

Version No. 055
Travel Agents Act 1986

No. 52 of 1986

Version incorporating amendments as at
1 January 2011

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purpose	1
2 Commencement	1
3 Definitions	1
4 Business as a travel agent	5
5 Exemptions	7
5A Act to bind the Crown	7
PART 2—LICENCES	8
Division 1—Travel agency business	8
6 Travel agents to be licensed	8
7 Unauthorised use of licence	8
Division 2—Issue of licences	9
8 Application for licence	9
8A Consent to disclosure of information	12
9 Application to be referred to Director and Chief Commissioner	13
9A Consideration of application	13
10 Grant or refusal of licence	14
11 Conditions of, and restrictions on, licence	18
11A Endorsement of conditions and restrictions	19
12 Name under which licensee may operate	19
13 Form of licence	20
14 Address of place of business	20
15 Register to be kept	21
16 Term of, and authority conferred by, licence	23
16A Automatic cancellation of licence	24
17 Annual fee and annual statement	24
18 Cancelled or suspended licence must be returned	28
18A Surrender of licence	28
19 Duplicate licence	28

<i>Section</i>	<i>Page</i>
Division 3—Disciplinary action	29
20 Disciplinary action against licensee	29
21 Determination of disciplinary measures by Authority	31
Division 4—Appeals	33
22 Applications for review	33
Division 5—Death of licensee	34
23 Death of licensee	34
24 Endorsement of conditions etc. of licence	35
Division 6—Unjust conduct by travel agents	35
25 Interpretation	35
26, 27 <i>Repealed</i>	35, 36
28 Restraint of unjust conduct	36
29 Variation etc. of restraining order	37
PART 3—CONDUCT OF BUSINESS	38
30 Certain particulars to be displayed	38
31 Advertisements	38
32 Name to appear on documents	38
33 Licensee must supervise conduct of business	39
34 Employment of disqualified person	39
35 Civil orders	40
36 Temporary restraint on disposition of property	42
37 Penalties for assisting business of unlicensed travel agent	43
38 Right to sue persons providing certain services to unlisted persons	46
39 Accounts to be kept	46
PART 3A—INSPECTION POWERS	48
39A Production of identity card	48
39B Documents available for inspection	48
39C Licensee or specified person to produce documents and answer questions	49
39D Third parties to produce documents and answer questions relating to licensee's business	50
39E Ministers, police and public authorities to produce information to inspectors	50
39F Certain other specified persons or bodies to produce information	51
39G Powers on production of documents	52
39H Order requiring supply of information and answers to questions	53
39I Entry or search with consent	53
39J Entry without consent or warrant	56
39K Search warrants	56

<i>Section</i>	<i>Page</i>
39L Announcement before entry	58
39M Details of warrant to be given to occupier	58
39N Seizure of things not mentioned in the warrant	59
39O Embargo notice	59
39P Copies of seized documents	60
39Q Retention and return of seized documents or things	61
39R Magistrates' Court may extend 3 month period	61
39S Requirement to assist inspector during entry	62
39T Refusal or failure to comply with requirement	62
39U Rule against self-incrimination does not apply	62
39V Offence to give false or misleading information	63
39VA Powers of court if requirement to produce information not complied with	63
39W Application of provisions relating to inspections	64
39X Service of documents	64
39Y Confidentiality	64
39Z Production of information to Authority	65
39ZA Rule against self-incrimination does not apply	65
 PART 3B—INFRINGEMENT NOTICES	 67
39ZB Definition	67
39ZC Power to serve a notice	67
39ZD Form of notice	67
39ZE–39ZJ <i>Repealed</i>	68
 PART 4—MISCELLANEOUS	 69
40 Other rights and remedies	69
41 Retention of documents	69
42 <i>Repealed</i>	69
42A Production of records in proceedings	70
42B False or misleading statements	71
42BA Waiver or refund of fees	71
42C Payments from Consolidated Fund	72
42D Offence to destroy records required by the Act	72
43 Limitation	72
44 Application of Fair Trading Act 1999	72
45 Who may bring proceedings for offences?	73
45A Legal action by compensation scheme trustees	74
46 Compensation scheme	74
46A Extension of time	75
46B Compensation scheme claims	75
47 Service of documents	76
47A Protection for things done under Act	77
47B Delegation by Director	78
48 Regulations	78
49–51 <i>Repealed</i>	79

<i>Section</i>	<i>Page</i>
PARTS 5, 6—<i>Repealed</i>	80
52–72 <i>Repealed</i>	80
<hr/>	
SCHEDULE—<i>Infringement Offences</i>	81
<hr/> <hr/>	
ENDNOTES	82
1. General Information	82
2. Table of Amendments	83
3. Explanatory Details	87

Version No. 055
Travel Agents Act 1986

No. 52 of 1986

Version incorporating amendments as at
1 January 2011

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to provide for the licensing of travel agents and the regulation of their operation.

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Definitions

(1) In this Act—

Authority means the Business Licensing Authority established under the **Business Licensing Authority Act 1998**;

S. 3(1) def. of *Authority* substituted by No. 52/1998 s. 280(a).

* * * * *

S. 3(1) def. of *chairperson* repealed by No. 52/1998 s. 280(b).

compensation scheme means a scheme declared under section 46 to be an approved compensation scheme for the purposes of this Act;

compensation scheme trustees means the trustees or other person by whom the compensation scheme is administered;

S. 3(1) def. of
Consumer Act
inserted by
No. 35/2000
s. 52(a).

Consumer Act has the same meaning as it has in
the **Fair Trading Act 1999**;

corresponding Act means any legislation in force
in another State, or in a Territory of the
Commonwealth, that provides for the
licensing of a person who carries on business
as a travel agent;

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 duly
authorized to act in, the position;

S. 3(1) def. of
*deputy
chairperson*
repealed by
No. 52/1998
s. 280(b).

* * * * *

S. 3(1) def. of
determination
repealed by
No. 52/1998
s. 280(b).

* * * * *

S. 3(1) def. of
*exempted
person*
amended by
No. 17/2004
s. 11.

exempted person means a person to whom,
by reason of an order under section 5,
section 6(1) does not apply;

S. 3(1) def. of
*financial
institution*
inserted by
No. 17/1999
s. 15(b).

financial institution means—

- (a) an authorised deposit-taking institution
within the meaning of the Banking Act
1959 of the Commonwealth; or

(b) a body approved by the Governor in Council by order published in the Government Gazette;

* * * * *

S. 3(1) def. of *insolvent under administration* inserted by No. 101/1998 s. 39(a), repealed by No. 4/2008 s. 32(Sch. item 34).

inspector means an inspector appointed under the **Fair Trading Act 1999**;

S. 3(1) def. of *inspector* inserted by No. 17/1999 s. 15(b).

licence means travel agent's licence in force under this Act;

licensee means holder of a licence;

* * * * *

S. 3(1) def. of *Licensing Registrar* repealed by No. 52/1998 s. 280(b).

manager means a person who is present and in charge of the day-to-day operations of a place of business;

S. 3(1) def. of *manager* inserted by No. 63/2010 s. 79(1).

* * * * *

S. 3(1) def. of *member* repealed by No. 52/1998 s. 280(b).

occupier in relation to a premises, means a person who appears to be of or over 16 years of age and who appears to be in control of the premises;

S. 3(1) def. of *occupier* inserted by No. 17/1999 s. 15(b).

Travel Agents Act 1986
No. 52 of 1986
Part 1—Preliminary

s. 3

S. 3(1) def. of
officer
substituted by
No. 44/2001
s. 3(Sch.
item 116.1).

officer, in relation to a body corporate, has the same meaning as in section 82A of the Corporations Act;

S. 3(1) def. of
OFTBA Act
inserted by
No. 17/1999
s. 15(b),
repealed by
No. 35/2000
s. 52(b).

* * * * *

record includes any book, account, document, paper or other source of information compiled, recorded, stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

registered means recorded in the register kept under section 15;

S. 3(1) def. of
Registrar
inserted by
No. 52/1998
s. 290(d).

Registrar means the Registrar of the Authority appointed under the **Business Licensing Authority Act 1998**;

S. 3(1) def. of
the Director
substituted by
Nos 52/1998
s. 280(c),
17/1999
s. 15(a).

the Director means the Director within the meaning of the **Fair Trading Act 1999**;

this Act includes the regulations;

S. 3(1) def. of
Tribunal
inserted by
No. 52/1998
s. 280(d).

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

S. 3(1) def. of
trust deed
inserted by
No. 78/2003
s. 3.

trust deed means the deed of trust made on the twelfth day of December 1986 establishing the compensation scheme as amended from time to time.

* * * * *

S. 3(2)
repealed by
No. 17/2004
s. 12.

4 Business as a travel agent

- (1) For the purposes of this Act, a person carries on business as a travel agent if the person carries on a business (whether or not in the course of, or as incidental to, or in connexion with, any other business) of—
- (a) selling tickets entitling another person to travel, or otherwise arranging for another person a right of passage, on a conveyance other than a prescribed conveyance; or
 - (b) selling to, or arranging or making available for, another person rights of passage to, and hotel or other accommodation at, one or more places—
 - (i) which are within or outside Victoria; or
 - (ii) some of which are within, and others of which are outside, Victoria; or
 - (c) purchasing for resale the right of passage on a conveyance other than a prescribed conveyance; or
 - (d) carrying on an activity prescribed for the purposes of this paragraph—
- or if the person holds out or advertises that the person is willing to carry on any activity referred to in paragraph (a), (b), (c) or (d).
- (2) A person does not carry on business as a travel agent by reason only of doing in the course of the person's employment anything referred to in subsection (1).

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

- (1) The Governor in Council may, by Order published in the Government Gazette, declare that any or all of the provisions of this Act do not have effect in relation to a specified person or to a specified class of persons.
- (2) An Order made under subsection (1)—
 - (a) may specify the period during which the Order shall remain in force; and
 - (b) may provide that its operation is subject to such terms and conditions as are specified in the Order; and
 - (c) may specify the circumstances under which a person to whom the Order applies is, by reason of the Order, to be deemed to be an exempted person for the purposes of this Act.
- (3) An Order under this section, including an Order that is varied under this section, has effect according to its tenor.

S. 5(1)
amended by
No. 103/2004
s. 74.

5A Act to bind the Crown

This Act binds the Crown, not only in right of the State of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

S. 5A
inserted by
No. 17/2004
s. 13.

PART 2—LICENCES

Division 1—Travel agency business

6 Travel agents to be licensed

- (1) A person must not—
- (a) carry on business as a travel agent otherwise than in accordance with the authority conferred on that person by a travel agent's licence; or
 - (b) carry on business as a travel agent in partnership with a person who is not the holder of a travel agent's licence.

Penalty: 500 penalty units or imprisonment for 12 months, or both.

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

7 Unauthorised use of licence

- (1) The holder of a licence must not transfer or lend, or attempt to transfer or lend, the licence to another person or allow another person to use the licence.
- (2) A person must 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: 50 penalty units.

Division 2—Issue of licences

8 Application for licence

- (1) An application for a licence may be made to the Authority—
 - (a) by a natural person of or over the age of 18 years; or
 - (b) by a body corporate if all persons concerned in the management of the body corporate are of or over the age of 18 years.
- (2) An application must be in writing in a form approved by the Authority and must be signed—
 - (a) if the application is made by a natural person—by that person; or
 - (b) if the application is made by a body corporate—by one director of the body corporate.
- (2A) If the application is signed by a director of a body corporate, the application must include a statement that the director—
 - (a) certifies that he or she has the authority to make the application on behalf of the body corporate; and
 - (b) certifies that the particulars contained in the application are true and correct; and
 - (c) certifies that the accompanying documents (if any) are true copies of those documents.
- (3) An application must be accompanied by the prescribed fee for the application and may be accompanied by the prescribed fee for the licence.

S. 8(2)
amended by
No. 52/1998
s. 281(1).

S. 8(2)(b)
amended by
Nos 101/1998
s. 39(b),
8/2003
s. 76(1).

S. 8(2A)
inserted by
No. 8/2003
s. 76(2).

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- (4) An application must specify—
- (a) the name and address—
 - (i) if the application is made by a natural person—of that person; or
 - (ii) if the application is made by a body corporate—of each director of the body corporate; and
 - (b) if the application is made by a body corporate—the date and place of incorporation of the body corporate, its corporate name and the address of its registered office; and
 - (c) the name under which the applicant proposes to carry on business as a travel agent; and
 - (d) the address of the place that, if a licence were granted pursuant to the application, would be the principal place of business of the licensee; and
 - (e) the address of any other place at which, if a licence were granted pursuant to the application, the licensee would carry on business as a travel agent; and
 - (f) if the applicant intends to carry on business in partnership, the name and address of each natural person with whom the applicant intends to carry on business in partnership; and
 - (g) if the applicant intends to carry on business in partnership with a body corporate—
 - (i) the date and place of incorporation; and
 - (ii) the corporate name; and
 - (iii) the address of the registered office; and
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(iv) the name and address of each director—

of each body corporate with which the applicant intends to carry on business in partnership; and

(h) the name, address and such other particulars as may be prescribed of the persons it is proposed to have in charge, in compliance with section 33, at each place referred to in paragraphs (d) and (e); and

(i) such other matters as may be prescribed.

(5) Where application is made for a licence and, before the application is granted or refused, a change occurs in the particulars specified in the application in accordance with subsection (4), the applicant must, within 14 days after the occurrence of the change, give to the Authority 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: 10 penalty units.

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S. 8(6)
repealed by
No. 52/1998
s. 281(2).

(7) A person must not in, or in relation to, an application under this section, a notice under subsection (5) or any information provided under section 9A(2)(b), make a statement that is false or misleading by reason of the inclusion of any false or misleading matter or the omission of any material matter.

Penalty: 50 penalty units.

S. 8(7)
amended by
No. 52/1998
s. 281(3).

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- (8) It is a defence to a prosecution of a person for an offence under subsection (7) if the person proves that, when the application was made, the notice given or the particulars provided, the person—
- (a) believed on reasonable grounds that the false matter was true; or
 - (b) believed on reasonable grounds that the misleading matter was not misleading; or
 - (c) 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.

S. 8A
inserted by
No. 8/2003
s. 77.

8A Consent to disclosure of information

- (1) The Authority may require a licensee, or a person submitting an application for a licence, or a person appointed as, or proposed to be appointed as, the person in charge of the day-to-day conduct of a travel agency business, to provide to the Authority, at the time of submitting the application or at any time during the currency of the licence, any consent required by another person or body to enable the Authority to check or confirm information relevant to the licence or application.
- (2) Without limiting subsection (1), consent includes—
 - (a) the consent of the licensee or the applicant; and
 - (b) the consent of another person other than the licensee or applicant; and
 - (c) if the licensee or applicant is a corporation, the consent of a director of the corporation or a member of the corporation.

- (3) The Authority may refuse to consider an application for a licence if the applicant does not provide to the Authority the required consent within 14 days after the requirement is made.

9 Application to be referred to Director and Chief Commissioner

S. 9
substituted by
No. 52/1998
s. 282.

- (1) If an application is made under section 8, the Authority must, except in the prescribed circumstances, give any details of the application that the Authority considers relevant to the Director and the Chief Commissioner of Police.
- (2) The Director and the Chief Commissioner of Police, on receiving details of the application, must make any inquiries in relation to the application that the Director or the Chief Commissioner of Police considers appropriate.
- (3) The Director and the Chief Commissioner, after receiving the results of the inquiries, must report to the Authority.
- (4) A report may include recommendations.

9A Consideration of application

S. 9A
inserted by
No. 52/1998
s. 282.

- (1) The Authority must consider every application for a licence.
- (2) In considering an application for a licence, the Authority may—
- (a) conduct any inquiries it thinks fit;
 - (b) require an applicant to provide any further information that the Authority thinks fit in the manner required by the Authority;
 - (c) seek advice and information on the application from any other person or body or source it thinks fit.
- (3) The Authority may engage or appoint any person to assist it in considering an application.

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- (4) The Authority may refuse to grant a licence to a person if the person does not provide the further information required within a reasonable time of the requirement being made.

10 Grant or refusal of licence

- (1) Subject to subsections (2) and (4), the Authority must grant an application for a licence if the Authority is satisfied that upon the granting of the application the applicant will be a participant in the compensation scheme.
- (2) An application for a licence made by a natural person must be refused if it appears to the Authority that—
- (a) the applicant has not attained the age of 18 years; or
 - (b) the applicant is disqualified from holding a licence under this Act or a corresponding Act; or
 - (c) the applicant is disqualified under this Act or a corresponding Act from being involved in the direction, management or conduct of a business as a travel agent; or
 - (d) a person proposed to be employed for the purposes of section 33 is not of good reputation or character or in any other way would not be a fit and proper person to be a licensee if the person were to apply for a licence; or
 - (e) the applicant is not a person likely to carry on such a business honestly and fairly; or
 - (f) the applicant is in any other way not a fit and proper person to be a licensee.
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- (3) Without affecting the generality of subsection (2)(f), the Authority may, in determining whether an applicant is not a fit and proper person to be a licensee, 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 the application, been convicted of, or served any part of a term of imprisonment for, an offence in Victoria or elsewhere involving fraud or dishonesty; or
 - (b) was, at the time of the making of the application, bound in relation to such an offence by a recognizance; or
 - (c) was, at the time of the making of the application, the subject of a charge pending in relation to such an offence; or
 - (d) has, at any time, been convicted of an offence against this Act or any other enactment administered by the Minister; or
 - (e) has been refused a licence under a corresponding Act; or
 - (f) has been the subject of action that, under a corresponding Act, had an effect similar to the effect under this Act of action under section 21(1)(a), (b), (c), (d) or (g).
- (4) An application for a licence made by a body corporate must be refused if it appears to the Authority that—
- (a) a person concerned in the management of the body corporate has not attained the age of 18 years; or
 - (b) the body corporate is disqualified from holding a licence under this or a corresponding Act; or
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- (c) the body corporate is disqualified under this Act or a corresponding Act from being involved in the direction, management or control of a business as a travel agent; or
 - (d) a person proposed to be employed for the purposes of section 33 is not of good reputation or character or in any other way would not be a fit and proper person to be a licensee if the person were to apply for a licence; or
 - (e) the body corporate is not likely to carry on such a business honestly and fairly; or
 - (f) the reputation of the body corporate is such that it would not be a fit and proper person to be a licensee; or
 - (g) an officer of the body corporate is disqualified from being involved in the direction, management or conduct of the business of a travel agent; or
 - (h) a director of, or a person concerned in the management of, the body corporate is not of good reputation or character or in any other way would not be a fit and proper person to be a licensee if the director or person were to apply for the licence personally; or
 - (i) any person (other than an officer of the body corporate) who, in the opinion of the Authority, 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.

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- (5) Without affecting the generality of subsection (4)(f), (h) or (i), the Authority may, in determining any matter referred to in those paragraphs, have regard (if such be the case) to the fact that a person so referred to—
- (a) has, during the period of 10 years that last preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in Victoria or elsewhere involving fraud or dishonesty; or
 - (b) was, at the time of the making of the application, bound in relation to such an offence by a recognizance; or
 - (c) was, at the time of the making of the application, the subject of a charge pending in relation to such an offence; or
 - (d) has, at any time, been convicted of an offence against this Act or any other enactment administered by the Minister; or
 - (e) has been refused a licence under a corresponding Act; or
 - (f) has been the subject of action that, under a corresponding Act, had an effect similar to the effect under this Act of action under section 21(1)(a), (b), (c), (d) or (g).
- (5A) The Authority is not required to conduct a hearing to determine whether to grant a licence or refuse an application for a licence.
- (6) Where an application for a licence is refused, the Authority must forthwith, by notice in writing served on the applicant, inform the applicant of the refusal and, if the application was accompanied by the prescribed fee for the licence, the Authority must, as soon as practicable, refund to the applicant that fee.

S. 10(5A)
inserted by
No. 52/1998
s. 283(1).

S. 10(6)
amended by
No. 52/1998
s. 283(2).

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- (7) Where an application for a licence is granted, the Authority must notify the applicant accordingly but must not issue the licence unless the prescribed fee for the licence is, or has been, paid to the Authority.

11 Conditions of, and restrictions on, licence

- (1) The Authority may—
- (a) upon the granting of an application for a licence and at any other time, impose conditions or restrictions subject to which the licence is to be held; and
 - (b) upon application or of its own motion, at any time vary or revoke any of those conditions or restrictions.
- (2) A licence is subject to—
- (a) a condition that the licensee, at all times during the currency of the licence, be a participant in the compensation scheme; and
 - (b) a condition that each place at which the licensee carries on business as a travel agent must at all times comply with such standards, and with such other requirements, as may be prescribed; and
 - (c) any prescribed conditions and restrictions; and
 - (d) any conditions and restrictions imposed under subsection (1) or any other provision of this Act, of which written notice has been served on the licensee.
- (3) A licensee must comply with any condition or restriction to which the licence is subject.

Penalty: 20 penalty units.

* * * * *

S. 11(4)(5)
repealed by
No. 52/1998
s. 284.

- (6) If, under this section, the Authority is entitled to impose conditions or restrictions on a licence, the Authority may, instead of so doing, accept an undertaking from the applicant for, or holder of, the licence as to matters or things that the applicant or holder will do or refrain from doing.

11A Endorsement of conditions and restrictions

- (1) If under section 11 or section 21, a condition or restriction is imposed on a licence, the Authority may require the licensee to produce the licence for endorsement of the condition or restriction.
- (2) A licensee must comply with a requirement under subsection (1).

S. 11A
inserted by
No. 52/1998
s. 285.

Penalty: 10 penalty units.

12 Name under which licensee may operate

- (1) Subject to the **Business Names Act 1962**, a licence may authorize the 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 person must not carry on business as a travel agent under a name other than the name of the licensee or a name under which the licensee is authorized so to do in accordance with subsection (1).

Penalty: 50 penalty units.

S. 13(1)(a)
amended by
No. 101/1998
s. 39(c).

13 Form of licence

- (1) Subject to section 10(7), a licence—
- (a) must be in a form approved by the Authority;
and
 - (b) must be issued by the Authority; and
 - (c) if it authorizes the licensee to carry on
business under a name or names in addition
to, or in substitution for, the name of the
licensee—must bear an endorsement to that
effect.
- (2) The Authority may, on the application of a
licensee, add or amend an endorsement referred to
in subsection (1)(c).

14 Address of place of business

- (1) A licensee, not later than 14 days after—
- (a) a change of address of the principal place at
which the licensee carries on business as a
travel agent—must apply to the Authority, in
writing accompanied by the prescribed fee,
for registration of the changed address; or
 - (b) the licensee commences to carry on business
as a travel agent at a new or additional
address—must apply to the Authority, in
writing accompanied by the prescribed fee,
for registration of the new or additional
address; or
 - (c) the licensee ceases to carry on business as a
travel agent at a particular address—must
apply to the Authority, in writing
accompanied by the prescribed fee, for
registration of the cessation of business at
that address.

Penalty: 20 penalty units.

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- (2) If a licensee is required by subsection (1)(a) or (b) to apply for registration of the address of a place of business, the licensee must include in the notification the name, address and such other particulars as may be prescribed, of the person it is proposed to have in charge at that place of business in compliance with section 33.

15 Register to be kept

- (1) The Registrar must keep a register of licensed travel agents open for public inspection in the form determined by the Registrar.

S. 15(1)
amended by
No. 52/1998
s. 286(1),
substituted by
No. 8/2003
s. 78.

- (2) The purposes of the register are—

- (a) to enable members of the public to have access to information about licensees;
- (b) to record the names of people disqualified under section 21(2) or refused a licence under section 10(2)(e) or (f) or section 10(4)(g) or (h).

S. 15(2)
amended by
No. 52/1998
s. 286(1),
substituted by
No. 8/2003
s. 78.

- (2A) The register must include the following details in relation to each licensed travel agent—

- (a) licence number issued by the Authority;
- (b) name of licensee;
- (c) date licence granted;
- (d) date licence surrendered, cancelled or suspended;
- (e) licence conditions;
- (f) details of any Tribunal or court orders concerning the licensee affecting the licence and of which the Registrar has notice;

S. 15(2A)
inserted by
No. 8/2003
s. 78.

- (g) business names under which a licensee is authorised to carry on travel agency business, including the date of commencement and cessation of business in that name;
 - (h) business addresses and telephone numbers of any premises from which the travel agency business is conducted and, in each place of business, the manager of that place, including the date of commencement and cessation of business at that place and the date of the manager's commencement and cessation of appointment;
 - (i) if the licensee is a corporation, the names of the directors and the date of appointment and cessation of appointment of each director;
 - (j) if the licensee carries on business in a partnership, the names of the partners;
 - (k) Australian Business Number (if any) issued under the A New Tax System (Australian Business Number) Act 1999 of the Commonwealth;
 - (l) Internet site address maintained by the licensee for the purposes of a travel agent's business (if any);
 - (m) any other information prescribed by the regulations as forming part of the register.
- (2B) Subject to the **Public Records Act 1973**, the Registrar may, if in his or her opinion it is no longer necessary or desirable to retain it, remove any information from the register 12 years after the information was added to the register.

S. 15(2B)
inserted by
No. 8/2003
s. 78.

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- (3) A person, on application in accordance with the regulations (if any) and on payment of the prescribed fee (if any)—
- (a) may inspect the Register of Travel Agents; and
 - (b) may make a copy of, or take extracts from, the register.
- (4) A certificate purporting to be signed by the Registrar certifying as to any matter relating to the contents of the Register of Travel Agents is evidence of that matter.
- (5) The Registrar may correct an error or omission in the Register by—
- (a) inserting an entry or
 - (b) amending an entry; or
 - (c) omitting an entry—
- if he or she decides that the correction is necessary.

S. 15(4)
inserted by
No. 52/1998
s. 286(2).

S. 15(5)
inserted by
No. 52/1998
s. 286(2).

16 Term of, and authority conferred by, licence

- (1) Except while it is suspended, a licence continues in force until, pursuant to the provisions of this Act, it is surrendered or cancelled.
- (2) If a licensee ceases to participate in the compensation scheme, the licence is suspended until the licensee again participates in the scheme.
- (3) A licence authorizes the licensee to carry on business as a travel agent under the name or names specified in the licence subject to and in accordance with this Act and the conditions and restrictions to which the licence is subject.

s. 16A

- (4) For the purposes of this Act, sections 17 and 18 excepted, a person whose licence is suspended under subsection (2) or under section 20 or 21 is, while the suspension continues, deemed to be a person who does not hold a licence.

S. 16A
inserted by
No. 52/1998
s. 287.

16A Automatic cancellation of licence

A person's licence is automatically cancelled if the person—

- (a) becomes an insolvent under administration;
or
(b) in the case of a body corporate, becomes an externally-administered body corporate within the meaning of the Corporations Act;
or
(c) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**.

S. 16A(b)
amended by
Nos 101/1998
s. 39(d),
44/2001
s. 3(Sch.
item 116.2).

17 Annual fee and annual statement

S. 17(1)
substituted by
No. 52/1998
s. 288(1).

- (1) Except where regulations made for the purposes of subsection (2) otherwise provide, a licensee must pay to the Authority the prescribed annual licence fee on each anniversary of the date the licensee was last granted a licence under section 10.

S. 17(1A)
inserted by
No. 52/1998
s. 288(1).

- (1A) An annual licence fee may be paid at any time in the 6 weeks before it falls due.
- (2) The regulations may make provision for and with respect to the date and payment of the fee prescribed for the purposes of subsection (1) where licensees carry on business in partnership.

Travel Agents Act 1986
No. 52 of 1986
Part 2—Licences

s. 17

(3) The payment of the prescribed annual licence fee must be accompanied by a statement in respect of the year up to the date that the payment is made that is in a form approved by the Authority.

S. 17(3)
substituted by
No. 52/1998
s. 288(2).

(3A) A statement lodged under this section must be signed—

S. 17(3A)
inserted by
No. 52/1998
s. 288(2).

(a) if the licensee is a natural person, by the licensee; or

(b) if the licensee is a body corporate, by a director of the body corporate.

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S. 17(4)
repealed by
No. 8/2003
s. 79(1).

(5) A statement under this section must contain any information and be accompanied by any documents required by the Authority.

S. 17(5)
substituted by
No. 52/1998
s. 288(3).

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S. 17(6)
repealed by
No. 52/1998
s. 288(4).

(7) The Authority, on the application of a person required to comply with subsection (1) or (3) and on payment of the prescribed fee, may extend or further extend the time for compliance with that subsection.

S. 17(7)
substituted by
No. 52/1998
s. 288(5).

(8) If a licensee fails to pay a fee, or lodge a statement, or pay a fee and lodge a statement, in accordance with this section and the regulations, the Authority must 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, 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.

Travel Agents Act 1986
No. 52 of 1986
Part 2—Licences

s. 17

S. 17(9)
substituted by
No. 52/1998
s. 288(6).

(9) If a licensee has not complied with this section and has not paid the prescribed late payment fee or late lodgement fee by the date specified in the notice, the licence is automatically cancelled.

S. 17(10)
repealed by
No. 52/1998
s. 288(4).

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S. 17(11)
amended by
No. 8/2003
s. 79(2)(b).

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

S. 17(11)(a)
amended by
No. 8/2003
s. 79(2)(a).

- (a) between the time the application for the licence was granted and the time the first statement is lodged under subsection (3)— a change in the particulars specified in, or in connexion with, the application or provided in accordance with section 8(5); or
- (b) between the lodging of successive annual statements under subsection (3)—a change in the particulars specified in the earlier of those statements—

(not, in either case, being a change required to be notified under section 14), the licensee within 14 days after the occurrence of the change, must give to the Authority notice in writing specifying particulars of the change.

Penalty: 20 penalty units.

S. 17(11A)
inserted by
No. 8/2003
s. 79(3).

- (11A) If at any time during the period of the licence the licensee proposes to replace the person in charge of a place of business with another person (the *proposed person*)—
- (a) the licensee must notify the Authority in the form approved by the Authority; and
 - (b) the licensee must pay the prescribed fee (if any) for lodgment of the notice.

- (11B) The Authority may—
- (a) conduct any inquiries it thinks fit;
 - (b) require the proposed person to provide any further information that the Authority thinks fit in the manner required by the Authority;
 - (c) seek advice and information on the proposed person from any other person or body it thinks fit.
- (12) A person must not, in or in relation to a statement required to be lodged under subsection (3) or a notice required to be given under subsection (11), make a statement that is false or misleading by reason of the inclusion of any false or misleading matter or the omission of any material matter.
- Penalty: 20 penalty units.
- (13) It is a defence to a prosecution of a person for an offence under subsection (12) if it is proved that, when the statement was lodged or the notice given, the person—
- (a) believed on reasonable grounds that the false matter was true; or
 - (b) believed on reasonable grounds that the misleading matter was not misleading; or
 - (c) in the case of an omission—believed on reasonable grounds that no material matter had been omitted; or
 - (d) in the case of an omission—did not know that the omitted matter was material.

S. 17(11B)
inserted by
No. 8/2003
s. 79(3).

s. 18

S. 18
substituted by
No. 52/1998
s. 289.

18 Cancelled or suspended licence must be returned

If a licence is suspended or cancelled under this Act, the person to whom the licence was issued must return the licence to the Authority within 7 days of becoming aware of the suspension or cancellation.

Penalty: 25 penalty units.

S. 18A
inserted by
No. 52/1998
s. 289.

18A Surrender of licence

- (1) Subject to subsection (2), a licensee may at any time by notice in writing to the Authority surrender the licence.
- (2) If an application has been made to the Tribunal under section 20 to conduct an inquiry in relation to a licensee, the licensee may not, without leave of the Tribunal, surrender the licence unless the Tribunal has determined to take action under section 21 or has determined not to take any action.
- (3) The person who held a licence that has been surrendered must return the licence to the Authority within 14 days of surrendering it.

Penalty: 10 penalty units.

S. 19
amended by
No. 52/1998
s. 290.

19 Duplicate licence

If the Registrar is satisfied that a licence has been lost destroyed or damaged, the Registrar must, on payment of the prescribed fee, issue a duplicate of the licence.

Division 3—Disciplinary action

20 Disciplinary action against licensee

- (1) The Director or the Chief Commissioner of Police may, at any time, apply to the Tribunal to conduct an inquiry into the holding of a licence on the ground that—
- (a) the licence has been improperly obtained or, at the time the licence was granted, there were grounds for refusing to grant it; or
 - (b) the licensee has been convicted of an offence against this Act or any other enactment administered by the Minister; or
 - (c) the licensee has failed to comply with this Act, a condition or restriction to which the licence is subject, a requirement under section 21(1)(b) or an order of the Authority applicable to the licensee; or
 - (d) the licensee has been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more; or
 - (da) the licensee has been convicted of an offence against section 49A(1) of the **Crimes Act 1958** or section 50DA or 50DB of the Crimes Act 1914 of the Commonwealth; or
 - (e) the licensee does not have, or is not likely to continue to have, sufficient financial resources to enable the licensee to continue to carry on business as a travel agent; or
 - (f) the business to which the licence relates is being carried on in a dishonest or unfair manner; or
 - (g) the Authority would be required by section 10(2) or (4) to refuse an application by the licensee for a licence; or

S. 20(1)
amended by
No. 52/1998
s. 291(1).

S. 20(1)(da)
inserted by
No. 102/1994
s. 97(1).

s. 20

S. 20(1)(k)
amended by
No. 52/1998
s. 291(2).

S. 20(2)
substituted by
No. 52/1998
s. 291(3).

S. 20(3)
substituted by
No. 52/1998
s. 291(3).

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- (h) the licensee has, for a period of one month or more, ceased to carry on the business to which the licence relates; or
 - (i) a person (other than the licensee) involved in the direction, management or conduct of a business to which the licence relates is not a fit and proper person to be so involved or does not have the prescribed qualifications or experience; or
 - (j) the licensee has been refused a licence under a corresponding Act; or
 - (k) the licensee has been the subject of action that, under a corresponding Act, had an effect similar to the effect under this Act of action under section 21(1)(a), (b), (c), (d) or (e); or
 - (l) the licensee is not, for any other reason, a fit and proper person to continue to hold a licence.
- (2) The Director or the Chief Commissioner of Police may apply to the Tribunal for the suspension of the licence held by a licensee if an application has been made in respect of the licence under subsection (1).
- (3) After considering an application under subsection (2), the Tribunal—
- (a) may suspend the licence for a period ending not later than the end of the inquiry, if the Tribunal considers that there is reasonable cause for believing that a ground set out in subsection (1) exists in relation to the licensee; and
 - (b) if the licence is suspended, must give the licensee notice of the suspension.
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S. 20(4)–(8)
repealed by
No. 52/1998
s. 291(4).

21 Determination of disciplinary measures by Authority

- (1) After conducting an inquiry under section 20, the Tribunal, if it considers it appropriate, may, by order, do any one or more of the following—
- (a) reprimand the licensee;
 - (b) require the licensee to pay a penalty of up to \$5000;
 - (c) require the licensee to comply within a specified time with a requirement specified by the Tribunal;
 - (d) cancel any licence held by the licensee and disqualify the licensee either permanently or temporarily from holding a licence;
 - (e) suspend any licence held by the licensee for a specified period not exceeding 12 months;
 - (f) impose any condition or limitation on any licence held by the licensee;
 - (g) disqualify the licensee in accordance with subsection (2);
 - (h) disqualify a person in accordance with subsection (2);
 - (i) require the licensee to enter into an undertaking to perform, or not to perform, certain tasks to be specified in the undertaking.

S. 21(1)
substituted by
No. 52/1998
s. 292(1).

Travel Agents Act 1986
No. 52 of 1986
Part 2—Licences

s. 21

S. 21(1A)
inserted by
No. 102/1994
s. 97(2),
amended by
No. 52/1998
s. 292(2)(3).

(1A) Despite subsection (1) if, after compliance with section 20, the Tribunal is satisfied that the licensee has been convicted of an offence against section 49A(1) of the **Crimes Act 1958** or section 50DA or 50DB of the Crimes Act 1914 of the Commonwealth, it must disqualify the licensee in accordance with subsection (2).

S. 21(2)
amended by
No. 52/1998
s. 292(3).

- (2) A person is disqualified in accordance with this subsection if either or both of the following disqualifications is or are imposed—
- (a) a disqualification from holding a licence;
 - (b) a disqualification from being involved in the direction, management or conduct of business as a travel agent—

either permanently or for such period as is specified by the Tribunal when imposing the disqualification.

S. 21(3)
amended by
Nos 52/1998
s. 292(3),
2/2009 s. 30.

- (3) If under subsection (1)(c), the Tribunal requires a licensee to comply with a requirement specified by it, the licensee must comply with the requirement within the time specified by the Tribunal under that paragraph.

Penalty: 10 penalty units.

S. 21(4)
amended by
No. 52/1998
s. 292(3).

- (4) If the Tribunal disqualifies a licensee in accordance with subsection (2), it must cancel the licence.

- (5) If the Tribunal suspends or cancels a licence, the suspension or cancellation takes effect on and from such day as is determined by the Tribunal.

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S. 21(5)
amended by
No. 52/1998
s. 292(3).

S. 21(6)(7)
repealed by
No. 52/1998
s. 292(4).

- (8) A person disqualified under subsection (2) must not, while disqualified, act in contravention of the disqualification.

Penalty applying to this subsection: 50 penalty units.

Division 4—Appeals

22 Applications for review

- (1) A person whose interests are affected by a decision of the Authority under section 10, 11 or 23 may apply to the Tribunal for review of that decision.
- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 22
substituted by
No. 52/1998
s. 293.

Division 5—Death of licensee

23 Death of licensee

- (1) Where 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 deceased licensee may, within 28 days after the death or such longer period as the Authority allows, apply to the Authority to be allowed to carry on the business as a travel agent of the deceased licensee during—
 - (a) the period that commences with the date of death of the licensee and ends 6 months later; or
 - (b) the period that commences with the date of death of the licensee and ends immediately before the next succeeding anniversary of the date on which the licence was granted—whichever is the longer.
- (2) The Authority may grant or refuse an application under subsection (1) and, where the Authority grants the application, may impose such conditions as it thinks fit, being conditions subject to which the business to which the application relates may be carried on.
- (3) A personal representative authorized under this section to carry on the business of a deceased licensee is, subject to this Act and any conditions imposed under subsection (2), deemed, while so authorized, to be the holder of the licence of the deceased licensee.

24 Endorsement of conditions etc. of licence

If, under section 23, the Authority imposes conditions subject to which a personal representative is authorized to carry on the business to which a licence relates, the personal representative, upon being required by the Authority so to do within a specified time, must produce the licence to the Authority within that time for endorsement of the conditions.

Penalty: 10 penalty units.

Division 6—Unjust conduct by travel agents

25 Interpretation

For the purposes of this Division, 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—

- (a) that is dishonest or unfair; or
- (b) that 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; or
- (c) that consists of the contravention of this Act or any other enactment administered by the Minister; or
- (d) that, in the case of a licensee, consists of the failure to comply with a condition or restriction to which the licence is subject or an order of the Tribunal applicable to the licensee.

S. 25(d)
amended by
No. 52/1998
s. 294(1).

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S. 26
amended by
No. 52/1998
s. 294(1),
repealed by
No. 17/1999
s. 16.

S. 27
amended by
No. 52/1998
s. 294(1)(2),
repealed by
No. 17/1999
s. 16.

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28 Restraint of unjust conduct

S. 28(1)
amended by
No. 52/1998
s. 294(1).

(1) If, on the application of the Director, the Tribunal is satisfied after inquiry that a person who carries on business as a travel agent 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 that business as a travel agent.

(2) A person to whom an order is given under subsection (1) must comply with the order.

Penalty: 50 penalty units.

S. 28(3)
amended by
No. 52/1998
s. 294(1),
substituted by
No. 17/1999
s. 17(1).

(3) If, on the application of the Director, the Tribunal is satisfied that a person has failed to observe an undertaking given by the person under section 146 of the **Fair Trading Act 1999**, the Tribunal may make an order under subsection (1) against the person.

S. 28(4)
amended by
Nos 52/1998
s. 294(1),
17/1999
s. 17(2).

(4) If the Director applies under subsection (1) or (3) for an order under subsection (1) against a body corporate and the Tribunal is satisfied that the unjust conduct or breach of undertaking to which the application relates was engaged in with the consent or connivance of a person who, at the time of the 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 prohibiting the person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking under section 146 of the **Fair Trading Act 1999**, by the body corporate

or any other body corporate of which the person is a director or in the management of which the person is concerned.

- (5) A person to whom an order under subsection (4) relates must comply with the order.

Penalty: 50 penalty units.

- (6) An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise) as the Tribunal thinks fit, including conditions as to the future conduct of the licensee and conditions specifying the action to be taken by the licensee to rectify the consequences of the licensee's unjust conduct.

S. 28(6)
amended by
No. 52/1998
s. 294(1).

29 Variation etc. of restraining order

The Tribunal may, on the application of the Director, vary or discharge an order made under section 28.

S. 29
amended by
No. 52/1998
s. 294(1).

PART 3—CONDUCT OF BUSINESS

30 Certain particulars to be displayed

A licensee must cause to be displayed at each place at which business is carried on pursuant to the licence a legible notice in the prescribed form that contains the prescribed particulars and is clearly visible to persons entering the place of business.

Penalty: 10 penalty units.

31 Advertisements

A licensee must not cause or permit to be published an advertisement (other than a radio or television advertisement) relating to the business carried on pursuant to the licence unless the advertisement legibly specifies the number of the licence and—

- (a) except as provided by paragraph (b)—the name of the licensee; or
- (b) if the licensee is authorized by the licence to carry on business otherwise than under the name of the licensee—the name of the licensee followed by the words "trading as" and the name or names under which the licensee is authorized to carry on business.

Penalty: 10 penalty units.

32 Name to appear on documents

- (1) A licensee must not, in the course of carrying on business pursuant to the licence, issue a letter, statement, invoice, cheque, receipt or other document on which there does not appear in legible characters the name of the licensee

identified as the holder of a licence under this Act, whether or not the licensee is authorized by the licence to carry on business under a name other than the name of the licensee.

Penalty: 10 penalty units.

- (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.
- (3) Subsection (1) does not affect the operation of section 20 of the **Business Names Act 1962**.

33 Licensee must supervise conduct of business

A licensee must ensure that the business conducted at any place from which a licensee carries on business as a travel agent is supervised by a manager (whether or not a licensee) with qualifications approved by the Director.

Penalty: 60 penalty units.

34 Employment of disqualified person

- (1) Except with the approval of the Authority, a licensee must not employ a person for the purposes of the business carried on pursuant to the licence if the person—
 - (a) is disqualified under this Act from holding a licence or is disqualified under a corresponding Act from holding a licence under the corresponding Act; or
 - (b) is disqualified under this Act or a corresponding Act from being involved in any capacity in the direction, management and conduct of business as a travel agent; or

S. 33
substituted by
No. 63/2010
s. 79(2).

- (c) has been refused a licence under this Act on a ground referred to in section 10(2)(e) or (f) or a licence under a corresponding Act on a similar ground; or
- (d) is a person whose adverse qualities were responsible for a body corporate being refused a licence on a ground referred to in section 10(4)(g) or (h) or a licence under a corresponding Act on a similar ground.

Penalty: 50 penalty units.

- (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 made reasonable inquiries regarding the person employed and had no reason to believe that the person employed was within the prohibition.
- (3) Nothing in this section empowers the Authority to approve the employment of a person in contravention of an order of the Tribunal.

S. 34(3)
inserted by
No. 52/1998
s. 295.

35 Civil orders

- (1) Where a person is convicted of an offence against this Act, the court may, in addition to any penalty it may impose, make any order, finding or determination relating to anything done or omitted to be done by the person convicted including an order for payment of compensation by the person convicted.
- (2) Where a person is convicted of an offence against section 6(1), the court may, in addition to any penalty it may impose, order the person to pay to the Crown an amount assessed by the court as not exceeding the proceeds derived by the person from the commission of the offence.
- (3) Before making an order under subsection (1) or (2), the court may require notice to be given to, and may hear, such persons as the court thinks fit.

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- (4) For the purpose of making an order against a person under subsection (2), the court may—
- (a) take into account such matters as the court thinks fit; and
 - (b) to the extent specified by the court—treat any interest in real or personal property acquired by the person by means of proceeds derived from the commission of the offence as proceeds derived by the person from commission of the offence; and
 - (c) treat the equivalent, in money terms, of any interest in real or personal property derived by the person from commission of the offence as proceeds derived by the person from commission of the offence.
- (5) Subject to subsection (6), where a body corporate is ordered under subsection (1) or (2) to make a payment, the persons who, at the time of the commission of the offence giving rise to the order for payment, were directors of the body corporate are jointly liable with the body corporate, and they and the body corporate are each severally liable, to make the payment ordered and are so liable as if the order had been to that effect.
- (6) If it is proved that an offence by a body corporate, giving rise to an order for payment made under subsection (1) or (2) was committed without the knowledge or consent of a director of the body corporate, the director is not liable as provided by subsection (5).
- (7) Without affecting any other right of appeal, an order for payment made under subsection (1) or (2) is appealable as if it were, or were part of, a penalty imposed in respect of the offence giving rise to the order.

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- (8) On appeal against a conviction referred to in subsection (1) or (2), an order made under the subsection may be confirmed, varied or revoked.
 - (9) An order for payment made under subsection (1) or (2) may be enforced as if it were a judgment in a civil matter given by the court.
 - (10) The Crown must pay to the compensation scheme trustees for the purposes of the compensation scheme an amount equivalent to any amount paid to the Crown pursuant to an order under subsection (2).

36 Temporary restraint on disposition of property

(1) Where—

- (a) proceedings are instituted against a person for an offence against section 6(1); or
- (b) an order against a person is made under section 35(1) or (2); or
- (c) a person is, because of an order made under section 35(1) or (2), under the liability imposed by section 35(5) on directors of a body corporate—

the court may, by order, prohibit—

- (d) the person from disposing of, or otherwise dealing with, any interest in specified property; and
- (e) any other specified person from disposing of, or otherwise dealing with, any interest in specified property—
 - (i) which is vested in the person referred to in paragraph (d) and in respect of which that other person has a power of disposition; or

(ii) which is held by that other person for the person so referred to—

otherwise than in such manner as may be specified in the order.

- (2) Before making an order under this section, the court may require notice to be given to, and may hear, such persons as it thinks fit.
- (3) An order under this section may be given or served in such manner as the court directs or as may be prescribed by rules of the court.
- (4) Any person who holds an interest in property the subject of an order under this section may apply for the revocation or variation of the order.
- (5) A person to or upon whom an order made under subsection (1) is given or served in accordance with this section must not, while it is in force, act in contravention of or fail to comply with the order.

Penalty: 20 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (6) In this section, *property* includes real and personal property and money.

37 Penalties for assisting business of unlicensed travel agent

- (1) In this section—

unlisted person means a person (other than an exempted person or the holder of a licence) who carries on business as a travel agent under a name or names that is not included in a list in force under subsection (2).

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- (2) The Authority, as soon as practicable after the commencement of this subsection and from time to time thereafter, must publish in the Government Gazette a list in which is specified—
- (a) the name or names under which each holder of a licence at the time of preparation of the list was authorized to carry on business as a travel agent; and
 - (b) the date on which the list comes into force, being a date that is not earlier than the date of publication of the list in the Government Gazette; and
 - (c) the date on which the list ceases to be in force.

S. 37(2A)
inserted by
No. 6/1989
s. 34.

- (2A) The Authority may from time to time amend a list in force under subsection (2) by publishing in the Government Gazette names which have been added to or removed from the list since the last date of publication.
- (3) If 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 scheme trustees are subrogated to the rights of the claimant in relation to the act or omission.
- (4) If the rights conferred by subsection (3) on the compensation scheme 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 act or omission and severally against the body corporate and each of those directors.

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- (5) 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, rights are not enforceable as provided by subsection (4) against the director in relation to the act or omission.
- (6) If an act or omission referred to in subsection (3) was the act or omission of a person who, at the time of the act or omission, was an unlisted person, any other person who, in the course of carrying on a business, provided the unlisted person with goods or services in relation to which the act or omission occurred, for the purposes of subsections (3), (4) and (5) but in relation only to the act or omission in so far as it involved those goods or services, is jointly and severally liable with the first-mentioned person for the reimbursement to the compensation trustees of the payment made under the compensation scheme by reason of the act or omission.
- (7) A person who, in the course of carrying on a business, provides an unlisted person with goods or services for disposal in a manner that would constitute the carrying on by the unlisted person or business as a travel agent, is deemed to have aided, abetted, counselled and procured the carrying on by the unlisted person of business as a travel agent.
- (8) Subsection (6) does not have effect in relation to an act or omission that occurs in relation to goods or services, and subsection (7) does not have effect in relation to goods or services, that are provided at a time when there is no list in force under subsection (2).

38 Right to sue persons providing certain services to unlisted persons

- (1) In this section, *unlisted person* has the same meaning as in section 37.
- (2) A person who—
 - (a) suffers loss by reason of an act or omission of an unlisted person; and
 - (b) is refused payment of a claim to the compensation trustees in respect of that loss—

has a right of action against any person who provided the unlisted person with goods or services in relation to which the act or omission occurred for damages in respect of the loss in so far as it involved those goods or services.

39 Accounts to be kept

A person who carries on business as a travel agent—

- (a) must keep such accounting and other records as correctly record and explain the transactions and financial position of the business; and
- (b) must keep the records in such a manner as will enable true and fair profit and loss accounts, and balance sheets, for the business to be prepared from time to time; and
- (c) must keep the records in such a manner as will enable profit and loss accounts, and balance sheets for the business, to be conveniently and properly audited; and

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- (d) must keep the records in the English language or, where the records are not kept in writing, in such manner as will enable the records to be readily converted into writing in the English language.

Penalty: 50 penalty units.

s. 39A

PART 3A—INSPECTION POWERS

Pt 3A
(Heading and
ss 39A–39ZA)
inserted by
No. 17/1999
s. 18.

39A Production of identity card

An inspector must produce his or her identity card for inspection—

- (a) before exercising a power under this Part other than a requirement made by post; and
- (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

S. 39A
inserted by
No. 17/1999
s. 18.

39B Documents available for inspection

- (1) A licensee must at all reasonable times at each office at which that licensee carries on business as a travel agent keep all documents relating to the business carried on at that office available for inspection by an inspector in a form in which they can be readily and expeditiously inspected by an inspector.

Penalty: 50 penalty units.

- (2) If the licence of a licensee has been surrendered or cancelled in the last 3 years, the former licensee must make all documents relating to the former business available for inspection by an inspector in a form and at a place where they can be readily and expeditiously inspected by an inspector.

Penalty: 50 penalty units.

S. 39B
inserted by
No. 17/1999
s. 18.

39C Licensee or specified person to produce documents and answer questions

S. 39C
inserted by
No. 17/1999
s. 18.

- (1) For the purpose of monitoring compliance with this Act, an inspector may require a licensee or a specified person at a time and place specified by the inspector—
- (a) to answer orally or in writing any questions put by the inspector relating to the licensee's business as a travel agent;
 - (b) to supply orally or in writing information required by the inspector relating to that business;
 - (c) to produce to the inspector specified documents or documents of a specified class relating to that business.
- (2) In this section *specified person*, in relation to a licensee's business as a travel agent, means—
- (a) a person whose licence has been surrendered or cancelled within the last 3 years; or
 - (b) a person who is a director or officer of a corporation which is a licensee; or
 - (c) if the licence of a corporation has been surrendered or cancelled within the last 3 years, a person who was a director or officer of the corporation at the time the licence was surrendered or cancelled; or
 - (d) a person who is an executor, administrator or trustee (including a trustee company within the meaning of the **Trustee Companies Act 1984**) of the estate of a deceased licensee who is carrying on the business of the licensee pursuant to this Act.

s. 39D

S. 39D
inserted by
No. 17/1999
s. 18.

39D Third parties to produce documents and answer questions relating to licensee's business

For the purpose of monitoring compliance with this Act, an inspector may require any person who has possession, custody or control of documents relating to a licensee's business as a travel agent—

- (a) to answer orally or in writing any questions put by the inspector relating to the licensee's business as a travel agent;
- (b) to supply orally or in writing information required by the inspector relating to that business;
- (c) to produce to the inspector specified documents or documents of a specified class relating to that business.

S. 39E
inserted by
No. 17/1999
s. 18.

39E Ministers, police and public authorities to produce information to inspectors

- (1) For the purpose of monitoring compliance with this Act, the Director or an inspector may request a specified public body within a time specified by the Director or inspector—
 - (a) to answer orally or in writing any questions put by the inspector relating to a licensee's business as a travel agent;
 - (b) to supply orally or in writing information required by the inspector relating to that business.
- (2) An inspector can only make a request under subsection (1) with the written consent of the Director.
- (3) A specified public body must comply with a request under subsection (1).

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- (4) In this section *specified public body* means—
- (a) a Minister; or
 - (b) a public statutory authority; or
 - (c) a municipal council; or
 - (d) the Chief Commissioner of Police.

39F Certain other specified persons or bodies to produce information

S. 39F
inserted by
No. 17/1999
s. 18.

- (1) For the purpose of monitoring compliance with this Act, the Director or an inspector may require a specified person or body within a time specified by the Director or inspector—
- (a) to answer orally or in writing any questions put by the inspector relating to a licensee's business as a travel agent;
 - (b) to supply orally or in writing information required by the inspector relating to that business.
- (2) An inspector can only make a requirement under subsection (1) with the written consent of the Director.
- (3) In this section *specified person or body* means—
- (a) a person who is a publisher of a publication; or
 - (b) a person who is the owner or operator of a broadcasting service; or
 - (c) a person who is the owner or operator of a telecommunications service; or
 - (d) a person who is the owner or operator of a postal service; or
 - (e) a financial institution.

s. 39G

39G Powers on production of documents

S. 39G
inserted by
No. 17/1999
s. 18.

- (1) If any documents are produced to an inspector under section 39C or 39D, the inspector may—
 - (a) inspect the documents or authorise a person to inspect the documents;
 - (b) make copies of or take extracts from the documents;
 - (c) seize the documents if the inspector considers the documents necessary for the purpose of obtaining evidence for the purpose of any proceedings under this Act;
 - (d) seize the documents if the inspector—
 - (i) considers the documents necessary for the purpose of obtaining evidence for the purpose of any proceedings under any Consumer Act; and
 - (ii) believes on reasonable grounds, that it is necessary to seize the documents in order to prevent their concealment, loss or destruction or their use in the contravention of any Consumer Act;
 - (e) secure any seized documents against interference;
 - (f) retain possession of the documents in accordance with this Part.

S. 39G(1)(d)(i)
amended by
No. 35/2000
s. 52(e).

S. 39G(1)(d)(ii)
amended by
No. 35/2000
s. 52(e).

S. 39G(2)
amended by
No. 35/2000
s. 52(c).

- (2) An inspector must not require a person to produce a document at a place other than the person's place of business or an office of the Director without the consent of the person.

39H Order requiring supply of information and answers to questions

S. 39H
inserted by
No. 17/1999
s. 18.

- (1) For the purpose of monitoring compliance with this Act, an inspector, with the written approval of the Director, may apply to the Magistrates' Court for an order requiring any person at a time and place specified by an inspector—
 - (a) to answer orally or in writing any questions put by an inspector relating to a licensee's business as a travel agent; or
 - (b) to supply orally or in writing information required by an inspector in relation to a licensee's business as a travel agent.
- (2) If the Magistrates' Court is satisfied on the basis of evidence presented by the Director that the order is necessary for the purpose of monitoring compliance with this Act, the Court may grant the order sought.
- (3) An order under this section must state a day, not later than 28 days after the making of the order, on which the order ceases to have effect.
- (4) An inspector who executes an order under this section must, as soon as practicable after that execution, notify the Magistrates' Court in writing of the time and place of execution of the order.

39I Entry or search with consent

S. 39I
inserted by
No. 17/1999
s. 18.

- (1) For the purpose of monitoring compliance with this Act, an inspector, with the consent of the occupier of the premises, may—
 - (a) enter and search any premises;
 - (b) seize anything found on the premises which the inspector believes on reasonable grounds to be connected with a contravention of this Act;

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- (c) examine and take and keep samples of any goods found on the premises which the inspector believes on reasonable grounds to be connected with a contravention of this Act;
 - (d) inspect and make copies of, or take extracts from, any document found on the premises.
- (2) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector has—
- (a) produced his or her identity card for inspection; and
 - (b) informed the occupier—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and
 - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.

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- (3) If an occupier consents to an entry and search, the inspector who requested consent must before entering the premises ask the occupier to sign an acknowledgment stating—
- S. 39I(3)
amended by
No. 106/2003
s. 29(1).
- (a) that the occupier has been informed of the purpose of the search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in proceedings; and
- (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search or to the seizure of anything or to the taking of any sample, copy or extract; and
- S. 39I(3)(b)
amended by
No. 106/2003
s. 29(2).
- (c) that the occupier has consented to such an entry and search; and
- (d) the date and time that the occupier consented.
- (4) If an occupier consents to the seizure or taking of any thing during a search under this section, the inspector must before seizing or taking the thing ask the occupier to sign an acknowledgment stating—
- (a) that the occupier has consented to the seizure or taking of the thing; and
- (b) the date and time that the occupier consented.
- (5) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the inspector leaves the premises.
- (6) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or taking of the thing.

s. 39J

S. 39J
inserted by
No. 17/1999
s. 18.

39J Entry without consent or warrant

- (1) For the purpose of monitoring compliance with this Act, an inspector may (with the assistance, if necessary, of another inspector or a member of the police force) do all or any of the following—
 - (a) enter and search any premises at which a licensee is carrying on business at any time that the premises are open for business or between the hours of 9 a.m. and 5 p.m.;
 - (b) seize or secure against interference anything that the Director or inspector believes on reasonable grounds to be connected with a contravention of this Act that is found on or in the premises;
 - (c) inspect and make copies of or take extracts from any document kept on the premises.
- (2) An inspector must not enter or search any premises under subsection (1) unless, before that entry, the inspector has produced his or her identity card for inspection by the occupier of the premises.

S. 39K
inserted by
No. 17/1999
s. 18.

39K Search warrants

- (1) An inspector, with the written approval of the Director, may apply to a magistrate for the issue of a search warrant in relation to particular premises for the purpose of monitoring compliance with this Act.
- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of the inspector that the warrant is necessary for the purpose of monitoring compliance with this Act, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an inspector named in the warrant, together with any other person or persons named or otherwise

identified in the warrant and with any necessary equipment—

- (a) to enter the premises specified in the warrant, if necessary by force; and
 - (b) to do all or any of the following—
 - (i) search for;
 - (ii) seize;
 - (iii) secure against interference;
 - (iv) examine and inspect;
 - (v) make copies of or take extracts from—
a thing or things of a particular kind named or described in the warrant and which the inspector believes, on reasonable grounds, to be connected with a contravention of this Act.
- (3) A search warrant issued under this section must state—
- (a) the purpose for which the search is required; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

s. 39L

S. 39L
inserted by
No. 17/1999
s. 18.

39L Announcement before entry

- (1) On executing a search warrant, the inspector executing the warrant—
 - (a) must announce that he or she is authorised by the warrant to enter the premises; and
 - (b) if the inspector has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

S. 39M
inserted by
No. 17/1999
s. 18.

39M Details of warrant to be given to occupier

- (1) If the occupier is present at premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to the occupier; and
 - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to a person (if any) at the premises; and
 - (b) give to the person a copy of the warrant.

39N Seizure of things not mentioned in the warrant

S. 39N
inserted by
No. 17/1999
s. 18.

A search warrant under section 39K authorises an inspector executing the search warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize or take a sample of any thing which is not of the kind described in the warrant if—

- (a) the inspector believes, on reasonable grounds, that the thing—
 - (i) is of a kind which could have been included in a search warrant issued under this Part; or
 - (ii) will afford evidence about the contravention of any Consumer Act; and
- (b) in the case of seizure, the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act or any other Consumer Act.

S. 39N(a)(ii)
amended by
No. 35/2000
s. 52(e).

S. 39N(b)
amended by
No. 35/2000
s. 52(e).

39O Embargo notice

S. 39O
inserted by
No. 17/1999
s. 18.

- (1) An inspector executing a search warrant who is authorised by that warrant to seize any thing may, if the thing cannot, or cannot readily, be physically seized and removed, issue an embargo notice in the prescribed form—
 - (a) by causing a copy of the notice to be served on the occupier; or

S. 39O(1)
amended by
No. 103/2004
s. 75.

s. 39P

- (b) if the occupier cannot be located after all reasonable steps have been taken to do so, by affixing a copy of the notice to the thing in a prominent position.
- (2) A person who knows that an embargo notice relates to a thing and who—
- (a) sells; or
 - (b) leases; or
 - (c) without the written consent of the inspector who issued the embargo notice, moves; or
 - (d) transfers; or
 - (e) otherwise deals with—
- the thing or any part of the thing is guilty of an offence and liable to a penalty not exceeding 50 penalty units.
- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the accused moved the thing or the part of the thing for the purpose of protecting and preserving it.
- (4) Despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of this section is void.

S. 39O(3)
amended by
No. 68/2009
s. 97(Sch.
item 125).

S. 39P
inserted by
No. 17/1999
s. 18.

39P Copies of seized documents

- (1) If an inspector retains possession of a document taken or seized from a person under this Part, the inspector must give the person, within 21 days of the seizure, a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under subsection (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

39Q Retention and return of seized documents or things

S. 39Q
inserted by
No. 17/1999
s. 18.

- (1) If an inspector seizes a document or other thing under this Part, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
 - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 39R extending the period during which the document or thing may be retained.

39R Magistrates' Court may extend 3 month period

S. 39R
inserted by
No. 17/1999
s. 18.

- (1) An inspector may apply to the Magistrates' Court within 3 months after seizing a document or other thing under this Part for an extension of the period for which the inspector may retain the document or thing.
- (2) The Magistrates' Court may order such an extension if it is satisfied that retention of the document or other thing is necessary—
 - (a) for the purposes of an investigation into whether a contravention of this Act has occurred; or
 - (b) to enable evidence of a contravention of this Act to be obtained for the purposes of a proceeding under this Act.

s. 39S

- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

S. 39S
inserted by
No. 17/1999
s. 18.

39S Requirement to assist inspector during entry

To the extent that it is reasonably necessary to determine compliance with this Act, an inspector exercising a power of entry under this Part who produces his or her identity card for inspection by the occupier of the premises or an agent or employee of the occupier may require that person—

- (a) to give information to the inspector, orally or in writing; and
- (b) to produce documents to the inspector; and
- (c) to give reasonable assistance to the inspector.

S. 39T
inserted by
No. 17/1999
s. 18.

39T Refusal or failure to comply with requirement

A person must not refuse or fail, without reasonable excuse, to comply with a requirement of the Director or an inspector under this Part.

Penalty: 50 penalty units.

S. 39U
inserted by
No. 17/1999
s. 18.

39U Rule against self-incrimination does not apply

- (1) A person is not excused from answering a question or producing a document under this Part on the ground that the answer or document might tend to incriminate the person.
- (2) If the person claims, before answering a question, that the answer might tend to incriminate them, the answer is not admissible in evidence in any criminal proceedings, other than in proceedings in respect of the falsity of the answer.

39V Offence to give false or misleading information

S. 39V
inserted by
No. 17/1999
s. 18.

A person must not—

- (a) give information to an inspector under this Part that the person believes to be false or misleading in any material particular; or
- (b) produce a document to an inspector under this Part that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 50 penalty units.

39VA Powers of court if requirement to produce information not complied with

S. 39VA
inserted by
No. 2/2008
s. 60(Sch.
item 14.1).

- (1) Subject to subsection (3), if the Director is satisfied that a person has, without reasonable excuse, failed to comply with a requirement under section 39F, the Director may certify that failure to a court.
- (2) Subject to subsection (3), if an inspector is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of the inspector under section 39C, 39D, 39F or 39S, the inspector may certify that failure to a court.
- (3) The Director or an inspector cannot certify a failure to a court under subsection (1) or (2) if the person to whom the failure relates has been charged with an offence against section 39T.
- (4) If the Director or an inspector so certifies under subsection (1) or (2), the court may inquire into the case and may order the person to comply with the requirement within the period specified by the court.

s. 39W

- (5) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence against section 39T in respect of that failure.

S. 39W
inserted by
No. 17/1999
s. 18,
amended by
No. 79/2006
s. 84.

39W Application of provisions relating to inspections

Sections 116, 120, 121A, 133, 135, 136, 137, 138 and 139 of the **Fair Trading Act 1999** apply (with any necessary modifications) in relation to the exercise or attempted exercise of a power of an inspector under this Part as if any reference in those sections to Part 10 of that Act were a reference to this Part.

S. 39X
inserted by
No. 17/1999
s. 18.

39X Service of documents

- (1) A written requirement by an inspector under this Part may be given personally or by registered post to a person—
- (a) at the last known place of business, employment or residence of the person; or
 - (b) in the case of a body corporate, at the registered office of the body corporate.
- (2) A person who provides a document or information in response to a requirement of an inspector under this Part may send that document or information to the Director by registered post.

S. 39X(2)
amended by
No. 35/2000
s. 52(d).

S. 39Y
inserted by
No. 17/1999
s. 18.

39Y Confidentiality

- (1) An inspector must not, except to the extent necessary to carry out the inspector's functions under this Part, give to any other person, whether directly or indirectly, any information acquired by the inspector in carrying out those functions.

Penalty: 50 penalty units.

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- (2) Subsection (1) does not apply to the giving of information—
- (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or Territory or of the Commonwealth; or
 - (d) to the Business Licensing Authority established under the **Business Licensing Authority Act 1998**; or
 - (e) with the written authority of the Director; or
 - (f) with the written authority of the person to whom the information relates.

39Z Production of information to Authority

S. 39Z
inserted by
No. 17/1999
s. 18.

- (1) The Authority may require a licensee to answer any question or provide information relating to the business of the licensee that the Authority reasonably requires to carry out its functions in relation to that licensee.
- (2) A licensee must not refuse or fail, without reasonable excuse, to comply with a requirement made by the Authority under this section.

Penalty: 50 penalty units.

39ZA Rule against self-incrimination does not apply

S. 39ZA
inserted by
No. 17/1999
s. 18.

- (1) A licensee is not excused from answering a question or providing information under section 39Z on the ground that the answer or the information might tend to incriminate the licensee.

Travel Agents Act 1986
No. 52 of 1986
Part 3A—Inspection Powers

s. 39ZA

- (2) If the licensee claims, before answering a question, that the answer might tend to incriminate the licensee, the answer is not admissible in evidence in any criminal proceedings, other than in proceedings in respect of the falsity of the answer.
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PART 3B—INFRINGEMENT NOTICES

Pt 3B
(Heading and
ss 39ZB–
39ZJ)
inserted by
No. 103/2004
s. 76.

39ZB Definition

In this Part—

authorised officer means—

- (a) an inspector;
- (b) a member of the police force;
- (c) a person authorised in writing by the Director.

S. 39ZB
inserted by
No. 103/2004
s. 76.

39ZC Power to serve a notice

- (1) An authorised officer may serve an infringement notice on any person that he or she has reason to believe has committed an offence against a provision of this Act specified in the Schedule.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006** and the penalty for that offence is the prescribed infringement penalty in respect of that offence.

S. 39ZC
inserted by
No. 103/2004
s. 76.

S. 39ZC(2)
substituted by
No. 32/2006
s. 94(Sch.
item 49(1)).

39ZD Form of notice

For the purposes of section 39ZC, an infringement notice must be in the form required by the **Infringements Act 2006** and may contain any additional information approved by the Director.

S. 39ZD
inserted by
No. 103/2004
s. 76,
substituted by
No. 32/2006
s. 94(Sch.
item 49(2)).

Travel Agents Act 1986
No. 52 of 1986
Part 3B—Infringement Notices

s. 39ZE

Ss 39ZE–39ZJ
inserted by
No. 103/2004
s. 76,
repealed by
No. 32/2006
s. 94(Sch.
item 49(3)).

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PART 4—MISCELLANEOUS

40 Other rights and remedies

Except to the extent that this Act expressly provides otherwise, nothing in this Act modifies or excludes a right or remedy that a person would have had if this Act had not been enacted.

41 Retention of documents

- (1) A person who under this Act is permitted or required to send a copy of any document or notice to the Director or Authority must retain the original document or notice for a period of 7 years after the copy was sent.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply to any document or notice—
- (a) created by a person using software approved by the Director and lodged on an Internet site operated by the State; and
 - (b) forwarded by electronic transmission to the Director or Authority.

- (3) A person must retain any document that is required to be kept by this Act or the regulations for at least 7 years from the date of its creation.

Penalty: 20 penalty units.

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S. 41
amended by
No. 52/1998
s. 296,
repealed by
No. 17/1999
s. 19,
new s. 41
inserted by
No. 8/2003
s. 80.

S. 42
amended by
No. 52/1998
s. 297,
repealed by
No. 17/1999
s. 19.

s. 42A

42A Production of records in proceedings

S. 42A
inserted by
No. 6/1989
s. 35.

S. 42A(1)
amended by
No. 52/1998
s. 298(1)(a).

(1) If a record is produced to the Authority in respect of any application under this Act, the Authority—

S. 42A(1)(a)
amended by
No. 52/1998
s. 298(1)(b).

(a) if it considers it necessary for the purpose of the application, may keep the record for any period it considers necessary; and

(b) may make copies of the record or any part of the record; and

S. 42A(1)(c)
amended by
No. 52/1998
s. 298(1)(c).

(c) may give to the person who produced the record a copy of the record which has been certified by the Registrar to be a true copy of the record.

(2) If—

S. 42A(2)(a)
amended by
No. 52/1998
s. 298(2).

(a) the Authority makes a copy of a record produced in respect of an application; and

(b) a member of the Authority certifies the copy to be a true copy of the record—

the certified copy is admissible in evidence in any proceedings as if it were the record of which it is certified to be a copy.

42B False or misleading statements

S. 42B
inserted by
No. 6/1989
s. 35.

- (1) A person must not give information or make a statement that is false or misleading by reason of the inclusion of any false or misleading matter or the omission of any material matter, in relation to anything covered by this Act.

S. 42B(1)
amended by
No. 52/1998
s. 299,
substituted by
No. 8/2003
s. 81.

Penalty: 50 penalty units for a natural person or, in the case of a body corporate, 100 penalty units.

- (2) It is a defence to a prosecution of a person for an offence under subsection (1) if the person proves that, when the information was given or the statement made, the person—

(a) believed on reasonable grounds—

- (i) that the false matter was true; or
- (ii) that 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.

42BA Waiver or refund of fees

S. 42BA
inserted by
No. 52/1998
s. 300.

The Registrar may, in a particular case or class of cases—

- (a) waive or reduce fees that would otherwise be payable under this Act; or
- (b) refund, in whole or in part, fees paid under this Act.

s. 42C

S. 42C
inserted by
No. 6/1989
s. 35,
amended by
No. 52/1998
s. 301.

42C Payments from Consolidated Fund

If the Registrar is authorised or becomes liable to pay amounts in accordance with this Act, those amounts must be paid from the Consolidated Fund which is to the necessary extent appropriated accordingly.

S. 42D
inserted by
No. 8/2003
s. 82.

42D Offence to destroy records required by the Act

- (1) A person must not destroy, conceal, mutilate or alter any record that the person is required to keep by this Act or the regulations.

Penalty: 100 penalty units.

- (2) It is a defence to a charge under subsection (1) if the person charged can prove that the destruction, concealment, mutilation or alteration of the document was not done with the intention of defeating the purposes of this Act.

43 Limitation

Notwithstanding anything in any Act, proceedings for an offence against this Act, or for aiding, abetting, counselling or procuring the commission of such an offence, may be brought within the period of three years after the commission of the alleged offence or, with the consent of the Director of Public Prosecutions, at any later time.

S. 44
substituted by
No. 103/2004
s. 77.

44 Application of Fair Trading Act 1999

S. 44(1)
amended by
Nos 17/2007
s. 36(Sch.
item 15.1),
2/2008
s. 60(Sch.
item 14.2).

- (1) Sections 143 and 144 and Division 2 of Part 11 (except sections 152A and 155) of the **Fair Trading Act 1999** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Fair Trading Act 1999** were a reference to this Act.

(1A) For the purposes of subsection (1), section 153 of the **Fair Trading Act 1999** applies as if a reference in that section to Part 2A or 6 of the **Fair Trading Act 1999** were a reference to this Act.

S. 44(1A)
inserted by
No. 17/2007
s. 36(Sch.
item 15.2),
amended by
No. 72/2010
s. 48(Sch.
item 23).

(2) For the purposes of subsection (1), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—

- (a) proceedings for an offence against a provision of this Act (except Part 3A); or
- (b) proceedings on an application for an injunction under section 149, 149A, 150, 151A or 151B of the **Fair Trading Act 1999** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except Part 3A); or
- (c) proceedings on an application for an order under section 158, or for damages under section 159, of the **Fair Trading Act 1999** (as applied by subsection (1)).

S. 44(2)(b)
amended by
No. 17/2007
s. 36(Sch.
item 15.3).

45 Who may bring proceedings for offences?

- (1) Proceedings for an offence against this Act may only be brought by—
 - (a) the Director; or
 - (b) a person authorised by the Director for the purposes of this section; or
 - (c) a member of the police force.
- (2) In proceedings for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceedings was authorised to bring the proceedings.

S. 45
amended by
No. 52/1998
s. 302,
substituted by
No. 103/2004
s. 77.

s. 45A

- (3) Subsection (1) does not apply to proceedings for an indictable offence.¹

S. 45A
inserted by
No. 78/2003
s. 4.

45A Legal action by compensation scheme trustees

- (1) The compensation scheme trustees may sue and be sued in the name of the Travel Compensation Fund.
- (2) In any legal proceedings brought by the compensation scheme trustees in the name of the Travel Compensation Fund it is to be presumed, unless the contrary is proved, that any provisions of the trust deed in relation to the bringing of proceedings have been satisfied.

46 Compensation scheme

- (1) The Minister may, by Order published in the Government Gazette, declare a scheme established by a trust deed (whether within or outside the State) or provided by a body corporate (whether within or outside the State) to be an approved compensation scheme for the purposes of this Act.
- (2) The Minister must not declare a scheme to be an approved compensation scheme unless the Minister is satisfied that the scheme provides that a decision of the trustees or other person administering the scheme—
- (a) refusing an application by an applicant for a licence under this Act to be a participant in the scheme; or
- (b) revoking the right of a licensee to be a participant in the scheme—
- may be the subject of an application for review to the Tribunal.

S. 46(2)
amended by
No. 52/1998
s. 303(1).

S. 46(3)
amended by
No. 52/1998
s. 303(1).

- (3) A person may make application to the Tribunal for review of a decision of the compensation scheme trustees referred to in subsection (2).

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- (4) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 46(4)
inserted by
No. 52/1998
s. 303(2).

46A Extension of time

S. 46A
inserted by
No. 52/1998
s. 304.

- (1) The Authority, on the application of the Director, the Chief Commissioner of Police or any person or on its own initiative, may extend any time limit fixed by this Act for taking any action.
- (2) The Authority may give an extension under this section even if an application for the extension was not made until after the end of the time appointed or fixed for taking the action.
- (3) This section does not apply to any time limit applying to the taking of any proceeding before the Tribunal.

46B Compensation scheme claims

S. 46B
inserted by
No. 78/2003
s. 5.

- (1) A person whose interests are affected by a decision of the compensation scheme trustees to admit, in whole or in part, or to reject a claim that relates to compensation referred to in clause 15.1 of the trust deed may apply to the Tribunal for review of that decision .
- (2) An application for review under subsection (1) must be made within 28 days after the later of—
 - (a) the day on which the decision is made; or

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- (b) if, under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is received by the person or the person is informed, under section 46(5) of that Act, that a statement of reasons will not be given.

47 Service of documents

- (1) Where under this Act, a document or notice is required or permitted to be served on or given to a person, the document or notice may be served or given—
- (a) if the person is a natural person, by giving it to or serving it personally on the person or by sending it by post to the person at the person's usual or last known place of residence or business; or
 - (b) if the person is a corporation, by leaving it at or sending it by post to the registered office of the corporation.
- (2) In subsection (1)(b), *registered office* means—
- (a) the office of the corporation that is the registered office or principal office in accordance with the law of the State or Territory of the Commonwealth by or under which the corporation is incorporated; or
 - (b) if the corporation is not incorporated in Australia, an office registered under the law of a State or Territory of the Commonwealth as a registered office of the corporation; or

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- (c) in the case of a corporation that has no such registered office or principal office, the principal place of business of the corporation in the State or, if it has no place of business in the State, its principal place of business in Australia.
- (3) If a document or notice is required or permitted to be served on or given to the compensation scheme trustees, the document or notice may be served or given in the manner provided by the compensation scheme.
- (4) For the purposes of this Act, if a document or notice is properly addressed, prepaid and posted as a letter, the document or notice, unless the contrary is proved, is deemed to have been given to the person to whom it is addressed at the time at which the letter would be delivered in the ordinary course of post.

47A Protection for things done under Act

- (1) An action does not lie against an applicant, a licensee or any other person on account of any information provided to the Authority, any publication made or anything done under the authority of this Act or provided made or done purportedly under the authority of this Act or on account of any omission made in good faith in the administration of this Act.
- (2) Subsection (1) does not apply to anything done or omitted to be done in the performance of a duty by a public statutory authority, a member of a public statutory authority or any person employed in the service of the Crown.

S. 47A
inserted by
No. 52/1998
s. 305.

s. 47B

S. 47B
inserted by
No. 52/1998
s. 305.

47B Delegation by Director

The Director may, by instrument, delegate to—

- (a) the Authority; or
- (b) the Registrar; or
- (c) any person engaged or appointed under section 7(2) or 15 of the **Business Licensing Authority Act 1998**; or
- (d) any person or class of person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act—

S. 47B(d)
substituted by
No. 35/2000
s. 52(f),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 211).

any function or power of the Director under this Act other than this power of delegation.

48 Regulations

- (1) The Governor in Council may make regulations, for or with respect to any matter or thing required or permitted by this Act to be prescribed, or necessary to be prescribed, to give effect to this Act.
- (2) The regulations may prescribe matters that may be taken into account for the purposes of section 20(1)(e).
- (3) The regulations may provide that the fee referred to in section 8(3), 17(1) or 17(8) is to be—
 - (a) a specified amount; or
 - (b) an amount calculated in a specified manner.
- (3A) The regulations may prescribe fees that differ according to differences in circumstances.

S. 48(3A)
inserted by
No. 8/2003
s. 83.

(3B) The regulations may prescribe the documents, accounts and records required to be kept by licensed travel agents and the manner of keeping them and the period for which they must be kept.

S. 48(3B) inserted by No. 8/2003 s. 83.

(4) A regulation may impose a penalty not exceeding 10 penalty units for a breach of the regulation.

S. 48(4) amended by No. 52/1998 s. 306.

(5) Except as otherwise expressly provided by this Act, the regulations may be of general or of specially limited application and may differ according to differences in time, place or circumstance.

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S. 49 repealed by No. 1/2010 s. 101.

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New s. 50 inserted by No. 78/2003 s. 6, repealed by No. 1/2010 s. 101.

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New s. 51 inserted by No. 78/2003 s. 7, repealed by No. 1/2010 s. 101.

Travel Agents Act 1986
No. 52 of 1986

s. 52

Pt 5 (Heading
and ss 50–71)
amended by
Nos 6/1989
ss 36–46,
46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 307.

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Pt 6 (Heading
and s. 72)
repealed by
No. 52/1998
s. 307.

* * * * *

Sch.

SCHEDULE

Sch.
inserted by
No. 103/2004
s. 78.

INFRINGEMENT OFFENCES

Section 8(5)	Section 21(3)
Section 11A(2)	Section 24
Section 12(2)	Section 30
Section 14(1)	Section 31
Section 17(11)	Section 32(1)
Section 18	Section 41(1)
Section 18A(3)	Section 41(3)

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 27 March 1986

Legislative Council: 8 May 1986

Long title

The long title for the Bill for this Act was "A Bill to provide for the licensing of travel agents and the regulation of their operations and for other purposes."

The **Travel Agents Act 1986** was assented to on 27 May 1986 and came into operation as follows:

All of Act (*except* sections 37, 38) on 1 February 1987: Government Gazette 21 January 1987 page 126; sections 37, 38 on 30 March 1988: Government Gazette 30 March 1988 page 751; proclaimed day for the purpose of section 49 was 1 August 1987: Government Gazette 21 January 1987 page 151.

2. Table of Amendments

This Version incorporates amendments made to the **Travel Agents Act 1986** by Acts and subordinate instruments.

Licensing Authorities (Amendment) Act 1989, No. 6/1989

Assent Date: 2.5.89
Commencement Date: Pt 4 (ss 33–47) on 19.6.91: Government Gazette 19.6.91 p. 1579
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Prostitution Control Act 1994, No. 102/1994

Assent Date: 13.12.94
Commencement Date: S. 97 on 13.6.95: s. 2(3)
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: Ss 279–307 on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

Assent Date: 1.12.98
Commencement Date: S. 39 on 1.2.99: Government Gazette 24.12.98 p. 3204
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999

Assent Date: 18.5.99
Commencement Date: Ss 14–19 on 1.9.99: Government Gazette 19.8.99 p. 1901
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Business Registration Acts (Amendment) Act 2000, No. 35/2000

Assent Date: 6.6.00
Commencement Date: S. 52 on 19.6.00: Government Gazette 15.6.00 p. 1248
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Travel Agents Act 1986
No. 52 of 1986

Endnotes

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 116) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Business Licensing Legislation (Amendment) Act 2003, No. 8/2003

Assent Date: 6.5.03
Commencement Date: Ss 76–83 on 1.11.03: Government Gazette 30.10.03 p. 2744
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Travel Agents (Amendment) Act 2003, No. 78/2003

Assent Date: 21.10.03
Commencement Date: Ss 3, 4, 6 on 22.10.03: s. 2(1); ss 5, 7 on 1.11.03 Government Gazette 30.10.03 p. 2744
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Fair Trading (Further Amendment) Act 2003, No. 106/2003

Assent Date: 9.12.03
Commencement Date: S. 29 on 10.12.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Estate Agents and Travel Agents Acts (Amendment) Act 2004, No. 17/2004

Assent Date: 18.5.04
Commencement Date: Ss 11–13 on 1.1.05: s. 2(3)
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date: 21.12.04
Commencement Date: Ss 74–78 on 22.12.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 211) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 108) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Travel Agents Act 1986
No. 52 of 1986

Endnotes

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 49) on 1.7.06: Government Gazette
29.6.06 p. 1315
Current State: This information relates only to the provision/s
amending the **Travel Agents Act 1986**

Justice Legislation (Further Amendment) Act 2006, No. 79/2006

Assent Date: 10.10.06
Commencement Date: S. 84 on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Travel Agents Act 1986**

Fair Trading and Consumer Acts Amendment Act 2007, No. 17/2007

Assent Date: 29.5.07
Commencement Date: S. 36(Sch. item 15) on 30.5.07: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Travel Agents Act 1986**

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: S. 60(Sch. item 14) on 12.2.08: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Travel Agents Act 1986**

Motor Car Traders Amendment Act 2008, No. 4/2008

Assent Date: 4.3.08
Commencement Date: S. 32(Sch. item 34) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Travel Agents Act 1986**

Fundraising Appeals and Consumer Acts Amendment Act 2009, No. 2/2009

Assent Date: 10.2.09
Commencement Date: S. 30 on 11.2.09: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Travel Agents Act 1986**

**Criminal Procedure Amendment (Consequential and Transitional Provisions)
Act 2009, No. 68/2009**

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 125) on 1.1.10: Government Gazette
10.12.09 p. 3215
Current State: This information relates only to the provision/s
amending the **Travel Agents Act 1986**

Consumer Affairs Legislation Amendment Act 2010, No. 1/2010

Assent Date: 9.2.10
Commencement Date: S. 101 on 1.8.10: Government Gazette 22.7.10 p. 1628
Current State: This information relates only to the provision/s
amending the **Travel Agents Act 1986**

Travel Agents Act 1986
No. 52 of 1986

Endnotes

Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010

Assent Date: 28.9.10
Commencement Date: S. 79 on 1.1.11: Government Gazette 14.10.10 p. 2404
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10
Commencement Date: S. 48(Sch. item 23) on 1.1.11: Special Gazette (No. 502) 20.12.10 p. 1
Current State: This information relates only to the provision/s amending the **Travel Agents Act 1986**

3. Explanatory Details

¹ S. 45(3): The amendment proposed by section 18(Sch. 1 item 108) of the **Legal Profession (Consequential Amendments) Act 2005**, No. 18/2005 is not included in this publication as the reference to "a duly qualified legal practitioner" was omitted by an earlier amendment by section 77 of the **Fair Trading (Enhanced Compliance) Act 2004**, No. 103/2004.