

(Reprint No. 1)

SOUTH AUSTRALIA

TRAVEL AGENTS ACT, 1986

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 15 January 1992.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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TRAVEL AGENTS ACT, 1986

being

Travel Agents Act, 1986, No. 15 of 1986 [Assented to 20 March 1986]¹

as amended by

Travel Agents Act Amendment Act, 1986, No. 88 of 1986 [Assented to 4 December 1986]²
Statutes Amendment (Fair Trading) Act, 1987, No. 43 of 1987 [Assented to 30 April 1987]³
Travel Agents Act Amendment Act, 1988, No. 73 of 1988 [Assented to 24 November 1988]

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

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

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

PART I

PRELIMINARY

Short title

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

Commencement

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

Interpretation

3. In this Act, unless the contrary intention appears—
“authorized name” in respect of a licensed travel agent means—
 - (a) the name of the travel agent as it appears in the licence;or
 - (b) a name in which the licensee is authorized by the Tribunal to carry on business;

¹Came into operation (except ss. 5, 7, 11, 21-24) 23 February 1987: *Gaz.* 12 February 1987, p. 294; ss. 7 and 11 came into operation 1 July 1987: *Gaz.* 7 May 1987, p. 1204; s. 21 was subsequently substituted and ss. 22-24 were repealed by Act No. 73 of 1988 before they were brought into operation; s. 5 had not been brought into operation at the date of this reprint.

²Came into operation 23 February 1987: *Gaz.* 12 February 1987, p. 295.

³Came into operation 26 October 1987: *Gaz.* 24 September 1987, p. 940.

- “authorized officer” means a person who is an authorized officer under the *Fair Trading Act, 1987*:
- “the Commissioner” means the Commissioner for Consumer Affairs:
- “the compensation fund” means the compensation fund established under the trust deed:
- “corresponding law” means a law of another State, or of a Territory of the Commonwealth declared by regulation to be a corresponding law for the purposes of this Act:
- “licence” means a licence under this Act; and “licensee”, “licensed” and “unlicensed” have corresponding meanings:
- “office”, of a licensed travel agent, means a place from which the licensee carries on business:
- “the Registrar” means the Commercial Registrar under the *Commercial Tribunal Act, 1982*:
- “the Tribunal” means the Commercial Tribunal:
- “the trust deed” means the trust deed approved under section 19:
- “vehicle” includes a boat, aircraft or other means of transport.

Business of travel agent

4. (1) Subject to this section, a person carries on business as a travel agent if that person in the course of a business sells, or arranges for the sale of—
- (a) rights to travel;
 - or
 - (b) rights to travel and accommodation.
- (2) A person does not carry on business as a travel agent—
- (a) by reason of anything done by that person in the course of employment;
 - (b) by reason of selling, or arranging for the sale of, rights to travel in a vehicle owned by that person;
 - (c) by reason of selling, or arranging for the sale of, rights to accommodation at a place owned by that person.
- (3) A person is the owner of a vehicle or place of accommodation for the purposes of this section if that person has lawful possession of the vehicle or place of accommodation.
- (4) In this section—
- “sale”, in relation to rights, includes the conferral or assignment of the rights; and
 “to sell” has a corresponding meaning.

Act to bind Crown¹

5. (1) *This Act binds the Crown not only in right of South Australia but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.*
- (2) *Nothing in this Act renders the Crown in right of South Australia or in any other capacity liable to be prosecuted for an offence or obliges the Crown in right of South Australia to hold a licence.*

¹S. 5 had not been brought into operation at the date of this reprint.

Commissioner to be responsible for administration of Act

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

PART II
LICENSING OF TRAVEL AGENTS
DIVISION I—GRANT OF LICENCES

Travel agent to be licensed

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

Penalty: \$50 000 or 12 months imprisonment.

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

Penalty: \$50 000 or 12 months imprisonment.

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

Penalty: \$50 000 or 12 months imprisonment.

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

(5) Any amount recovered by the Crown in pursuance of an order under subsection (4) shall be paid into the Compensation Fund.

Application for a licence

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

(a) be made to the Tribunal;

(b) be in writing in the prescribed form;

and

(c) be accompanied by the prescribed application fee.

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

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

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

and

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

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

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

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

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

(8) Where—

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

or

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

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

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

(a) that—

(i) where the applicant is a natural person—

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

and

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

or

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

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

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

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

and

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

and

(d) that the applicant is not disqualified under a corresponding law from holding a licence under the corresponding law or being involved in the direction, management or conduct of the business of a travel agent.

Duration of licence

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

(a) the licence is surrendered;

or

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

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

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

and

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

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

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

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

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

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

Conditions of licence

10. (1) A licence is subject to—

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

(b) any prescribed conditions;

and

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

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

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

Penalty: \$5 000.

Supervision of business of travel agent

10a. (1) The business conducted at any place from which a licensee carries on business must be managed and supervised by a person with qualifications approved by the Tribunal (whether or not that person is the licensee).

(2) If a licensee fails to ensure compliance with subsection (1), the licensee is guilty of an offence.

Penalty: \$5 000.

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

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

Business may be carried on by unlicensed person where licensee dies

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

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

and

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

DIVISION II—DISCIPLINARY POWERS**Tribunal may exercise disciplinary powers**

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

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

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

or

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

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

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

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

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

(a) it may reprimand the respondent;

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

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

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

or

(ii) cancel the licence;

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

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

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

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

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

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

or

(ii) acted negligently, fraudulently or unfairly;

or

(c) being a licensee—

(i) has obtained the licence improperly;

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

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

(iv) has been found guilty of an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than 3 months;

or

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

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

Disqualified persons not to be involved in business of travel agent

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

Record of disciplinary action to be kept

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

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

and

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

DIVISION III—CONDUCT OF BUSINESS

Notice to be displayed

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

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

and

(b) such other matters as may be prescribed.

Penalty: \$1 000.

Travel agent to use authorized name

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

Penalty: \$1 000

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

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

and

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

Penalty: \$1 000.

Accounts to be kept

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

Penalty: \$1 000 or 6 months imprisonment.

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

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

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

and

(c) be kept in the English language.

PART III

THE COMPENSATION SCHEME

Approval of the trust deed

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

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

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

Obligation of agent to participate in scheme

20. (1) A licensed travel agent must be a contributor to the compensation scheme established by the trust deed.

(2) If the trustees determine that a licensed travel agent is not eligible or is no longer eligible to be a contributor to the compensation fund, the licence is, by force of this subsection, cancelled (but it revives if the trustees' determination is reversed on appeal).

Appeals

21. (1) If the trustees—

- (a) determine that a person is not eligible, or is no longer eligible, to be a contributor to the compensation fund;

or

- (b) make a conditional determination that a person is eligible, or is to remain eligible, to be a contributor to the compensation fund,

the person may, within 28 days after service of notice of the determination, appeal against the determination or the condition to the Tribunal.

(2) An appeal may be heard and determined concurrently with an application for a licence.

(3) On an appeal under this section, the Tribunal—

- (a) may confirm or reverse a determination of the trustees;
- (b) may confirm, vary or quash the condition to which a conditional determination is subject;
- (c) may make consequential or ancillary orders.

* * * * *

Trustees subrogated to rights of claimant

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

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

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

Name in which trustees may sue and be sued

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

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PART IV
MISCELLANEOUS

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Investigations

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

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

or

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

Commissioner of Police may appear in proceedings before Tribunal

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

Annual report

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

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

Service of documents

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

(a) served on the person personally;

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

or

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

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

False or misleading information

33. A person shall not, in furnishing any information required under this Act, make a statement that is false or misleading in a material particular.

Penalty: \$1 000.

Return of licences suspended or cancelled

34. Where a licence is suspended or cancelled under this Act, the licensee or former licensee shall, at the direction of the Tribunal or the Registrar, return the licence to the Registrar.

Penalty: \$1 000.

Offences by bodies corporate

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

Summary proceedings

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

Commencement of prosecutions

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

(2) Proceedings for an offence against this Act must not be commenced except—

(a) by the Commissioner, an authorized officer, the Commissioner of Police or a member of the police force acting in an official capacity;

or

(b) by some other person acting with the consent of the Minister.

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

Regulations

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

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

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

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

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

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

(e) prescribe the records to be kept by licensees and the manner in which the records must be kept;

(f) require periodic audits to be made of the accounts required by this Act to be kept by persons who carry on business as travel agents, and provide for the appointment of auditors;

(g) regulate the form and content of advertisements concerning the services offered by persons carrying on business as travel agents;

(h) provide for the furnishing of returns to enable calculation of contributions to the compensation fund;

(i) prescribe penalties (recoverable summarily) not exceeding \$1 000 for contravention of, or non-compliance with, any regulation.

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

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

APPENDIX

Legislative History

Section 3:	definition of "authorized officer" amended by 43, 1987, s. 26(a)
Section 7(4) and (5):	definition of "the compensation fund" amended by 73, 1988, s. 2
Section 8(9):	inserted by 88, 1986, s. 3
Section 10a:	amended by 88, 1986, s. 4
Section 13(8):	inserted by 88, 1986, s. 5
Sections 20 and 21:	amended by 88, 1986, s. 6
Sections 22 - 24:	substituted by 73, 1988, s. 3
Section 26(2):	repealed by 73, 1988, s. 3
Sections 27 and 28:	repealed by 73, 1988, s. 4
Section 29:	repealed by 43, 1987, s. 26(b)
Section 37(2):	amended by 73, 1988, s. 5
	substituted by 73, 1988, s. 6