

South Australia

Travel Agents Act 1986

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

Contents

Part 1—Preliminary

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

Part 2—Licensing of travel agents

Division 1—Grant of licences

- 7 Travel agents to be licensed
- 8 Application for licence
- 9 Entitlement to be licensed
- 10 Conditions of licences
- 11 Appeals
- 12 Duration of licence and annual fee and return
- 13 Supervision of travel agent's business
- 14 Business may be carried on by unlicensed person in certain circumstances

Division 1A—Suspension of licence in urgent circumstances

- 14A Suspension of licence in urgent circumstances

Division 2—Discipline

- 15 Interpretation of Division
- 16 Cause for disciplinary action
- 17 Complaints
- 18 Hearing by Court
- 18A Participation of assessors in disciplinary proceedings
- 18B Disciplinary action
- 18C Contravention of orders

Part 3—The compensation scheme

- 19 Approval of the trust deed
- 20 Obligation of agent to participate in scheme
- 21 Appeals
- 25 Trustees subrogated to rights of claimant
- 26 Name in which trustees may sue and be sued

Part 4—Miscellaneous

27	Delegations
28	Agreement with professional organisation
29	Exemptions
30	Registers
31	Commissioner and proceedings before District Court
32	False or misleading information
33	Notice to be displayed
34	Travel agent to use authorised name
35	Accounts to be kept
36	Statutory declaration
37	Investigations
38	General defence
39	Liability for act or default of officer, employee or agent
40	Offences by bodies corporate
41	Continuing offence
42	Prosecutions
43	Evidence
44	Service of documents
45	Annual report
46	Regulations

Schedule—Appointment and selection of assessors for District Court

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

3—Interpretation

In this Act, unless the contrary intention appears—

authorised 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 business name registered by the travel agent under the *Business Names Registration Act 2011* of the Commonwealth of which the Commissioner has been given prior notice in writing;

authorised officer means a person who is an authorised 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;

director of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

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

licence means a licence under this Act; and **licensee**, **licensed** and **unlicensed** have corresponding meanings;

the trust deed means the trust deed approved under section 19;

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

4—Business of travel agent

- (1) Subject to this section, a person carries on business as a travel agent if the person in the course of a business—
 - (a) sells or arranges to sell rights to travel; or
 - (b) sells or arranges to sell rights to travel and accommodation; or
 - (c) carries out an activity set out in the regulations.
- (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;
 - (d) by reason of carrying on an activity set out in the regulations.
- (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.

5—Act to bind Crown

- (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.*

Note—

Section 5 had not come into operation at the date of the publication of this version.

6—Commissioner to be responsible for administration of Act

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

Part 2—Licensing of travel agents

Division 1—Grant of licences

7—Travel agents to be licensed

- (1) A person must not—
- (a) carry on business as a travel agent except as authorised by a licence under this Act; or
 - (b) advertise or otherwise hold himself or herself out as being entitled to carry on business as a travel agent unless authorised to carry on business as such an agent by a licence under this Act.

Maximum penalty: \$50 000.

- (2) If a person is convicted of an offence against subsection (1), the court by which the conviction is recorded must order the person to pay to the Crown an amount estimated by the court to be the amount of the profit that has accrued to the convicted person or any other person with whom the convicted person has a business or personal association in consequence of the commission of the offence.
- (3) An amount recovered by the Crown under an order must be paid into the compensation fund.
- (4) A person required by this Act to be licensed as a travel agent is not entitled to any fee, other consideration or compensation under or in relation to a contract with another on whose behalf the person provided services as a travel agent unless—
- (a) the person was authorised to provide the services under a licence; or
 - (b) a court hearing proceedings for recovery of the fee, other consideration or compensation is satisfied that the person's failure to be so authorised resulted from inadvertence only.

8—Application for licence

- (1) An application for a licence must—
- (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
 - (b) be accompanied by the fee fixed by regulation.

- (2) An applicant for a licence must provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, age and address of the applicant and any other information required by the Commissioner for the purposes of determining the application.
- (3) If an applicant for a licence has previously failed to pay a fee, penalty, contribution or levy that became payable under this Act, the Commissioner may require the applicant to pay the whole or a specified part of the fee, penalty, contribution or levy (as the case may be).
- (4) The Commissioner may, by notice in writing, require an applicant for a licence, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to comply with any requirement under this section to the Commissioner's satisfaction.
- (5) If the applicant fails to comply with the notice under subsection (4), the Commissioner may, without further notice, refuse the application but keep the fee that accompanied the application.

9—Entitlement to be licensed

- (1) A natural person is entitled to be granted a licence if—
 - (a) the person is of or above the age of 18 years; and
 - (b) the person is not disqualified under this Act or a corresponding law from holding a licence under this Act or the corresponding law or being involved in the direction, management or conduct of the business of a travel agent; and
 - (c) the person has made suitable arrangements to fulfil the obligations that may arise under this Act; and
 - (d) the trustees under the trust deed have certified that—
 - (i) the person is eligible for membership of the compensation scheme established by the trust deed; and
 - (ii) the person will be admitted as a member of the compensation scheme on being licensed; and
 - (e) he or she is a fit and proper person to be the holder of a licence.
- (2) A body corporate is entitled to be granted a licence if—
 - (a) the body corporate is not disqualified under this Act or a corresponding law from holding a licence under this Act or the corresponding law or being involved in the direction, management or conduct of the business of a travel agent; and
 - (b) no director of the body corporate is disqualified under a corresponding law from holding a licence under the corresponding law or being involved in the direction, management or conduct of the business of a travel agent; and
 - (c) the body corporate has made suitable arrangements to fulfil the obligations that may arise under this Act; and
 - (d) the trustees under the trust deed have certified that—
 - (i) the body corporate is eligible for membership of the compensation scheme established by the trust deed; and

- (ii) the body corporate will be admitted as a member of the compensation scheme on being licensed; and
- (e) each director of the body corporate is a fit and proper person to be the director of a body corporate that is the holder of a licence.

10—Conditions of licences

- (1) A licence is subject to the following conditions:
 - (a) a condition that each place at which the licensed travel agent carries on business as a travel agent must comply with the requirements of the regulations; and
 - (b) conditions imposed by regulation; and
 - (c) conditions imposed by the Commissioner on granting the licence.
- (2) Conditions imposed by the Commissioner on the grant of the licence may be varied or revoked by the Commissioner at any time on application by the licensed travel agent.

11—Appeals

- (1) An applicant for a licence may appeal to the District Court against a decision of the Commissioner refusing the application.
- (2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against.
- (3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision to refuse the application.
- (4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within one month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

12—Duration of licence and annual fee and return

- (1) A licence remains in force (except for any period for which it is suspended) until—
 - (a) the licence is surrendered or cancelled; or
 - (b) the licensed travel agent dies or, in the case of a licensed body corporate, is dissolved.
- (2) A licensed travel agent must, each year not later than the date fixed by regulation—
 - (a) pay to the Commissioner the fee fixed by regulation; and
 - (b) lodge with the Commissioner a return in the manner and form required by the Commissioner.
- (3) If a licensed travel agent fails to pay the annual fee or lodge the annual return in accordance with subsection (2), the Commissioner may, by notice in writing, require the agent to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.
- (4) If the travel agent fails to comply with the notice within 28 days after service of the notice, the agent's licence is cancelled.

- (5) The Commissioner must notify the travel agent in writing of the cancellation of the agent's licence.
- (6) A licensed travel agent may surrender the licence.
- (7) In this section—
licensed travel agent includes a licensed travel agent whose licence has been suspended.

13—Supervision of travel agent's business

- (1) The business conducted at a place from which a licensed travel agent carries on business must be managed and supervised by a person with qualifications approved by the Commissioner (whether or not that person is the licensed travel agent).
- (2) A licensed travel agent who fails to ensure compliance with subsection (1) is guilty of an offence.
Maximum penalty: \$20 000.

14—Business may be carried on by unlicensed person in certain circumstances

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

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

Division 1A—Suspension of licence in urgent circumstances

14A—Suspension of licence in urgent circumstances

- (1) If the Commissioner is of the opinion that—
 - (a) there are reasonable grounds to believe that a licensed travel agent has engaged or is engaging in conduct that constitutes grounds for disciplinary action under Division 2; and
 - (b) it is likely that the travel agent will continue to engage in that conduct; and
 - (c) there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of the travel agent's conduct unless action is taken urgently,
 the Commissioner may, by notice served on the travel agent—
 - (d) suspend the travel agent's licence for a specified period (which may not exceed 6 months); and
 - (e) direct the travel agent, within 7 days of service of the notice, to surrender the suspended licence to the Commissioner.

- (2) A licensed travel agent who, without reasonable excuse, fails to surrender his or her licence in accordance with a direction under subsection (1)(e) is guilty of an offence.
Maximum penalty: \$1 250.
- (3) If, during the suspension of a licence under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have so altered that the suspension should be terminated, the Commissioner must, by further notice specifying the date of termination, terminate the suspension without delay and restore the licence to the person.
- (4) A person whose licence has been suspended under this section may appeal to the District Court against the decision of the Commissioner to suspend the licence.
- (5) Subject to subsection (7), an appeal must be instituted within 1 month of the making of the decision appealed against.
- (6) The Commissioner must, if so required by the person whose licence has been suspended, state in writing the reasons for the Commissioner's decision to suspend the licence.
- (7) If the reasons of the Commissioner are not given in writing at the time of making the decision and the person (within 1 month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the person receives the written statement of those reasons.
- (8) The District Court must hear and determine an appeal under this section as expeditiously as possible.
- (9) This section applies in relation to conduct occurring before or after the commencement of this section.

Division 2—Discipline

15—Interpretation of Division

In this Division—

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

travel agent means—

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

16—Cause for disciplinary action

- (1) There is proper cause for disciplinary action against a travel agent if—
 - (a) licensing of the agent was improperly obtained; or
 - (b) the agent has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
 - (c) the agent or another person has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the agent; or

- (d) the agent has insufficient financial resources properly to carry on business as a travel agent; or
 - (e) the agent has not maintained satisfactory arrangements for the fulfilment of the agent's obligations under this Act; or
 - (f) events have occurred such that the agent would not be entitled to be licensed as a travel agent if he or she were to apply for a licence.
- (2) Disciplinary action may be taken against each director of a body corporate that is a travel agent if there is proper cause for disciplinary action against the body corporate.
 - (3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented the act or default.
 - (4) This section applies in relation to conduct occurring before or after the commencement of this section.

17—Complaints

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

18—Hearing by Court

- (1) On the lodging of a complaint, the District Court must conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Division.
- (2) Without limiting the usual powers of the District Court, the Court may during the hearing—
 - (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and
 - (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

18A—Participation of assessors in disciplinary proceedings

In any proceedings under this Division, the District Court will, if a Judge of the Court so determines, sit with assessors selected in accordance with the Schedule.

18B—Disciplinary action

- (1) On the hearing of a complaint, the District Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:
 - (a) reprimand the person;
 - (b) impose a fine not exceeding \$20 000 on the person;
 - (c) in the case of a person who is licensed as a travel agent—

- (i) suspend the licence for a specified period or until the fulfilment of stipulated conditions or until further order; or
 - (ii) cancel the licence; or
 - (iii) impose conditions as to the conduct of the person or the person's business as a travel agent;
 - (d) disqualify the person from being licensed under this Act;
 - (e) prohibit the person from being employed or otherwise engaged in the business of a travel agent;
 - (f) prohibit the person from being a director or having an interest in a body corporate that is a travel agent.
- (2) The District Court may—
- (a) stipulate that a disqualification or prohibition is to apply—
 - (i) permanently; or
 - (ii) for a specified period; or
 - (iii) until the fulfilment of stipulated conditions; or
 - (iv) until further order;
 - (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.
- (3) If—
- (a) a person has been found guilty of an offence; and
 - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

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

18C—Contravention of orders

If a person—

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

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

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

Part 3—The compensation scheme

19—Approval of the trust deed

- (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 must be promulgated by regulation.

20—Obligation of agent to participate in scheme

- (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).

21—Appeals

- (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 District Court.

25—Trustees subrogated to rights of claimant

- (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) If rights to which the trustees are subrogated lie against a licensed travel agent (or former licensed travel agent) that is a body corporate, the trustees may determine that those rights may be enforced against the directors or one or more of the directors of the body corporate.
- (3) It is a defence in proceedings to enforce a right against a director of a body corporate under subsection (2), if the director proves that the director could not, by exercise of reasonable care, have prevented the occurrence of the circumstances out of which the claim arose.

26—Name in which trustees may sue and be sued

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

Part 4—Miscellaneous

27—Delegations

- (1) The Commissioner may delegate any of the Commissioner's functions or powers under this Act—
 - (a) to a person employed in the Public Service; or
 - (b) to the person for the time being holding a specified position in the Public Service; or

- (c) to any other person under an agreement under this Act between the Commissioner and an organisation representing the interests of persons affected by this Act.
- (2) The Minister may delegate any of the Minister's functions or powers under this Act (except the power to direct the Commissioner).
- (3) A delegation under this section—
 - (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) is revocable at will; and
 - (d) does not prevent the delegator from acting in any matter.

28—Agreement with professional organisation

- (1) The Commissioner may, with the approval of the Minister, make an agreement with an organisation representing the interests of persons affected by this Act under which the organisation undertakes a specified role in the administration or enforcement of this Act.
- (2) The agreement—
 - (a) must be in writing and executed by the Commissioner and the organisation; and
 - (b) may contain delegations by the Commissioner of functions or powers under this Act or the *Fair Trading Act 1987*; and
 - (c) must set out any conditions governing the performance or exercise of functions or powers conferred on the organisation; and
 - (d) must make provision for the variation and termination of the agreement by the Commissioner with the approval of the Minister or the organisation.
- (3) The Commissioner may not delegate any of the following for the purposes of the agreement:
 - (a) functions or powers under Part 2;
 - (b) power to request the Commissioner of Police to investigate and report on matters under this Part;
 - (c) power to commence a prosecution for an offence against this Act.
- (4) A delegation by the Commissioner for the purposes of the agreement—
 - (a) has effect subject to the conditions specified in the agreement; and
 - (b) may be varied or revoked by the Commissioner in accordance with the terms of the agreement; and
 - (c) does not prevent the Commissioner from acting in any matter.
- (5) The Minister must, within six sitting days after the making of the agreement, cause a copy of the agreement to be laid before both Houses of Parliament.

29—Exemptions

- (1) The Minister may, on application by a person, exempt the person from compliance with a specified provision of this Act.
- (2) An exemption under this section is subject to the conditions (if any) imposed by the Minister.
- (3) The Minister may, at his or her discretion, vary or revoke an exemption under this section.
- (4) The grant or a variation or revocation of an exemption under this section must be notified in the Gazette.

30—Registers

- (1) The Commissioner must keep a register of persons licensed as travel agents.
- (2) The Commissioner must record on the register—
 - (a) disciplinary action taken against a person under this Act; and
 - (b) a note of any assurance accepted by the Commissioner under the *Fair Trading Act 1987* in relation to a licensed travel agent.
- (2a) If—
 - (a) the licence of a person who is licensed as a travel agent is suspended under section 14A; or
 - (b) a person who is licensed as a travel agent, or is a director of a body corporate that is licensed as a travel agent, is suspended or 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,the Commissioner may record a note of the suspension or disqualification on the register.
- (3) A person may inspect a register on payment of the fee fixed by regulation.

31—Commissioner and proceedings before District Court

- (1) The Commissioner is entitled to be joined as a party to any proceedings of the District Court under Part 2.
- (2) The Commissioner may appear personally in any such proceedings or may be represented at the proceedings by counsel or a person employed in the Public Service.

32—False or misleading information

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

Maximum penalty:

- (a) If the person made the statement knowing that it was false or misleading—\$10 000;
- (b) In any other case—\$2 500.

33—Notice to be displayed

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

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

Maximum penalty: \$2 500.

34—Travel agent to use authorised name

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

Maximum penalty: \$2 500.

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

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

Maximum penalty: \$2 500.

35—Accounts to be kept

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

Maximum penalty: \$2 500.

- (2) The accounting records must—

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

36—Statutory declaration

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

37—Investigations

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

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

38—General defence

- (1) It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.
- (2) This section does not apply in relation to a person who is charged with an offence under section 40.

39—Liability for act or default of officer, employee or agent

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

40—Offences by bodies corporate

- (1) If a body corporate is guilty of a prescribed offence, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- (2) If a body corporate is guilty of any other offence against this Act (other than an offence against the regulations), each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—
 - (a) the director knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
 - (b) the director was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
 - (c) the director failed to exercise due diligence to prevent the commission of the offence.
- (3) Subsection (2) does not apply if the principal offence is an offence against section 14A(2), 33 or 34.
- (3a) The regulations may make provision in relation to the criminal liability of a director of a body corporate that is guilty of an offence against the regulations.
- (4) In this section—

prescribed offence means an offence against section 7, 13, 18C or 35.

41—Continuing offence

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
 - (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and

- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

42—Prosecutions

- (1) Proceedings for an offence against this Act must be commenced—
- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
 - (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.
- (2) A prosecution for an offence against this Act cannot be commenced except by—
- (a) the Commissioner; or
 - (b) an authorised officer under the *Fair Trading Act 1987*; or
 - (c) a person who has the consent of the Minister to commence the prosecution.
- (3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

43—Evidence

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

44—Service of documents

- (1) Subject to this Act, a notice or document required or authorised by this Act to be given to or served on a person may—
- (a) be served on the person personally; or
 - (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) if the person is a licensed travel agent—at the person's address for service; or
 - (c) if the person is a licensed travel agent—be left for the person at the address for service with someone apparently over the age of 16 years; or

- (d) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) The address for service of a licensed travel agent is the address of which the Commissioner has been last notified in writing by the agent as the agent's address for service.

45—Annual report

- (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act during the period of 12 months ending on the preceding 30 June.
- (2) The Minister must, within six sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

46—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) require licensed travel agents to comply with a code of conduct;
 - (b) fix fees to be paid in respect of any matter under this Act and regulate the recovery, refund, waiver or reduction of such fees;
 - (c) exempt (conditionally or unconditionally) classes of persons or activities from the application of this Act or specified provisions of this Act;
 - (d) prescribe the records to be kept by licensed travel agents and the manner in which the records must be kept;
 - (e) require periodic audits to be made of the accounts required by this Act to be kept by persons who carry on business as travel agents, and provide for the appointment of auditors;
 - (f) regulate the form and content of advertisements concerning the services offered by persons carrying on business as travel agents;
 - (g) provide for the furnishing of returns to enable calculation of contributions to the compensation fund;
 - (h) impose a penalty (not exceeding a fine of \$2 500) for contravention of, or non-compliance with, a regulation;
 - (i) fix expiation fees, not exceeding \$210, for alleged offences against the regulations.
- (3) Regulations under this Act—
 - (a) may be of general application or limited application;
 - (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
 - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Minister.

- (4) The regulations may operate by reference to a specified code as in force at a specified time or as in force from time to time.
- (5) If a code is referred to in the regulations—
 - (a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
 - (b) evidence of the contents of the code may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code.

Schedule—Appointment and selection of assessors for District Court

- (1) The Minister must establish the following panels of persons who may sit with the District Court as assessors in proceedings under Part 2—
 - (a) a panel consisting of persons representative of travel agents;
 - (b) a panel consisting of persons representative of members of the public who deal with travel agents.
- (2) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.
- (3) A member of a panel is, on the expiration of a term of office, eligible for reappointment.
- (4) Subject to subclause (5), if assessors are to sit with the District Court in proceedings under Part 2, a Judge of the Court must select one member from each of the panels to sit with the Court in the proceedings.
- (5) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in the hearing of the matter.
- (6) If an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Repeal of Act

The *Travel Agents Act 1986* was repealed by s 3 of the *Travel Agents Repeal Act 2014* on 1.7.2014.

Principal Act and amendments

Year	No	Title	Assent	Commencement
1986	15	<i>Travel Agents Act 1986</i>	20.3.1986	23.2.1987 (<i>Gazette 12.2.1987 p294</i>) except ss 7 & 11—1.7.1987 (<i>Gazette 7.5.1987 p1204</i>) and except s 21 which was substituted by 73/1988 before coming into operation and except ss 22—24 which were deleted by 73/1988 without coming into operation and except s 5—uncommenced
1986	88	<i>Travel Agents Act Amendment Act 1986</i>	4.12.1986	23.2.1987 (<i>Gazette 12.2.1987 p295</i>)
1987	43	<i>Statutes Amendment (Fair Trading) Act 1987</i>	30.4.1987	26.10.1987 (<i>Gazette 24.9.1987 p940</i>)
1988	73	<i>Travel Agents Act Amendment Act 1988</i>	24.11.1988	24.11.1988
1992	55	<i>Statutes Amendment (Commercial Licences) Act 1992</i>	29.10.1992	10.12.1992 (<i>Gazette 10.12.1992 p1752</i>)
1996	11	<i>Travel Agents (Miscellaneous) Amendment Act 1996</i>	11.4.1996	1.7.1996 (<i>Gazette 27.6.1996 p3107</i>)
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996 as amended by 59/1997</i>	2.5.1996	Sch (cl 40)—1.3.1998 (<i>Gazette 5.2.1998 p862</i>)
1997	59	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1997</i>	31.7.1997	Pt 8 (s 16)—14.9.1997 (<i>Gazette 11.9.1997 p704</i>)
1998	21	<i>Statutes Amendment (Consumer Affairs) Act 1998 as amended by 22/1998</i>	2.4.1998	Pt 13 (ss 37 & 38) and Sch—28.5.1998 (<i>Gazette 28.5.1998 p2292</i>)
1998	22	<i>Statutes Amendment (Consumer Affairs) Amendment Act 1998</i>	2.4.1998	2.4.1998

Travel Agents Act 1986—17.6.2013 to 30.6.2014—repealed

Legislative history

2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 46)—1.6.2000 (<i>Gazette</i> 18.5.2000 p2554)
2001	47	<i>Statutes Amendment (Consumer Affairs) Act 2001</i>	11.10.2001	Pt 8 (s 25)—1.11.2001 (<i>Gazette</i> 25.10.2001 p4686)
2009	39	<i>Statutes Amendment and Repeal (Fair Trading) Act 2009</i>	23.7.2009	Pt 10 (ss 57 & 58)—3.9.2009 (<i>Gazette</i> 3.9.2009 p4367)
2011	36	<i>Statutes Amendment (Directors' Liability) Act 2011</i>	22.9.2011	Pt 25 (ss 33 & 34)—1.1.2012 (<i>Gazette</i> 15.12.2011 p4988)
2012	3	<i>Business Names Registration (Transitional Arrangements) Act 2012</i>	22.3.2012	Sch 1 (cl 12)—28.5.2012 (<i>Gazette</i> 19.4.2012 p1467)
2013	16	<i>Statutes Amendment (Directors' Liability) Act 2013</i>	23.5.2013	Pt 49 (s 101)—17.6.2013 (<i>Gazette</i> 6.6.2013 p2498)

Provisions amended

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>deleted by 11/1996 s 11 (Sch)</i>	1.7.1996
s 3		
authorised name	amended by 11/1996 s 3(a)	1.7.1996
	amended by 3/2012 Sch 1 cl 12	28.5.2012
authorised officer	amended by 43/1987 s 26(a)	26.10.1987
the compensation fund	amended by 73/1988 s 2	24.11.1988
director	inserted by 11/1996 s 3(b)	1.7.1996
District Court	inserted by 11/1996 s 3(b)	1.7.1996
<i>office</i>	<i>deleted by 11/1996 s 11 (Sch)</i>	1.7.1996
<i>the Registrar</i>	<i>deleted by 11/1996 s 3(c)</i>	1.7.1996
<i>the Tribunal</i>	<i>deleted by 11/1996 s 3(c)</i>	1.7.1996
s 4		
s 4(1)	substituted by 11/1996 s 4(a)	1.7.1996
s 4(2)	amended by 11/1996 s 4(b)	1.7.1996
Pt 2	amended by 88/1986 ss 3—6	23.2.1987
	amended by 55/1992 ss 19, 20	10.12.1992
	substituted by 11/1996 s 5	1.7.1996
Pt 2 Div 1		
s 8		
s 8(2)	amended by 47/2001 s 25(a)	1.11.2001
s 8(3)—(5)	inserted by 47/2001 s 25(b)	1.11.2001
s 11		
s 11(2)	amended by 4/2000 s 9(1) (Sch 1 cl 46(a))	1.6.2000
<i>s 11(5)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 46(b))</i>	1.6.2000
<i>s 11(6)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 46(c))</i>	1.6.2000

Pt 2 Div 1A	inserted by 39/2009 s 57	3.9.2009
Pt 2 Div 2		
s 18A	amended by 21/1998 s 37	28.5.1998
s 18B		
s 18B(1)	amended by 21/1998 Sch cl 10 as inserted by 22/1998 s 3	28.5.1998
Pt 3		
s 19		
s 19(2)	amended by 11/1996 s 11 (Sch)	1.7.1996
s 20	substituted by 73/1988 s 3	24.11.1988
s 21	substituted by 73/1988 s 3	24.11.1988
s 21(1)	amended by 11/1996 s 6(a)	1.7.1996
s 21(2)	<i>deleted by 11/1996 s 6(b)</i>	1.7.1996
s 21(3)	<i>amended by 11/1996 s 6(c)</i>	1.7.1996
	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 46(d))</i>	1.6.2000
ss 22—24	<i>deleted by 73/1988 s 3</i>	24.11.1988
s 25		
s 25(2) and (3)	substituted by 11/1996 s 7	1.7.1996
s 26		
s 26(2)	<i>deleted by 73/1988 s 4</i>	24.11.1988
ss 27 and 28	<i>deleted by 43/1987 s 26(b)</i>	26.10.1987
Pt 4		
	amended by 73/1988 ss 5, 6	24.11.1988
	substituted by 11/1996 s 8	1.7.1996
s 30		
s 30(2a)	inserted by 39/2009 s 58	3.9.2009
s 38		
s 38(1)	s 38 redesignated as s 38(1) by 36/2011 s 33	1.1.2012
s 38(2)	inserted by 36/2011 s 33	1.1.2012
s 40	substituted by 36/2011 s 34	1.1.2012
s 40(2)	amended by 16/2013 s 101(1)	17.6.2013
s 40(3)	amended by 16/2013 s 101(2)	17.6.2013
s 40(3a)	inserted by 16/2013 s 101(3)	17.6.2013
s 42		
s 42(1)	substituted by 21/1998 Sch cl 10 as inserted by 22/1998 s 3	28.5.1998
s 46		
s 46(2)	amended by 34/1996 s 4 (Sch cl 40) as substituted by 59/1997 s 16	1.3.1998
Sch		
scl (4)	inserted by 11/1996 s 9	1.7.1996
	amended by 21/1998 s 38	28.5.1998

Transitional etc provisions associated with Act or amendments

Travel Agents (Miscellaneous) Amendment Act 1996

10—Transitional provisions

- (1) Subject to this Act, a licence in force under Division 1 of Part 2 of the principal Act immediately before the commencement of this Act continues in force as a licence under Division 1 of Part 2 of the principal Act as amended by this Act subject to the same licence conditions (if any).
- (2) An approval of qualifications by the Commercial Tribunal in force under section 10A of the principal Act immediately before the commencement of this Act continues as an approval by the Commissioner under section 13 of the principal Act as amended by this Act.
- (3) If an order or decision of the Commercial Tribunal is in force or continues to have effect under Division 2 of Part 2 of the principal Act immediately before the commencement of this Act, the order or decision has effect as if it were an order of the District Court under Division 2 of Part 2 of the principal Act as amended by this Act.

Travel Agents Repeal Act 2014

4—Transitional provisions

- (1) An approval of the Minister made under section 19 of the *Travel Agents Act 1986* and in effect immediately before the repeal date remains in force until the termination date.
- (2) Section 21 of the *Travel Agents Act 1986* as in force immediately before the repeal date remains in force until the termination date in relation to a determination or conditional determination referred to in that section made before the repeal date.
- (3) Section 25 of the *Travel Agents Act 1986* as in force immediately before the repeal date remains in force until the termination date in relation to a claim made against the compensation fund in respect of matters occurring before the repeal date.
- (4) Section 26 of the *Travel Agents Act 1986* as in force immediately before the repeal date remains in force in relation to any legal proceedings brought by or against the trustees before the termination date in relation to a matter occurring before the repeal date.
- (5) For the purposes of this section, a term used in section 19, 21, 25 or 26 of the *Travel Agents Act 1986* as in force immediately before the repeal date has the same meaning as it had immediately before the repeal date.
- (6) In this section—

repeal date means the day on which section 3 comes into operation;

termination date means the date on which the compensation fund is terminated.

Note—

The date of termination of the compensation fund is provided for in clause 27.1 of the trust deed.

Historical versions

Reprint No 1—15.1.1992

Reprint No 2—10.12.1992

Reprint No 3—1.7.1996

Reprint No 4—1.3.1998

Reprint No 5—28.5.1998

Reprint No 6—1.6.2000

Reprint No 7—1.11.2001

3.9.2009

1.1.2012

28.5.2012