

SOUTH AUSTRALIA

**TRAVEL AGENTS REGULATIONS, 1987**

## REGULATIONS UNDER THE TRAVEL AGENTS ACT, 1986

### *Travel Agents Regulations, 1987*

being

No. 12 of 1987: *Gaz.* 12 February 1987, p. 334<sup>1</sup>

as varied by

- No. 134 of 1987: *Gaz.* 25 June 1987, p. 1720
- No. 201 of 1987: *Gaz.* 20 August 1987, p. 588
- No. 154 of 1988: *Gaz.* 28 July 1988, p. 579<sup>2</sup>
- No. 110 of 1989: *Gaz.* 29 June 1989, p. 1776<sup>3</sup>
- No. 100 of 1990: *Gaz.* 21 June 1990, p. 1669<sup>4</sup>
- No. 248 of 1990: *Gaz.* 13 December 1990, p. 1770
- No. 45 of 1991: *Gaz.* 24 April 1991, p. 1387
- No. 146 of 1991: *Gaz.* 27 June 1991, p. 2257<sup>5</sup>
- No. 151 of 1992: *Gaz.* 25 June 1992, p. 2035<sup>6</sup>
- No. 144 of 1993: *Gaz.* 24 June 1993, p. 2109<sup>7</sup>
- No. 63 of 1994: *Gaz.* 2 June 1994, p. 1610<sup>8</sup>
- No. 59 of 1995: *Gaz.* 10 May 1995, p. 2012<sup>9</sup>

- <sup>1</sup> Came into operation 23 February 1987: reg. 2.
- <sup>2</sup> Came into operation 1 August 1988: reg. 2.
- <sup>3</sup> Came into operation 1 July 1989: reg. 2.
- <sup>4</sup> Came into operation 1 July 1990: reg. 2.
- <sup>5</sup> Came into operation 1 July 1991: reg. 2.
- <sup>6</sup> Came into operation 1 July 1992: reg. 2.
- <sup>7</sup> Came into operation 1 July 1993: reg. 2.
- <sup>8</sup> Came into operation 1 July 1994: reg. 2.
- <sup>9</sup> Came into operation 1 July 1995: reg. 2.

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

2.

PART I

PRELIMINARY

1. These regulations may be cited as the *Travel Agents Regulations, 1987*.
2. These regulations will come into operation on 23 February, 1987.
3. In these regulations "the Act" means the *Travel Agents Act, 1986*.

3.

PART II

LICENSING OF TRAVEL AGENTS

*Division I—Grant of Licences*

4. For the purposes of section 7 of the Act, a person is not required to hold a licence if the rights to travel or accommodation sold by that person—

(a) are rights to travel or accommodation only within Australia;

and

(b) do not, in any period of 12 months, exceed the sum of \$30 000 in value.

5. For the purposes of section 8 of the Act—

(a) the form of an application for a licence is the form set out in schedule 1 completed in accordance with the instructions contained in that schedule;

(b) the application fee is the amount fixed for that purpose in schedule 5;

(c) the manner and form in which an application for a licence must be advertised by the Registrar is by publication of a notice in at least one issue of a newspaper circulating through the State;

(d) the prescribed licence fee is the amount fixed for that purpose in schedule 5;

and

(e) where the Tribunal orders that an applicant be granted a licence, the Registrar shall issue a licence to the applicant.

6. For the purposes of section 9 of the Act—

(a) the date for payment of the annual licence fee and lodging of the annual return is the last day of the month that is the anniversary of the month in which the licence was granted;

(b) the annual licence fee is the amount fixed for that purpose in schedule 5;

(c) the form of an annual return is the form set out in schedule 3 completed in accordance with the instruction contained in that schedule;

and

(d) the penalty for default in paying an annual licence fee or lodging an annual return is the amount fixed for that purpose in schedule 5.

\* \* \* \* \*

4.

7. (1) The Registrar must, on application by a licensee if satisfied that there has been a change in any particulars included in a licence, make an appropriate amendment to the particulars in the licence or, if necessary, issue a new licence in the appropriate amended form and return the copy or copies of the licence previously issued to the licensee.

(2) The Registrar shall, on application by a licensee and payment of a fee fixed for that purpose in schedule 4 of the *Commercial Tribunal Regulations*, if satisfied that a copy of a licence has been lost, destroyed or damaged, issue a further copy of the licence.

\* \* \* \* \*

\* \* \* \* \*

*Division III—Conduct of Business*

9. For the purposes of section 16 of the Act, a notice under that section must contain the licence number of the licensee.

10. (1) An advertisement relating to the business of a licensee (other than an advertisement relating solely to the recruiting of staff) must state the licensee's licence number.

(2) A licensee who publishes an advertisement that does not comply with subregulation (1) is guilty of an offence and liable to a penalty not exceeding \$1 000.

PART III

MISCELLANEOUS

11. (1) If there is a change—

(a) in the residential address, the address of the principal place of business or the registered office of a licensee;

or

(b) in the case of a licensee that is a body corporate, in the directors of the licensee,

the licensee shall within one month after that change give notice in writing to the Registrar of that change and the particulars of that change.

Penalty: \$1 000.

(2) If a licensee becomes insolvent, the licensee and the receiver, manager, liquidator or trustee shall each within one month give notice in writing to the Registrar of that fact.

Penalty: \$1 000.

(3) A licensee who desires to surrender his or her licence shall do so by giving notice in writing of surrender to the Registrar.

12. If a licensee desires to change his or her address for service, the licensee shall give notice in writing to the Registrar of the desired new address.

\* \* \* \* \*

14. For the purposes of section 19 of the Act, the trust deed is set out in schedule 6.

15. (1) A person who carries on business as a travel agent is exempt from sections 7 and 11 of the Act if—

(a) the person has, before 1 July, 1987, instituted proceedings for obtaining a licence (whether by applying to the trustees under the trust deed for admission to the compensation scheme or by applying to the Tribunal for a licence);

but

(b) the proceedings have not, as at 1 July, 1987, been finally determined.

(2) The exemption of a person under subregulation (1) continues until the proceedings for obtaining a licence have been finally determined.

6.

(3) For the purposes of this regulation, proceedings for obtaining a licence are finally determined—

(a) in the case where an application for admission to the compensation scheme under the trust deed is refused— when any appeal to the Tribunal against the decision of the trustees is dismissed or withdrawn, or, if no such appeal is instituted, when the time for appeal expires;

and

(b) in the case where such an application is granted—

(i) when the applicant is notified by the Tribunal of its decision to grant a licence;

or

(ii) when any appeal against the decision of the Tribunal to refuse a licence is determined or withdrawn, or, if no such appeal is instituted, when the time for appeal expires.

SCHEDULE 1  
*Travel Agents Act, 1986*

APPLICATION FOR TRAVEL AGENTS LICENCE BY A NATURAL PERSON

INSTRUCTIONS:

1. PLEASE USE BLOCK LETTERS. IF SPACE PROVIDED IS INSUFFICIENT, CONTINUE ON SEPARATE ATTACHMENT.
2. Your application cannot be granted unless you are eligible to be a member of the Travel Compensation Fund. You must lodge your Certificate of Eligibility from the Trustees of that Fund with this application.

Applicant's Full Name .....
Date of Birth .....
Residential Address (Not Post Office Box) .....
..... Postcode: .....
Address of Service of Notices .....
..... Postcode: .....
Telephone ..... (Office Hours) Telephone ..... (After Hours)
Person to be contacted for further information .....

Application is made for a licence to carry on business as a travel agent under the *Travel Agents Act, 1986*.

ANSWER YES OR NO. IF ANSWER IS "YES" PLEASE PROVIDE DETAILS ON ATTACHMENT.

1. Have you had experience in a travel agency business?
2. Have you had experience in any other travel related business?
3. Have you been convicted of any offence involving dishonesty in the last 10 years?
4. Have you been a member of the governing body of or an officer of a body corporate convicted of any such offence in the last 10 years?
5. Have you ever applied for and been refused any form of licence to carry on any business?
6. Have you ever been reprimanded, fined or disqualified by any Court, Tribunal, Board or other Authority in respect of any business or other dealing in this State or elsewhere?
7. Have you been a member of the governing body of or an officer of a body corporate so reprimanded, fined or disqualified?
8. Have you become insolvent or in any way had your affairs (or the affairs of any company with which you were associated) administered under bankruptcy law?
9. Do you intend to carry on business as a travel agent under a business or trading name? If yes. attach a copy of the Certificate of Registration of the Business Name issued by the Corporate Affairs Commission.



10. Do you intend to carry on business as a travel agent in partnership with any other person? If so, with whom?

Name	Licence No.	Address (Not P.O. Box No.)
.....	.....	.....
.....	.....	.....
.....	.....	.....

(If space insufficient, please continue on attachment)

11. Where do you propose to carry on your business as a travel agent?

(a) Address .....  
..... Postcode: .....

Nature of premises (shop, office etc.) .....  
Name of proposed manager .....

(b) Address .....  
..... Postcode: .....

Nature of premises (shop, office etc.) .....  
Name of proposed manager .....

(c) Address .....  
..... Postcode: .....

Nature of premises (shop, office etc.) .....  
Name of proposed manager .....

(d) Address .....  
..... Postcode: .....

Nature of premises (shop, office etc.) .....  
Name of proposed manager .....

(If space insufficient, please continue on attachment)

12. Have you made suitable arrangements to fulfil the obligations that may arise under the Act?

13. Are you a member or eligible to be a member of the Travel Compensation Fund? (If yes, attach proof of membership or Certificate of Eligibility).

INFORMATION CONTAINED IN THIS APPLICATION MUST BE CORRECT. PENALTIES APPLY IF FALSE INFORMATION IS GIVEN.

Date:

Signed:

*Travel Agents Act, 1986*

APPLICATION FOR TRAVEL AGENTS LICENCE BY A BODY CORPORATE

INSTRUCTIONS:

- PLEASE USE BLOCK LETTERS. IF SPACE IS INSUFFICIENT CONTINUE ON SEPARATE ATTACHMENT.
- This application cannot be granted unless the applicant has a Certificate of Eligibility from the Trustees of the Travel Compensation Fund. This Certificate must be lodged with this application.

3. This form to be completed by a member of the governing body authorized to make the application on behalf of the body corporate.
4. A copy of the applicant's Certificate of Incorporation should be lodged with this application.

Name of Applicant .....	
Place of Incorporation .....	
Registered/Principal Office .....	
Address for Service of Notices .....	
Postcode: .....	
Telephone .....	
Name of Person completing this form .....	
Residential Address (not post office box) .....	
Postcode: .....	
Telephone ..... (Office Hours) Telephone ..... (After Hours)	
Members of the Governing Body	Residential Address
(Full Names)	(not post office box)
.....	.....
.....	.....
.....	.....
Secretary (Full Name)	Residential Address (not P.O. Box)
.....	.....
.....	.....
.....	Postcode: .....

Application is made for a licence to carry on business as a travel agent under the *Travel Agents Act, 1986*.

1. Has any person involved in the management of the body corporate had experience in a travel agency business or any travel related business?
2. Is any person (other than those members of the governing body and the secretary listed above) in a position to control or influence substantially the applicant's affairs?
3. Has the applicant, any member of the governing body, the secretary or any person involved in the management of the body corporate been convicted of any offence involving dishonesty in the last 10 years?
4. Has any such person been a member of the governing body or an officer of a body corporate convicted of any such offence in the last 10 years?
5. Has the applicant or any such person ever applied for and been refused any form of licence to carry on any business?
6. Has the applicant or any such person ever been reprimanded, fined or disqualified by any Court, Tribunal, Board or other Authority in respect of any business dealing in this State or elsewhere?
7. Does the applicant intend to carry on business as a travel agent under a business or trading name? If yes, attach a copy of the Certificate of Registration of the Business Name issued by the Corporate Affairs Commission.

8. Does the applicant intend to carry on business as a travel agent in partnership? If so, with whom?

Name	Licence No.	Address (Not P.O. Box No.)
.....	.....	.....
.....	.....	.....
.....	.....	.....

(If space insufficient, please continue on attachment)

9. Where does the applicant propose to carry on business?

(a) Address .....  
 ..... Postcode: .....

Nature of premises (shop, office etc.) .....  
 Name of proposed manager .....

(b) Address .....  
 ..... Postcode: .....

Nature of premises (shop, office etc.) .....  
 Name of proposed manager .....

(c) Address .....  
 ..... Postcode: .....

Nature of premises (shop, office etc.) .....  
 Name of proposed manager .....

(d) Address .....  
 ..... Postcode: .....

Nature of premises (shop, office etc.) .....  
 Name of proposed manager .....

(If space insufficient, please continue on attachment)

10. Has the applicant made suitable arrangements to fulfil the obligations that may arise under the Act?

11. Is the applicant a member or eligible to be a member of the Travel Compensation Fund?

(If yes, attach proof of membership or Certificate of Eligibility.)

Date:

Signed:

\* \* \* \* \*

SCHEDULE 3

ANNUAL RETURN  
TO THE COMMERCIAL REGISTRAR  
BY A NATURAL PERSON

USE BLOCK LETTERS

Licensee's Full Name: .....  
Licensee's Address for service of notices .....  
Licensee's Residential Address (Not P.O. Box) .....  
Licensee's Telephone No.: ..... (Office) ..... (Home)

Since your last return (or if this is the first return, since the licence was granted):

- |  | Answer<br>YES or NO  |
|--|----------------------|
| 1. Has there been any change in any of the above addresses or particulars? If yes, give details on attachment.   | <input type="text"/> |
| 2. Has there been any change in the address of any of your business premises? If yes, give details on attachment.  | <input type="text"/> |
| 3. Has there been any change in the managers/supervisors of your business premises? If yes, give details on attachment.  | <input type="text"/> |
| 4. Has there been any change to the partnership under which you carry on business or has a new partnership commenced? If yes, give full names of partners.   | <input type="text"/> |
| 5. Has any new business name been registered in your name? If yes, give details on attachment.   | <input type="text"/> |
| 6. Have you become bankrupt or had your affairs administered under the laws relating to bankruptcy? If yes, give details including relevant dates.   | <input type="text"/> |
| 7. Have you been convicted or found guilty of any offence against the Act or of conduct that constituted a breach of any other Act or law or of any offence involving dishonesty or been disciplined, whether in this State or elsewhere, by any Tribunal, Court or other Authority or are any such proceedings pending? If yes, provide <i>full</i> details. If proceedings are pending, give details of the nature of the allegations and the present position of the proceedings. | <input type="text"/> |
| 8. Have you ceased to be a member of the Travel Compensation Fund?   | <input type="text"/> |

INFORMATION PROVIDED IN THIS ANNUAL RETURN MUST BE TRUE AND COMPLETE. PENALTIES MAY BE IMPOSED IF FALSE INFORMATION IS GIVEN.

Date:

Signed:

ANNUAL RETURN  
TO THE COMMERCIAL REGISTRAR  
BY A BODY CORPORATE

USE BLOCK LETTERS

Licensee's Full Name: .....	Telephone: .....
Registered/Principal Officer .....	
Address for Service of Notices .....	
.....	Postcode: .....

Since the last return (or if this is the first return, since the licence was granted):

	Answer YES or NO
1. Has there been any change in any of the above addresses or particulars? If yes, give details on attachment.	
2. Has there been any change in the address of any of the business premises of the body corporate? If yes, give details on attachment.	
3. Has there been any change in the managers/supervisors of the body corporate's business premises? If yes, give details on attachment.	
4. Has there been any change to the partnership under which the body corporate carries on business or has a new partnership commenced? If yes, give the full names of partners.	
5. Has the body corporate any new business name? If yes, give details on attachment.	
6. Has the body corporate or any of its Directors, Secretary or any person in a position to control its affairs, gone into receivership or liquidation or become bankrupt or had affairs administered under the laws relating to bankruptcy? If yes, give details including relevant dates.	
7. Has the body corporate or any of its Directors or Secretary or any person in a position to control its affairs been convicted or found guilty of any offence against the Act or of conduct that constituted a breach of any other Act or law or of any offence involving dishonesty or been disciplined, whether in this State or any other State, by any Tribunal, Court or other Authority or are any such proceedings pending? If yes, give the full name of the person convicted or disciplined, and if proceedings are pending, give details of the nature of the allegations and the present position of the proceedings on attachment.	
8. Has the body corporate ceased to be a member of the Travel Compensation Fund?	

INFORMATION PROVIDED IN THIS ANNUAL RETURN MUST BE TRUE AND COMPLETE. PENALTIES MAY BE IMPOSED IF FALSE INFORMATION IS GIVEN.

Date:

Signed:

Name of signatory on behalf of Company: .....

\* \* \* \* \*

**SCHEDULE 5**  
*Travel Agents Act 1986*

FEES

	\$
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2. On an order being made for the granting of a licence (section 8(9))—	
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(b) body corporate .....	498
3. On the lodging of an annual return (section 9(2))—annual licence fee:	
(a) natural person .....	208
(b) body corporate .....	498
In addition, a fee of \$84 is payable in respect of each office from which the licensee carries on business up to a maximum of 10 offices.	
4. On a notice being given to a licensee following default in the payment of an annual licence fee or the lodging of an annual return (section 9(3))—default penalty .....	186

SCHEDULE 6  
TRAVEL COMPENSATION FUND  
TRUST DEED

THIS DEED is made the twelfth day of December 1986 by:

DEIRDRE MARY GRUSOVIN of 1 Oxford Street, Darlinghurst in the State of New South Wales (being the Minister for Consumer Affairs in that State) for the Crown in the right of that State, PETER CORNELIS SPYKER of 500 Bourke Street, Melbourne in the State of Victoria (being the Minister for Consumer Affairs in that State) for the Crown in the right of that State,

CHRISTOPHER JOHN SUMNER of 25 Grenfell Street, Adelaide in the State of South Australia (being the Minister for Public and Consumer Affairs in that State) for the Crown in the right of that State,

KEITH JAMES WILSON of 600 Murray Street, West Perth in the State of Western Australia (being the Minister for Consumer Affairs in that State) for the Crown in the right of that State,

hereinafter referred to as "the settlors".

WHEREAS

- A. The Governments of the States of New South Wales, Victoria, South Australia and Western Australia have entered into a Participation Agreement dated the 19th day of September 1986 (hereinafter referred to as "the Participation Agreement") relating to the licensing of persons carrying on or intending to carry on business as travel agents and the regulation of their operations;
- B. Reference is made in the Participation Agreement to a compensation fund;
- C. The settlors are the Ministers of the Crown who will be respectively responsible for the Act in each State;
- D. The settlors by this Deed appoint the persons named in this Deed to act as trustees of the Trust to be created upon the terms set out in this Deed in respect of a fund to be known as the Travel Compensation Fund and to be responsible for administration of the Scheme provided for in this Deed with a view to the Fund becoming the fund referred to in the Participation Agreement:

NOW THIS DEED WITNESSES as follows—

- I. The settlors hereby declare that the Trust shall be established on the terms and conditions which are set out in the Schedule hereto and that this Deed includes that Schedule (as it may be amended from time to time).
- II. The settlors appoint the following persons to act as Trustees:
  - (i) as the nominee of the New South Wales Minister under clause 4.2, John William Andrew Holloway of 39 Carcoola Avenue, Chipping Norton in the State of New South Wales;
  - (ii) as the nominee of the Victorian Minister under clause 4.2, John David Hall of 70 Scott Street, Beaumaris in the State of Victoria;
  - (iii) as the nominee of the South Australian Minister under clause 4.2, Philip Herschel Nicholls of 5 Robert Street, Unley in the State of South Australia;
  - (iv) as the nominee of the Western Australian Minister under clause 4.2, Paul Richard Glanville of Unit 5, 286 Mill Point Road, South Perth in the State of Western Australia;

- (v) as the nominees of the Ministers under clause 4.3—

Osmond Francis William Pitts of 18 Greenfield Avenue, Middle Cove in the State of New South Wales;

Allen Charles Corbett of 2 Singleton Road, North Balwyn in the State of Victoria;  
Michael Anthony Gilmour Thompson of 103 Monmouth Street, North Perth in the State of Western Australia;

Francis William O’Gorman of 77 Rugby Street, Malvern in the State of South Australia;  
and

- (vi) as the nominee of the Ministers under clause 4.5, Neil Francis Francey of Unit 6, 59 Kirribilli Avenue, Kirribilli in the State of New South Wales.

III. This Deed shall come into force and effect when it is executed by each of the settlors and when the persons appointed to act as Trustees under clause II, have consented so to act.

IV. As soon as this Deed comes into force and effect the settlors shall lodge with the Trustees the sum of one hundred dollars to be held by them on the trusts set out in this Deed.

IN WITNESS WHEREOF the settlors have executed this Deed on the date stated above.

SIGNED, SEALED AND DELIVERED by the  
said DEIRDRE MARY GRUSOVIN

in the presence of: M. ROELANOTS

SIGNED, SEALED AND DELIVERED by the  
said PETER CORNELIS SPYKER

in the presence of: P. VAN DYK

SIGNED, SEALED AND DELIVERED by the  
said CHRISTOPHER JOHN SUMNER

in the presence of: A.J. MARTIN

SIGNED, SEALED AND DELIVERED by the  
said KEITH JAMES WILSON

in the presence of: E. RUSSELL



SCHEDULE

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1 INTERPRETATION

1.1 In this Deed and in all documents and statements issued under it, except where a different meaning is expressly indicated or the context clearly otherwise requires—

"An Act" or "the Act" means the Travel Agents Act or Travel Agents Ordinance in a State.

"Bank" means a bank as defined in the Banking Act 1959 of the Commonwealth of Australia or a bank that carries on banking business on behalf of a State under the authority of the laws of that State.

"Beneficiary" means a person on trust for whom, pursuant to clause 2.2, the Fund is held.

"Client" means a person who enters into travel arrangements or incidental arrangements directly or indirectly with a participant but does not include a person who is not resident in Australia and its territories to the extent that the arrangements relate to the provision of services outside Australia and its territories.

"Fund" means the Fund established by Part 5.

"Incidental arrangements" means arrangements which are entered into in conjunction with travel arrangements and which, in the opinion of the Trustees, are reasonably incidental to travel arrangements.

"Licensing Authority" means the person or body in a State responsible for licensing under the Act.

"Minister" means the Minister of the Crown responsible for the Act.

"Ministerial Council" means the Ministerial Council created by the Participation Agreement.

"Participant" means a person—

- (a) who is—
  - (i) for the time being, in the Trustees' determination eligible to be a contributor to the Fund; and
  - (ii) licensed or deemed to be licensed under an Act; or
- (b) who is a participant by virtue of Part 10.

"Principal" means, subject to clause 1.4, the owner or operator of a transport system or transport facility, hotel, lodging house or other place of accommodation, restaurant or eating or drinking place, place of entertainment, leisure or study or any other facility or place in respect of which travel arrangements are made.

"State" means a State or Territory of Australia which is a party to the Participation Agreement.

"Travel arrangements" means arrangements entered into in a State for the provision of services which in that State constitutes the carrying on of business as a travel agent in the State.

"Trust" means the trust created by this Deed.

"Trustees" means the trustees of the Trust from time to time.

"Year" means the period from any 1st January to the next succeeding 31 December.

1.2 For the purposes of this Deed, a person carries on business as a travel agent in a State if that person is, within the meaning of the Act of that State, carrying on business as a travel agent in the State.

1.3 Subject to this Deed—

- (a) a person is eligible to be a contributor to the Fund if the person has and is likely to continue to have sufficient financial resources to enable the person to carry on business as a travel agent; and
- (b) the only matter which the Trustees may take into account in determining whether a person is eligible to be a contributor to the Fund is whether the person has and is likely to continue to have sufficient financial resources to enable the person to carry on business as a travel agent entering into travel arrangements or incidental arrangements;

and

- (c) without limiting the factors which the Trustees may take into account in respect of the matter referred to in (b), the Trustees may have regard to any previous experience that any person concerned with the management of the business may have had in managing the financial affairs of a business and also to the financial resources of any legal entity with which the first mentioned person is or has been associated.

- 1.4 For the purposes of this Deed, where a person enters into a contract with another person to provide services of which some are travel arrangements and others are provided by the firstnamed person as a principal, that person is deemed not to be a principal in respect of any of the services referred to in that contract.
- 1.5 Where a word or phrase is given a particular meaning in this Deed, other parts of speech and grammatical forms of that word or phrase have, unless the contrary intention appears, corresponding meanings.
- 1.6 In this Deed, words in the singular number include the plural number and vice versa, and words denoting persons include legal persons.
- 1.7 A reference in this Deed to "Parts" and "clauses" is a reference to Parts and clauses (including subclauses and paragraphs) of this Deed.
- 1.8 A reference in this Deed to a statute is a reference to the statute as amended, consolidated or replaced by any other statute from time to time and to all orders, ordinances, regulations, rules and by-laws made under or pursuant to the statute.
- 1.9 A heading or index in this Deed shall not affect the construction of the Deed.

## 2 TITLE AND OBJECTS OF THE TRUST

- 2.1 The trust established by this Deed shall be known as the Travel Compensation Fund.
- 2.2 The Trustees shall hold the Fund on trust for—
- (a) the Crown in right of the States; and
  - (b) every person who entrusts money or other valuable consideration to another person (or an employee or agent of the other person) in the course of the other person's carrying on business as a travel agent in a State if either:
    - (i) that other person; or
    - (ii) any third or subsequent person who carries on business as a travel agent in a State and who, in turn, receives directly or indirectly through an employee or agent of the third or subsequent person all or part of that money or consideration, other than as a principal,fails to account for the relevant money or consideration, whether due to an act or to an omission of that person (or of an employee or agent of that person).

## 3 PURPOSES OF THE TRUST

- 3.1 The purposes of the Trust are—
- (a) to further the intention expressed by the settlors in the Participation Agreement to establish a Co-operative Scheme for the regulation of travel agents in Australia, and for the protection of certain people who deal with those agents;
  - (b) to establish and provide for the operation of a fund (in terms of and within the limits prescribed by this Deed) to compensate persons who have suffered or may suffer a pecuniary loss by reason of a failure to account in respect of travel arrangements by a person who carries on, or carried on, business as a travel agent and to make emergency payments for the benefit of persons who may suffer such a pecuniary loss; and

- (c) to ensure that only those persons who have sufficient financial resources to enable them to carry on business as a travel agent are participants.

3.2 Nothing in clause 3.1 limits or affects any right or power of the Trustees, whether arising under this Deed or otherwise.

#### 4 TRUSTEES

4.1 There shall be not less than three trustees.

4.2 Each Minister may nominate a trustee.

4.3 There shall be nominated, in a number equal to the number of trustees who may be nominated under clause 4.2, trustees who have knowledge of the travel industry.

4.4 Except for the appointments made on settlement of this Trust, the trustees nominated pursuant to clause 4.3 shall be selected from the persons whose names are submitted by the trustees pursuant to clause 4.8 and shall be nominated by the Ministers jointly.

4.5 There shall be at least one and not more than two trustees, nominated by the Ministers acting jointly, who have knowledge of the interests of travel consumers.

4.6 The nomination or appointment of a person under clause 4.3 or 4.5 shall not be avoided, invalidated or impugned by reason of the person's knowledge or degree of knowledge of the matters of which, under those clauses, the person is required to have knowledge.

4.7 A person nominated as a trustee pursuant to clause 4.2, 4.3 or 4.5 may not, at the same time, be nominated pursuant to another of those clauses.

4.8 When a trustee is to be nominated pursuant to clause 4.3, the Trustees shall submit to the Ministers the names of two persons suitable for nomination within four weeks of the occasion for the nomination arising.

4.9 Where there is more than one trustee to be nominated pursuant to clause 4.3 the Trustees shall, pursuant to clause 4.8, submit to the Ministers two names in respect of each vacant position.

4.10 Subject to this Part, a trustee shall hold office for three years from the date of appointment and shall be eligible for reappointment.

4.11 A trustee may resign by notice to the Trustees.

4.12 Where a trustee—

- (a) becomes bankrupt or makes any arrangement or composition with the trustee's creditors generally;
- (b) becomes of unsound mind or the trustee's estate is liable to be dealt with in any way under the law relating to mental health which applies in the State where the trustee resides;
- (c) is subject to any penalty contained in and imposed pursuant to section 21(1) of the Act in New South Wales or the equivalent provision in an Act in another State;
- (d) being a participant, is found by the Trustees not to be eligible to remain a contributor to the Fund;

(e) is convicted of a criminal offence punishable on conviction by imprisonment for 2 years or more; or

(f) is for some other reason unfit to continue to be a trustee—

the Minister or Ministers entitled to nominate the trustee may by notice to the Trustees cause the trustee to be removed.

4.13 Two trustees, one from each of—

(a) those appointed by paragraphs (i), (ii), (iii) and (iv) of covering Clause II of the Deed of Settlement; and

(b) those appointed by paragraph (v) of Clause II of the Deed of Settlement—

to be determined (failing agreement among them) by lot, shall retire on the first anniversary of the settlement of this Deed, and two other trustees, one from each of—

(c) those appointed by paragraphs (i), (ii), (iii) and (iv) of Clause II of the Deed of Settlement; and

(d) those appointed by paragraph (v) of Clause II of the Deed of Settlement—

to be determined (failing agreement among them) by lot, shall retire on the second anniversary of the settlement of this Deed.

4.14 When the Trustees receive a notice nominating a person as a trustee or causing a trustee to be removed and signed by the Minister or Ministers entitled to nominate the trustee or to cause the trustee to be removed, the Trustees shall, as soon as practicable, by deed executed by no less than two Trustees appoint or remove the person as trustee in accordance with the notice.

4.15 Upon execution by the Trustees of a deed pursuant to clause 4.14—

(a) an appointment referred to in the deed takes effect when the deed is executed and when the person appointed to act as trustee consents so to act; and

(b) a removal referred to in the deed takes effect forthwith—

and the Trustees shall immediately after the deed takes effect serve a copy of it on the person appointed or removed.

4.16 A trustee shall be deemed to have resigned from office as a trustee at the close of the third successive meeting of the Trustees from which the trustee is absent without leave of the other Trustees.

## 5 THE FUND

5.1 There shall be established a fund called the Travel Compensation Fund which shall be held and applied by the Trustees for the purposes of this Trust.

5.2 The Fund shall consist of—

(a) all sums paid to the Trustees to be held on the Trusts of this Deed;

(b) moneys paid by applicants pursuant to clause 9.7;

(c) moneys paid by participants pursuant to a requirement of the Trustees under clause 6.4;

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- (d) the application fees paid pursuant to clause 9.3;
- (e) administration fees paid pursuant to clauses 9.3 and 11.3;
- (f) additional fees paid pursuant to clauses 7.4 and 7.7;
- (g) all investments for the time being in the name of the Trust;
- (h) the income earned on moneys invested by the Trust;
- (i) moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the Trustees pursuant to this Deed;
- (j) moneys donated to the Trustees for the purposes of the Trust;
- (k) moneys recovered by the Trustees pursuant to the exercise of a right or power under this Deed or to some other action lawfully taken by them;
- (l) all moneys, rights and property of any description transferred to or acquired or received by the Trustees in their capacity as such; and
- (m) all other moneys lawfully paid into the Fund.

6 FIXING CONTRIBUTIONS TO THE FUND

- 6.1 The Trustees shall fix the amount of the initial contribution to be made by participants.
- 6.2 The Trustees may at any time fix as the amount of the initial contribution an amount greater than that last fixed under clause 6.1 or this clause.
- 6.3 Subject to clause 9.7, an applicant for participation shall pay into the Fund the initial contribution in the manner determined by the Trustees.
- 6.4 If, in the opinion of the Trustees, the Fund is or may be insufficient to meet the existing or potential liabilities of the Trust, the Trustees may require at any time that every participant pay into the Fund an additional contribution.
- 6.5 Where the Trustees require an additional contribution under clause 6.4, they shall determine the amount of the contribution and the manner in which it is to be paid.
- 6.6 The Trustees may in their absolute discretion allow time for the payment of the whole or part of a contribution.
- 6.7 A reference in clauses 9.7 and 11.6 to a contribution is a reference to so much of the contribution as is, at the relevant time, required to be paid pursuant to this Part.
- 6.8 For the purposes of clauses 6.1 and 6.4, the Trustees may fix as a contribution an amount that is a specified amount or an amount calculated in a specified manner.

7 FEES

- 7.1 The Trustees shall fix the amount of the application fee and administration fee to be charged under this Deed.
- 7.2 The Trustees may fix as the administration fee an amount that is a specified amount or that is an amount calculated in a specified manner.

- 7.3 A reference in this Deed to the current administration fee is a reference to the level of the fee fixed in accordance with this Part as it applies to the particular applicant or participant.
- 7.4 The Trustees shall fix an additional fee which may be charged to participants who fail to meet their obligations under Clauses 11.1, 11.2, 11.3 or 11.4 of this Deed.
- 7.5 The Trustees may fix as the additional fee an amount that is a specified amount or that is an amount calculated in a specified manner. The amount so specified or calculated shall not exceed 50% of the current administration fee.
- 7.6 The Trustees may at any time vary the amount of the application, administration or additional fees or the manner in which those fees are to be calculated.
- 7.7 A participant shall pay an additional fee at such time as the Trustees may specify.

## 8 INVESTMENT OF MONEYS

- 8.1 All moneys received by the Trustees from any source shall be paid by the Trustees into one or more of a current account or savings account with a bank or an account with a financial institution determined by the Trustees.
- 8.2 The Trustees shall invest in authorized investments, with power from time to time to realize investments and re-invest, any of the Fund which the Trustees consider is not required for the immediate purposes of the Trust.
- 8.3 For the purposes of clause 8.2, "authorized investments" means—
- (a) bank accepted bills and interest bearing deposits with banks;
  - (b) bonds or securities issued or guaranteed by a State Government in Australia or the Commonwealth Government;
  - (c) units in cash trusts or other negotiable investment forms if those trusts or investments are guaranteed by or have full recourse to a bank or consist solely of investments guaranteed by a bank or investments specified in paragraphs (a) and (b); and
  - (d) any other investments which trustees may lawfully make in the State where the investment is made.
- 8.4 Subject to clause 8.5, all documents requiring signature in connexion with operating on or dealing with the accounts referred to in clause 8.1 and the investments referred to in clause 8.2 shall be signed by two Trustees or by one Trustee and any person so authorised in writing by any two Trustees. Such authority may be revoked at any time in writing by any two Trustees.
- 8.5 The Trustees may authorize any person to make deposits to the accounts referred to in clause 8.1.

## 9 INITIAL APPLICATION

- 9.1 A person may apply in writing to the Trustees for a determination by them that the person is eligible to be a contributor to the Fund.
- 9.2 The Trustees may specify a form for applications under clause 9.1.
- 9.3 An applicant shall pay, at the time of application, the current application and administration fee.

- 9.4 An applicant shall provide to the Trustees any information that they reasonably require about the applicant's financial resources.
- 9.5 The Trustees may require an applicant to supply further information, or to supply information in a particular form, or both, where they consider that the information or form is reasonably necessary to enable them to determine whether the applicant is eligible to be a contributor to the Fund.
- 9.6 The Trustees shall determine whether an applicant is eligible to be a contributor to the Fund.
- 9.7 Where the Trustees determine that an applicant is eligible to be a contributor to the Fund, and when the applicant pays any contribution fixed pursuant to Part 6, the Trustees shall certify to the relevant Licensing Authority that the person is eligible to become a participant.
- 9.8 Where the Trustees determine that an applicant is not eligible to be a contributor to the Fund, they shall—
- (a) refuse the application; and
  - (b) give notice to the relevant Licensing Authority and to the applicant of the refusal and of the matters they took into account in making their determination.

## 10 EXEMPT PARTICIPANTS

- 10.1 Where a person who is exempt from the requirement to hold a licence by virtue of section 3(2) of the Act in New South Wales or an equivalent provision in another Act—
- (a) gives notice to the Trustees that the person wishes to be a participant; and
  - (b) pays any contribution fixed pursuant to Part 6—
- the Trustees shall declare that the person is a participant.
- 10.2 Where a person who has been declared to be a participant under clause 10.1—
- (a) ceases to be exempt from the requirement to hold a licence under an Act;
  - (b) fails to pay a contribution or (where permitted) part of a contribution when it is due; or
  - (c) gives notice to the Trustees that the person wishes to cease to be a participant—
- the Trustees shall declare that the person is no longer a participant.
- 10.3 A person who is a participant by virtue of this Part is not required to comply with a provision of this Deed which is not in this Part.
- 10.4 In this Part, "person" includes a department of State or a Government agency, whether or not it is a legal person.
- 10.5 Notwithstanding the provisions of clause 29.1, nothing in this Part shall operate to prevent the payment of any balance of the Fund to the Crown in right of a State pursuant to clause 28.2.

## 11 OBLIGATIONS ON AND REVIEW OF PARTICIPANTS

- 11.1 A participant shall provide to the Trustees annually, before a date and in a form determined by the Trustees, any information that the Trustees reasonably require as to the participant's financial resources.



- 11.2 The Trustees may vary the date on which a participant is required to provide information under clause 11.1.
- 11.3 A participant shall, at the time of providing information pursuant to clause 11.1, pay the current administration fee.
- 11.4 The Trustees may at any time, whether or not it is a time specified by them under clause 11.1 or 11.2, require a participant to supply information, or to supply information in the form, or both, which they reasonably consider necessary to enable them to determine whether the participant remains eligible to be a contributor to the Fund.
- 11.5 The Trustees shall on receiving information pursuant to clause 11.1 or 11.4, and may at any other time, determine whether a participant remains eligible to be a contributor to the Fund.
- 11.6 Where under clause 11.5 the Trustees determine that a participant remains eligible to be a contributor to the Fund, and when the participant pays any contribution required to be paid pursuant to Part 6, the Trustees shall certify to the relevant Licensing Authority that the participant remains eligible to continue to be a participant.
- 11.7 Where the Trustees determine that a participant is no longer eligible to be a contributor to the Fund, they shall give notice to the relevant Licensing Authority and to the participant of the determination and of the matters they took into account in making it, and the person shall cease to be a participant at the time when the determination is made.
- 11.8 The Trustees may determine that a participant who fails to pay a current administration fee, or the whole or (where permitted) part of a contribution or an additional fee, at a time when it is due is no longer a participant.
- 11.9 Where the Trustees determine that a person is no longer a participant pursuant to clause 11.8 they shall give notice of their determination to the relevant Licensing Authority and to the participant.

## 12 DETERMINATIONS REGARDING FINANCIAL RESOURCES

- 12.1 The Trustees shall publish from time to time guidelines as to the criteria which they may use to determine whether a person has and is likely to continue to have sufficient financial resources to enable the person to carry on business as a travel agent.
- 12.2 The Trustees may make it a condition of their determining that a person is or is to remain eligible to be a contributor to the Fund—
- (a) that the person maintain and operate the person's business as a travel agent, or the accounts of the business, in a manner specified by the Trustees; or
  - (b) that the person's business be guaranteed in a way, or by a person or class of persons, specified by the Trustees.

## 13 HEARINGS AND APPEALS

- 13.1 Before the trustees—
- (a) determine that an applicant is not eligible to be a contributor to the Fund under clause 9.8;
  - (b) determine under clause 11.5 that a participant is no longer eligible to be a contributor to the Fund; or

- (c) pursuant to clause 12.2, make their determination that an applicant or participant is eligible to be a contributor to the Fund conditional on any conduct—

they shall allow the applicant or participant a reasonable opportunity to be heard.

13.2 Notwithstanding any other provision of this Deed, where the Trustees make any determination or take any action referred to in paragraphs (a) to (c) of clause 13.1, and where an Act creates in or confers on the person a right so to do, a person who was the applicant or participant may—

- (a) if the person was an applicant or participant in New South Wales, appeal to the Commercial Tribunal of that State;
- (b) if the person was an applicant or participant in Victoria, apply for a review of the decision to the Administrative Appeals Tribunal of that State;
- (c) if the person was an applicant or participant in South Australia, appeal to the Commercial Tribunal of that State; and
- (d) if the person was an applicant or participant in Western Australia, appeal to the District Court of that State;
- (e) if the person was an applicant or participant in Tasmania, appeal to a magistrate of that State;
- (f) if the person was an applicant or participant in Queensland, appeal to the District Court in that State.

13.3 The Trustees shall give effect forthwith to a decision of a court or tribunal referred to in clause 13.2, notwithstanding that an appeal or application to another court or tribunal named in that clause remains to be determined.

#### 14 REGISTER OF PARTICIPANTS

14.1 The Trustees shall keep a register of participants, including details of names and addresses, and record in it any variation or change in the name or trading name of a participant that is approved and notified by the Licensing Authority.

#### 15 PAYMENT OF COMPENSATION BY THE TRUSTEES

15.1 Subject to this Deed, the Trustees shall pay compensation out of the Fund to a beneficiary—

- (a) who is a client; and
- (b) who has suffered or may suffer pecuniary loss arising directly from a failure to account for money or other valuable consideration by a participant—

where—

- (c) the failure to account arises from an act or omission by the participant or an employee or agent of the participant; and
- (d) the client is not protected against the loss by a policy of insurance.

15.2 The Trustees may in their absolute discretion pay compensation to a beneficiary to whom they are not required to pay compensation by virtue of clause 15.1.

15.3 Notwithstanding any other provision of this Deed, the Trustees shall not pay compensation to a person in respect of loss that is a loss within the meaning of Clause 15, and arises before the proclamation of the Act in the State or Territory.

15.4 A principal or a person who carries on or carried on a business comprising or including the provision of travel arrangements may be paid compensation in respect of a pecuniary loss suffered or incurred in connexion with that business by reason of a failure to account only where the principal or person is exercising a right of a beneficiary to claim or receive compensation out of the Fund which has been assigned to the principal or person.

## 16 TIME FOR AND MANNER OF MAKING A CLAIM

16.1 A claim for compensation shall be made in writing to the Trustees.

16.2 Subject to clause 16.3 and to the provisions of Part 18, a person shall not be entitled to compensation from the Fund unless the person makes a claim in the manner provided for in this Deed within twelve months of the failure to account in respect of which the claim arises.

16.3 The Trustees may accept a claim made more than twelve months after the failure to account in respect of which it arises.

16.4 The Trustees may require, where it is reasonable and necessary to do so, that a person provide them with information relating to the person's claim and with copies of any documents in the possession or under the control of the person that relate to a claim.

16.5 Where the Trustees require that information or documents be provided under clause 16.4 they may require—

(a) that the information be provided by statutory declaration or in some other manner; and

(b) that copies of documents be verified in a particular manner.

16.6 Notwithstanding any provision in this Part, the Trustees shall not be liable to make any payment for compensation under this Deed to a person who has not provided information or verified copies of documents as required by this Part.

16.7 The Trustees may make the payment of compensation to a beneficiary in consideration of, or subject to, the assignment to the Trustees of the beneficiary's right and entitlement against another person.

16.8 The Trustees may decide to admit the claim in whole or in part or to reject it.

16.9 Within 14 days of making a decision under clause 16.8 the Trustees shall give notice of the decision to the person who made the claim.

16.10 Where the Trustees reject a claim or admit it only in part, they shall, when notifying a person pursuant to clause 16.9, advise the person in writing of the right of appeal under Part 19 and of the method of appeal.

## 17 AMOUNT OF COMPENSATION

17.1 The Trustees shall not pay to a person as compensation an amount exceeding the pecuniary loss suffered directly by the person by reason of the failure to account in respect of which the claim was made.

- 17.2 For the period of two years from the commencement of this Deed—
- (a) the total amount which the Trustees may pay in respect of any one transaction between a client and a person carrying on business as a travel agent is \$20 000; and
  - (b) the aggregate sum which may be applied in compensating all persons who have or may have suffered a pecuniary loss as a result of a failure to account by any one person carrying on business as a travel agent shall not exceed \$400 000.

## 18 EMERGENCY COMPENSATION

- 18.1 Notwithstanding any other provision in this Deed but subject to Part 17 and to this Part, the Trustees may make the payments specified in clause 18.2.
- 18.2 If a participant fails to meet, or in the opinion of the Trustees is unable to meet, an obligation to a beneficiary, the Trustees may pay out of the Fund any amount which they determine is necessary to meet in whole or in part the emergency requirements of the beneficiary arising from the failure or inability.
- 18.3 The Trustees may not under this Part make a payment prohibited by or outside the terms of the provisions in Part 15.
- 18.4 The Trustees shall not be liable for anything done in good faith pursuant to clause 18.2.

## 19 APPEAL COMMITTEES

- 19.1 Within one month of being notified of a decision under clause 16.8, a claimant may, by notice in writing to the Trustees, appeal to an Appeal Committee from a decision of the Trustees under clause 16.8 other than a decision in respect of a claim under clause 15.2.
- 19.2 An Appeal Committee shall have three members appointed by the Minister in the relevant State.
- 19.3 One member of an Appeal Committee shall be a barrister or solicitor of the relevant State of not less than seven years' standing and shall be the Chairman of the Committee.
- 19.4 A trustee may not be a member of an Appeal Committee.
- 19.5 A member of an Appeal Committee is entitled to the expenses, fees and allowance which the Trustees fix from time to time for members of Appeal Committees.
- 19.6 An Appeal Committee shall consider *de novo* the claim in respect of which it is constituted and shall have all the powers of the Trustees under Part 16 in respect of the claim.
- 19.7 Subject to clause 19.8, a decision of an Appeal Committee may be by majority and shall have effect as if it were the decision of the Trustees.
- 19.8 The Chairman of an Appeal Committee shall determine all questions of law.
- 19.9 An Appeal Committee may determine its own rules and procedures.
- 19.10 In this Part, "the relevant State" means—
- (a) where the person bringing the appeal resides in a State, that State; and
  - (b) where the person bringing the appeal does not reside in a State, the State in which the failure to account is alleged to have taken place.

## 20 PROCEEDINGS OF TRUSTEES

- 20.1 The Trustees shall meet together at least once a year.
- 20.2 Except as otherwise provided by this Deed, the Trustees may determine the procedure for the calling of meetings and conduct of business at those meetings.
- 20.3 The Trustees may meet either in person or by telephone or other electronic means of conferring for the dispatch of business.
- 20.4 For the purpose of clause 20.7, where the meeting is conducted by telephone or other electronic means of conferring, a trustee shall be regarded as being present if the trustee is able to hear the entire meeting and to be heard by all others attending the meeting.
- 20.5 A meeting conducted by telephone or other electronic means of conferring shall be deemed to be held at a place, to be agreed by the Trustees present at the meeting, where at least one of the Trustees present at the meeting was during the whole of the meeting.
- 20.6 Any three Trustees may at any time by notice to all the Trustees for the time being require a meeting of the Trustees to be convened.
- 20.7 The quorum at a meeting of the Trustees shall be one half of the total number of the Trustees at that time plus one or, if that is not a whole number, the next highest whole number.
- 20.8 The Trustees shall elect a Chairman whose period of office may be decided, altered or terminated from time to time by the Trustees.
- 20.9 If the Chairman is absent from a meeting of the Trustees, the Trustees may elect a trustee who is present to chair the meeting.
- 20.10 The Trustees may adjourn and otherwise regulate their meetings as they think fit.
- 20.11 Questions arising at a meeting of Trustees shall be decided by a majority of votes of the trustees present and voting.
- 20.12 The person chairing a meeting shall have a deliberative as well as a casting vote.
- 20.13 A resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly convened and held.
- 20.14 A resolution for the purposes of clause 20.13 may consist of several identical copies of the same document each signed by one or more of the Trustees.
- 20.15 The Trustees shall cause to be kept full and accurate minutes of their proceedings at meetings.
- 20.16 A trustee shall be entitled to expenses, fees and allowances for attending meetings and transacting the business of the Trust.
- 20.17 The amounts which a trustee is entitled to seek under clause 20.16 shall be the amounts fixed from time to time by the Ministerial Council.

## 21 POWERS AND DUTIES OF THE TRUSTEES

- 21.1 The Trustees shall, in addition to the powers and duties otherwise conferred upon them by this Deed and by law, have the following powers and duties:
- (a) to pay out of the Fund all claims approved under this Deed;

- (b) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments;
- (c) for the purpose of conducting the affairs of the Trust, to raise money and to secure over the whole or any part of the fund by mortgage assignment floating charge or in any other way the payment of money to any person firm bank or governmental or municipal body and upon such terms as the Trustees shall think fit;
- (d) to give a guarantee or indemnity for the payment of money or the performance of a contract, obligation or undertaking by a person, firm or association, and to give any security over the assets of the fund for the guarantee or indemnity;
- (e) to hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, assign, surrender, let, lease, exchange, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any real or personal property or any interest in it including the benefit of any leasing or other contracts to which the Trustees are a party;
- (f) to pay out of the Fund all costs, charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion in this Deed or to carrying out or performing the trusts of this Deed which the Trustees may at any time incur, including the costs of establishing and winding up the Trust and the legal costs of the Trustees and of any other party relating to the legal proceedings or appeal referred to in paragraphs (e) and (m) of this clause;
- (g) to employ any person in connexion with anything required or permitted to be done by the Trustees pursuant to this Deed, including the receipt and payment of money, and to decide the remuneration to be allowed and paid to such a person and to create (or arrange) and contribute from the Fund to a superannuation, retirement, benefit or pension scheme for the benefit of a person so employed;
- (h) to open and operate upon an account or accounts with any bank or other financial institution;
- (i) to give effectual receipts and discharges for money received by or on behalf of the Trustees or otherwise relating to any of the acts, matters and things provided for in this Deed;
- (j) to take such action as the Trustees shall think fit for the adequate protection of the whole or any part of the Fund and to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustees by this Deed;
- (k) without limiting the generality of paragraph (j), to take all such action as the Trustees consider necessary to recover a debt owing to them and to release or compound that debt and to give time for the payment of that debt with or without taking security;
- (l) to institute or defend legal proceedings in the name of the Trust;
- (m) to appear in an appeal brought in any forum or tribunal against a decision made by the Trustees under this Deed;
- (n) to make arrangements and enter into contracts to underwrite any part of the liabilities of the Trust;
- (o) to insure or re-insure the Trustees against any claims made upon or against them for compensation or otherwise as provided in this Deed and to settle the terms of all such insurance and to pay from the Fund the premiums and charges for that insurance;

- (p) to permit any asset of the Fund to be held or registered in the name of any nominee of the Trustees and to deposit securities included in the Fund with a bank;
  - (q) to appoint a person to administer or assist with the administration of the Trust in accordance with the requirements of the Trustees and to remunerate the person for the administration or assistance;
  - (r) to appoint actuaries, accountants, solicitors, barristers and other professional advisers to represent, advise and act on behalf of the Trustees;
  - (s) to pay a trustee the expenses, fees and allowances to which the trustee is entitled;
  - (t) to pay a member of an Appeal Committee the expenses, fees and allowances to which the member is entitled; and
  - (u) to pay the expenses or costs, whether incurred before or after the date on which this Deed comes into force and effect, not otherwise provided for in this Deed that the Trustees determine in their discretion to be a reasonable claim on the Fund;
  - (v) to publish from time to time information concerning the operations of the Fund.
- 21.2 A trustee shall not be answerable for any losses except losses arising from the trustee's own wilful neglect or default, nor shall a trustee be answerable for the acts or defaults of one or more co-trustees or for an act done *bona fide* in conformity with the decisions of the Trustees.
- 21.3 The Trustees shall not be liable for the neglect or default of a solicitor, banker, accountant or other agent employed *bona fide* by the Trustees.
- 21.4 A trustee shall be indemnified against all liabilities incurred in execution of the duties of the trustee, other than when they arise from the trustee's wilful neglect or default, and shall have a lien on the Fund for that indemnity.

## 22 COMMITTEES

- 22.1 Subject to this Part, the Trustees may by instrument in writing delegate any of their powers, duties and obligations conferred or created under this Deed to a committee or committees consisting of at least three Trustees.
- 22.2 The Trustees may vary the membership of a committee from time to time as they see fit and may nominate one or more Trustees who may act in the absence of a Trustee appointed to such committee and who for that purpose shall be deemed to have been delegated the powers, duties and obligations referred to in Clause 22.1.
- 22.3 The Trustees may not delegate their powers, duties and obligations under clauses 4.8, 6.1, 6.2, 6.4, 6.5, 7.1, 7.4, 12.1, 20.8, 22.1, 22.5, 24.1, 24.2, 25.1, 28.1, 30.1.
- 22.4 A committee to which powers have been delegated under clause 22.1 shall exercise those powers in accordance with any directions and subject to such conditions which the Trustees may specify and a power so exercised shall be deemed to have been exercised by the Trustees.
- 22.5 The Trustees shall appoint one member of each committee to be the chairman of that committee (in this Part called "the Chairman").
- 22.6 Where at a meeting of a committee the Chairman is not present within ten minutes of the time appointed for the holding of the meeting or is unable or unwilling to act, the members present may elect one of their number to chair that meeting.

- 22.7 A committee may meet and adjourn as it thinks proper.
- 22.8 The quorum at a meeting of a Committee shall be one half of the total number of members of the Committee or, if that is not a whole number, the next highest whole number.
- 22.9 Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.
- 22.10 In the case of an equality of votes, the Chairman has a casting vote in addition to a deliberative vote.
- 22.11 A person chairing a meeting who is not the Chairman shall not have a casting vote.
- 22.12 Except as otherwise specifically provided in this Deed or directed by the Trustees the meetings and proceedings of a committee shall be governed by the provisions contained in this Deed regulating the meetings and proceedings of the Trustees.

### 23 SECRECY

- 23.1 A person who is or has been a trustee shall not either directly or indirectly make a record of, divulge or communicate information concerning the affairs of a person which was acquired through the firstnamed person's office or employment under or for the purposes of this Deed, unless the information is recorded, divulged or communicated—
- (a) in the performance of a function or the exercise of a power under this Deed;
  - (b) when the person is communicating for the purposes of an Act or this Deed with a person charged with or employed in the administration of the Act;
  - (c) when the person is giving evidence or producing a document to a person or body which is entitled to hear or determine an application for a licence under an Act or an appeal from or with respect to such an application; or
  - (d) when the person is giving evidence or producing a document to a court of law which is hearing any criminal or civil proceedings connected with or arising under this Deed or an Act;
  - (e) when it is requested by and provided to an agency of the Commonwealth of Australia or a State of the Commonwealth for the purpose of an investigation by the agency into a breach or an alleged breach of a law of the Commonwealth or of a State of the Commonwealth; or
  - (f) with the written authority of the second-named person.
- 23.2 Where the Trustees enter into a contract with a person by which the person is employed in or concerned with the administration of the Trust, the Trustees shall in the contract require the person—
- (a) to be bound by and observe the provisions of clause 23.1 in the same manner and to the same extent as if the person was a trustee; and
  - (b) if the person enters in turn into a subcontract with a third person, to be bound by and observe the provisions of this clause in the same manner and to the same extent as if the person was the Trustees and the third person was the person.



## 24 ACCOUNTS AND AUDIT

24.1 The Trustees shall cause proper books of account to be kept in relation to all of the dealings and operations of the Trustees and shall cause the accounts of the Trust to be audited and a balance sheet, funds statement, supporting information and an auditor's certificate to be presented to the Trustees not more than ninety days after the end of each year.

24.2 The Trustees shall have power to appoint and to determine the remuneration of the auditors of the Trust.

## 25 ANNUAL REPORT

25.1 The Trustees shall, within four months of the conclusion of each year, forward to each Minister a report of the financial and operational activities of the Trust for that year.

## 26 NOTICES

26.1 A reference in this Deed to a notice or notification or other like communication is (in the absence of a clear contrary intention) a reference to a notice notification or communication in writing.

## 27 SERVICE

27.1 The Trustees shall publish in the *Government Gazette* of each State an address in that State to which notices can be delivered or sent.

27.2 A notice or communication to the Trustees shall be deemed to have been duly given if it is delivered or sent by prepaid post to an address for the time being published pursuant to clause 27.1.

27.3 A notice sent by post shall be deemed to have been served on the third day following the day on which it was posted and, in proving service of the notice, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

## 28 TERMINATION OF THE TRUST

28.1 The Trust may be terminated at any time by unanimous resolution of the Trustees or of the Ministerial Council or by order of the Supreme Court of New South Wales.

28.2 Upon termination of the Trust the Fund shall be applied first in paying all the liabilities of the Trust (including any liability arising from a failure to account after the termination of the trust for money or other valuable consideration entrusted to another person before the termination of the Trust), and any balance after the payment of the Trust's liabilities shall be paid to the States in proportions equivalent to the total number of participants in each State at the date of termination.

## 29 TRUST FUNDS NOT TO BE PAID TO PARTICIPANTS

29.1 The Trustees shall not in any circumstances distribute among or pay to all or any of the participants any part of the Fund otherwise than as provided for by this Deed.

## 30 AMENDMENT OF TRUST DEED

30.1 Subject to this Part, this Deed may be amended by a resolution (in this Part called "an amendment resolution") passed by not less than seventy five per centum of the Trustees.

- 30.2 Part 13 (except by adding or deleting paragraphs in clause 13.2), clauses 30.1 and 31.3 and this clause may not be amended.
- 30.3 Immediately upon the passing of an amendment resolution the Trustees shall notify each Minister of it.
- 30.4 Where, within four weeks of an amendment resolution being passed, the Ministerial Council resolves that the amendment is rejected by the Ministerial Council, the amendment resolution lapses and is of no effect for any purpose.
- 30.5 An amendment resolution shall specify a date which shall be no earlier than six weeks after the date on which it is passed as the date on which the amendment is to take effect and this Deed shall be amended in accordance with that resolution as from and including that date.
- 30.6 An amendment to this Deed may be made and expressed so as to save from being void or of no effect a matter or thing done prior to the amendment.

### 31 GOVERNING LAW AND JURISDICTION

- 31.1 The Trust Fund shall be maintained in New South Wales.
- 31.2 The Trust shall be administered in New South Wales.
- 31.3 This Deed shall be governed by and construed in accordance with the laws of New South Wales.
- 31.4 A legal action or proceeding relating to this Deed or arising out of an action taken or omitted to be taken by the Trustees under this Deed may be brought in any State and the Trustees shall not raise any objection in regard to such an action or proceeding on the ground of venue or forum *non conveniens* or a similar ground.

**APPENDIX****LEGISLATIVE HISTORY**

Regulation 5:	varied by 248, 1990, reg. 2
Regulation 6:	varied by 248, 1990, reg. 3
Regulation 6(e):	revoked by 248, 1990, reg. 3(b)
Part II Div. II heading:	revoked by 201, 1987, reg. 2
Regulation 8:	revoked by 201, 1987, reg. 2
Regulation 13:	revoked by 201, 1987, reg. 3
Regulation 15:	inserted by 134, 1987, reg. 2
Schedule 2:	revoked by 248, 1990, reg. 4
Schedule 4:	revoked by 248, 1990, reg. 4
Schedule 5:	varied by 154, 1988, reg. 3; 110, 1989, reg. 3; 100, 1990, reg. 3; substituted by 146, 1991, reg. 3; 151, 1992, reg. 3; 144, 1993, reg. 3; varied by 63, 1994, reg. 3; 59, 1995, reg. 3
Schedule 6	
clause 1.1:	definition of "Client" varied by 45, 1991, reg. 2(a) definition of "Incidental arrangements" inserted by 45, 1991, reg. 2(b) definition of "Year" varied by 45, 1991, reg. 2(c)
clause 1.3:	varied by 45, 1991, reg. 2(d), (e)
clause 2.2:	substituted by 45, 1991, reg. 2(f)
clause 5.2:	varied by 45, 1991, reg. 2(g)
clause 7.4:	substituted by 45, 1991, reg. 2(h)
clauses 7.5 - 7.7:	inserted by 45, 1991, reg. 2(h)
clause 8.4:	varied by 45, 1991, reg. 2(i)
clause 11.8:	varied by 45, 1991, reg. 2(j)
clause 13.2:	varied by 45, 1991, reg. 2(k)
clause 15.3:	varied by 45, 1991, reg. 2(l)
clause 21.1:	varied by 45, 1991, reg. 2(m)
clause 22.2:	varied by 45, 1991, reg. 2(n)
clause 24.1:	varied by 45, 1992, reg. 2(o)
clause 25.1:	varied by 45, 1991, reg. 2(p)