

SOUTH AUSTRALIA

TRAVEL AGENTS REGULATIONS 1996

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LEGISLATIVE HISTORY

REGULATIONS UNDER THE TRAVEL AGENTS ACT 1986

Travel Agents Regulations 1996

being

No. 158 of 1996: *Gaz.* 27 June 1996, p. 3140¹

as varied by

No. 259 of 1996: *Gaz.* 23 December 1996, p. 2262²

No. 84 of 1997: *Gaz.* 13 May 1997, p. 1876³

No. 80 of 1998: *Gaz.* 28 May 1998, p. 2345⁴

No. 126 of 1998: *Gaz.* 28 May 1998, p. 2459⁵

- ¹ Came into operation 1 July 1996: reg. 2.
- ² Came into operation 3 February 1997: reg. 2.
- ³ Came into operation 1 July 1997: reg. 2.
- ⁴ Came into operation 1 July 1998: reg. 2.
- ⁵ Came into operation 28 May 1998: reg. 2.

N.B. The amendments effected to these regulations by Regulation No. 64 of 1999 had not been brought into operation at the date of, and have not been included in, this consolidation.

Citation

1. These regulations may be cited as the *Travel Agents Regulations 1996*.

Commencement

2. These regulations will come into operation on the day on which the *Travel Agents (Miscellaneous) Amendment Act 1996* comes into operation.

Revocation

3. All regulations previously made under the *Travel Agents Act 1986* are revoked.

Interpretation

4. In these regulations, unless the contrary intention appears—

"Act" means the *Travel Agents Act 1986*;

"day trip" means a round trip completed in one day by persons who have bought rights to travel in a vehicle.

Definition of business of travel agent (s. 4(1))

5. For the purposes of section 4(1)(c) of the Act, the activity of making arrangements (such as arrangements for car hire or the provision of travellers cheques) as a normal incidental part of the business of—

(a) selling or arranging to sell rights to travel; or

(b) selling or arranging to sell rights to travel and accommodation,

is prescribed.

Exemptions

6. (1) Section 7 of the Act does not apply to the following:

(a) a person who sells or arranges to sell rights to travel or accommodation if—

(i) the travel or accommodation is only within Australia; and

(ii) the rights sold by the person in any one year do not exceed \$30 000;

(b) a person who sells or arranges to sell rights to travel in a vehicle for the purposes of a day trip;

(c) a person who sells or arranges to sell rights to travel in a vehicle used to provide a regular passenger service within the meaning of the *Passenger Transport Act 1994* (including a service excluded by regulation from the ambit of the definition of regular passenger service under that Act).

Fees

7. (1) The fees fixed by Schedule 1 are payable to the Commissioner for the purposes set out in that schedule.

(2) The Commissioner may waive, reduce or refund a fee (or part of a fee) payable under these regulations if satisfied that it is appropriate to do so in a particular case.

Annual licence fee and return (s. 12)

8. (1) For the purposes of section 12(2) of the Act, the date for payment of an annual fee and for lodging an annual return is the last day of the month that is the anniversary of the month in which the licence was granted.

(2) For the purposes of section 12(3) of the Act, the penalty for default in paying the annual fee or lodging the annual return is as set out in Schedule 1.

Notification of changes in circumstances

9. (1) If there is any change in—

- (a) the residential address of a licensed travel agent; or
- (b) the name in which a licensed travel agent carries on business; or
- (c) the address of the registered corporate office of a licensed travel agent that is a body corporate; or
- (d) the address for service of a licensed travel agent,

the travel agent must, within 14 days after that change, give written notice to the Commissioner of the new address or name (as the case may be).

Maximum penalty: \$2 500.

Expiation fee: \$160.

(2) A licensed travel agent must, within 14 days after ceasing to carry on business as a travel agent, give written notice to the Commissioner of that fact.

Maximum penalty: \$2 500.

Expiation fee: \$160.

(3) A licensed travel agent that is a body corporate must, within 14 days after a person becomes a director of the body corporate, give written notice to the Commissioner of the name and residential address of the new director.

Maximum penalty: \$2 500.

Expiation fee: \$160.

Return of licence

10. If the licence of a travel agent is suspended or cancelled, the travel agent must, at the direction of the District Court or the Commissioner, return the licence to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$160.

Trust deed (s. 19)

11. For the purposes of section 19(2) of the Act, the trust deed (as amended to 9 May 1996) is set out in Schedule 2.

Notice to be displayed (s. 33)

12. For the purposes of section 33 of the Act, the notice that must be maintained in a conspicuous position in each place from which a person carries on business as a travel agent must clearly show the licence number of the licensed travel agent.

Information to be contained in advertisements (s. 34)

13. For the purposes of section 34(2) of the Act, the licence number of a licensed travel agent must appear—

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

SCHEDULE 1

Fees

1. Application fee for licence (s. 8(1) of the Act)	\$150
2. Licence fee—payable before the granting of a licence under s. 9 of the Act—	
(a) in the case of a natural person	\$230
(b) in the case of a body corporate	\$550
3. Annual fee (s. 12(2) of the Act):	
(a) in the case of a natural person	\$230
(b) in the case of a body corporate	\$550
plus for each office from which the licensee carries on business up to a maximum of 10 offices . . .	\$95
4. Default penalty fee (s. 12(3) of the Act)	\$205

SCHEDULE 2
Trust Deed

DEED OF TRUST

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 4.1, 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 4.1, John David Hall of 70 Scott Street, Beaumaris in the State of Victoria;
 - (iii) as the nominee of the South Australian Minister under clause 4.1, 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 4.1, 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 4.1, 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 4.3, Neil Francis Francey of Unit 6, 59 Kirribilli Avenue, Kirribilli in the State of New South Wales.

7.

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**) **DEIRDRE M GRUSOVIN**
GRUSOVIN)

in the presence of: **M ROELANDTS**

SIGNED, SEALED AND DELIVERED)
by the said **PETER CORNELIS**) **PETER SPYKER**
SPYKER)

in the presence of: **P VAN DYK**

SIGNED, SEALED AND DELIVERED)
by the said **CHRISTOPHER**) **C J SUMNER**
JOHN SUMNER)

in the presence of: **ALAN MARTIN**

SIGNED, SEALED AND DELIVERED)
By the said **KEITH JAMES**) **KEITH WILSON**
WILSON)

in the presence of: **E RUSSELL**

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 travel-related 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.

"Travel-related arrangements" means arrangements which are or normally are in the opinion of the Trustees incidental to travel arrangements, including but not limited to arrangements in respect of the provision of:

- accommodation,
- car hire, or
- travellers cheques which are to be drawn against someone other than the person providing them.

"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 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 or travel-related 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.

9.

- 1.2 For the purposes of this Deed, a person carries on business as a travel agent in the 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 travel-related arrangements and
 - (c) without limiting the factors which the Trustees may take into account in respect to 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 or travel-related arrangements and others are provided by the first-named 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, who carries on business as a travel agent (or an employee or agent of the other person) in connection with travel arrangements or travel-related arrangements or both 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 or travel-related 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 Each Minister shall nominate two Trustees one of whom shall have knowledge of the travel industry.

4.2 The Trustee nominated pursuant to Clause 4.1 who is required to have knowledge of the travel industry shall be selected from the persons whose names are submitted to the Minister pursuant to Clause 4.4.

4.3 In addition to the Trustees nominated under Clause 4.1, 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.

4.4 When a Trustee is to be nominated in accordance with Clause 4.2, the Trustees shall submit to the relevant Minister the names of two persons whom they consider to be suitable for nomination within four weeks of the occasion for the nomination arising.

4.5 A person nominated as a Trustee pursuant to the criteria referred to in Clause 4.1, 4.2 or 4.3, may not at the same time be nominated pursuant to another of those clauses and any such nomination shall not be invalidated by reason of the person's knowledge of the matters referred to in those clauses.

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

4.7 A Trustee may resign by notice in writing to the Trustees.

4.8 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 in writing to the Trustees cause the Trustee to be removed.

- 4.9 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.
- 4.10 Upon execution by the Trustees of a deed pursuant to Clause 4.9—
- (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 in writing 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.
- 4.11 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 all moneys and property (of whatever nature and kind) received or held by the Trustees for the purposes of the Trust and shall include, but without limiting the generality of the foregoing:
- (a) all contributions fees, levies and penalties referred to in Clause 6.1.
 - (b) all investments for the time being in the name of the Trust;
 - (c) the income earned on moneys invested by the Trust;
 - (d) moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the Trustees pursuant to this Deed;
 - (e) moneys donated to the Trustees for the purposes of the Trust;
 - (f) 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;
 - (g) all moneys rights and property of any description transferred to or acquired or received by the Trustees in their capacity as such; and
 - (h) all other moneys lawfully paid into the Fund.
- 5.3 The Trustees may cause the books of account of the Fund to show separately moneys and property received and held for the purposes of meeting-
- (a) claims;
 - (b) the administrative expenses of the Fund;
- but such separate accounts shall not preclude the Trustees from transferring funds or property between those accounts if they shall deem this to be appropriate.

6 CONTRIBUTIONS TO THE FUND, FEES, LEVIES AND PENALTIES

- 6.1 The Trustees shall determine whenever and as often as they consider appropriate the amount, method of calculation and manner of collection of all contributions, fees, levies and penalties payable to the Fund by participants and by other persons applying to be contributors to the Fund and, in particular, but without limiting the generality of the foregoing, the Trustees may charge:
- (a) an initial contribution payable upon application;
 - (b) an additional contribution or special levy where the Trustees are of the opinion the Fund is insufficient to meet the existing or potential liabilities of the Trust;
 - (c) an application fee;
 - (d) an administration fee;
 - (e) an annual renewal fee;
 - (f) an additional or late filing or penalty fee for participants who fail to meet their obligations under this Deed and in particular Part 11 hereof; and

- (g) where a participant carries on business as a travel agent in more than one location, an additional contribution or special levy for each location at which a participant carries on business as a travel agent additional to the participant's first location.

6.2 The Trustees may waive or refund in part or whole and in such manner as they shall decide, any contributions, fees, levies and penalties charged by them if they consider the circumstances warrant such waiver or refund.

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 clauses 8.5 and 8.6, all documents requiring signature in connection 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.

8.6 The Trustees may determine that any two persons whose names appear of a list of persons approved in writing by the Trustees (being persons employed by the Trustees to administer or assist in administering the Trust) shall be authorised jointly to make withdrawals from, and jointly to sign cheques drawn on, accounts designated "clearing accounts", but only where the amount of all withdrawals and the payee or recipient of the funds have been previously approved in writing by the Trustees or a duly constituted Committee of them."

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.
- 9.9 Where the Trustees make a written request to the applicant to supply information and the applicant does not respond to the written request within 3 months of the date of the written request the application shall lapse.

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 pay the current annual renewal fee before a date determined by the Trustees.
- 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.

14.

- 11.5 (a) 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.
- (b) Where a participant fails to provide information pursuant to clause 11.1 or 11.4 the Trustees may determine that the participant is not 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 any contribution, fee, levy or penalty 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.
- 11.10 Where the Trustees determine that a person is no longer a participant they may within 2 months after the date of the determination and on the written application of the terminated participant determine to reinstate that person as a participant and the reinstatement shall operate from the date of the determination to reinstate the person.
- 11.11 Where a person is reinstated as a participant under clause 11.10 the Trustees shall notify the relevant Licensing Authority and the person of the Trustees' determination.
- 11.12 Before the Trustees determine to reinstate a person as a participant pursuant to clause 11.10 they may require:
- (a) the person to pay part or all of the current application and administration fees payable by persons applying to be a contributor to the Fund pursuant to clause 9.3; and
- (b) the person to provide the Trustees any information that they may reasonably require about the person's financial resources.
- 11.13 Apart from the fees that may be imposed by the Trustees under clause 11.12(a) no other fees shall be imposed by the Trustees as a condition of the Trustees exercising their discretion under clause 11.10.

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 that the person comply with any one or more of the following—
- (a) that the person maintain and operate the person's business as a travel agent in a manner specified by the Trustees and, in particular, but without limiting the generality of the foregoing, the Trustees may require the person—
- (i) to maintain a trust account in respect of moneys received from clients;
- (ii) to increase the capital of the travel agency business;
- (iii) to reduce debt of the travel agency business.
- (b) that the person's business be guaranteed in a way, or by a person or class of person, specified by the Trustees.
- (c) that the person maintain and operate the books of account and other accounting records of the travel agency business in a manner specified by the Trustees.

15.

- (d) that a report be obtained at the expense of the person from a duly qualified auditor or accountant nominated by the Trustees stating that the accounting records of the travel agency give a true and fair view of the financial position of the business.
- (e) that a report be obtained at the expense of the person from a duly qualified auditor or accountant nominated by the Trustees providing such information as will permit the Trustees to determine whether the person has sufficient financial resources to carry on business as a travel agent.
- (f) that the person provide a floating charge over the assets and undertakings of the person's business in favour of the Trustees.

12.3 The Trustees may—

- (a) determine a date or period of time for compliance with any condition referred to in Clause 12.2.
- (b) authorise payment of the cost of obtaining any report referred to in Clause 12.2 from the Fund notwithstanding any other provision of this Deed to the contrary.

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;
- (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.
- (g) if the person was an applicant or participant in the Australian Capital Territory, appeal to the Australian Capital Territory Administrative Appeals Tribunal.

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:
- (a) pay compensation to a beneficiary under clause 15.1 in relation to any consequential pecuniary loss suffered by reason of a failure to account; and
 - (b) pay compensation, including compensation in relation to any consequential pecuniary loss suffered by reason of a failure to account, to a person to whom they are not required to pay compensation under 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 or travel-related arrangements may be paid compensation in respect of a pecuniary loss suffered or incurred in connection 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.

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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 The Trustees may in their absolute discretion determine the amount of pecuniary loss suffered directly by the person of the failure to account in respect of which the claim was made.

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 despatch 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 connection 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 4.4, 6.1, 6.2, 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 SECREC​Y

- 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 first-named 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 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

Transitional Provisions

(Transitional provision from Regulation No. 259 of 1996, reg. 4)

4. A regulation varied or revoked by these regulations will continue to apply (as in force immediately prior to the variation or revocation coming into operation) to an expiation notice issued under the varied or revoked regulations.

Legislative History

Regulation 9(1) and (2):	varied by 259, 1996, reg. 3 (Sched. cl. 30)
Regulation 9(3):	inserted by 126, 1998, reg. 3
Regulation 10:	varied by 259, 1996, reg. 3 (Sched. cl. 30)
Schedule 1:	varied by 84, 1997, reg. 3; substituted by 80, 1998, reg. 3