

South Australia

## **Travel Agents Regulations 2011**

under the *Travel Agents Act 1986*

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### **1—Short title**

These regulations may be cited as the *Travel Agents Regulations 2011*.

### **2—Commencement**

These regulations will come into operation on 1 September 2011.

### **3—Interpretation**

In these regulations, unless the contrary intention appears—

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

*day trip* means a round trip completed in 1 day by persons who have bought rights to travel in a vehicle.

### **4—Business of travel agent**

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.

## 5—Exemptions

- (1) Section 7 of the Act does not apply to a person who carries on business as a travel agent only by reason of selling or arranging to sell—
  - (a) rights to travel or accommodation within Australia if the total value of such rights sold by the person in the course of that business in a financial year does not exceed \$50 000; or
  - (b) rights to travel in a vehicle for the purposes of a day trip; or
  - (c) 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).

### Note—

For the purposes of calculating the total value of rights to travel or accommodation within Australia sold by a person in a financial year, the value of rights sold—

- (a) to travel on a conveyance owned by the person; or
- (b) to accommodation at a place owned by the person; or
- (c) in the course of an activity that does not, by virtue of section 4(2) of the Act, constitute carrying on business as a travel agent,

is to be disregarded.

- (2) A person who is authorised by a licence to carry on business as a travel agent under a law of a reciprocating State or Territory is exempt from section 7 of the Act to the extent that the person—
  - (a) advertises in South Australia, if the person states in the advertisement—
    - (i) the person's name; and
    - (ii) the number of the licence issued to the person under the law of the reciprocating State or Territory; and
    - (iii) the name of the reciprocating State or Territory in which the licence was issued; or
  - (b) provides information to prospective customers in connection with the person's business as a travel agent.
- (3) Subregulation (2) does not authorise the person to carry on business as a travel agent if—
  - (a) the person is physically present in South Australia; or
  - (b) the person operates through another person who is physically present in South Australia.
- (4) In subregulation (2)—

***a reciprocating State or Territory*** means—

  - (a) Australian Capital Territory;
  - (b) New South Wales;

- (c) Queensland;
- (d) Tasmania;
- (e) Victoria;
- (f) Western Australia.

## **6—Fees**

- (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.

## **7—Annual fee and return**

- (1) For the purposes of section 12(2) of the Act, a licensed travel agent must pay the fee and lodge the return on or before—
  - (a) the last day of the month in each year nominated in writing to the travel agent by the Commissioner; or
  - (b) if the Commissioner does not nominate a month—the last day of the month in each year that is the same month as the month in which the travel agent's 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.

## **8—Notification of change in circumstances**

- (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) If a person is appointed as a director of a body corporate that is a licensed travel agent, the travel agent must, within 14 days after the appointment—
  - (a) notify the Commissioner in the manner and form approved by the Commissioner of the appointment of the new director; and

- (b) provide the Commissioner with any information required by the Commissioner for the purposes of determining whether the new director meets the requirements for directors under section 9(2) of the Act.

Maximum penalty: \$2 500.

Expiation fee: \$160.

### **9—Return etc of licence**

- (1) If the licence of a travel agent is surrendered, 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.

- (2) If, on an application under section 7 of the Act, a licence has been issued to a travel agent but the fee payable in respect of the application has not been paid (whether because of the dishonouring of a cheque or otherwise), the travel agent must, at the direction of the Commissioner, return the licence to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (3) The Commissioner may issue to a licensed travel agent a licence in replacement of a current licence if satisfied that—

- (a) the current licence has been lost, destroyed or damaged; or
- (b) any particulars appearing on the current licence are incorrect.

- (4) If the Commissioner issues to a licensed travel agent a replacement licence, the travel agent must, at the direction of the Commissioner, return the original (or previous duplicate) licence to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$160.

### **10—Trust deed**

For the purposes of section 19(2) of the Act, the trust deed (as amended to 5 August 2011) is set out in Schedule 2.

### **11—Notice to be displayed**

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.

### **12—Information to be contained in advertisements**

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 (section 8(1)(b) of the Act)	\$236.00
2	Licence fee—payable before the granting of a licence under Part 2 Division 1 of the Act—	
	(a) in the case of a natural person	\$363.00
	(b) in the case of a body corporate	\$865.00
	If the period between the grant of the licence and the next date for payment of a fee under section 12 of the Act is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the additional fee by applying the proportion that the length of that period bears to 12 months.	
3	Annual fee (section 12(2)(a) of the Act)—	
	(a) in the case of a natural person	\$363.00
	(b) in the case of a body corporate	\$865.00
	plus for each office from which the licensee carries on business up to a maximum of 10 offices	\$149.00
	If the period between a date for payment of a fee under section 12 of the Act and the next date for payment of the fee under that section (as nominated by the Commissioner) is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the fee by applying the proportion that the length of that period bears to 12 months.	
4	Default penalty (section 12(3) of the Act)	\$149.00
5	Replacement fee for licence	\$22.90

## 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.
- 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.

<u>SIGNED, SEALED AND DELIVERED</u> by the said <u>DEIRDRE MARY GRUSOVIN</u> in the presence of: M ROELANDTS	}	DEIRDRE M GRUSOVIN
<u>SIGNED, SEALED AND DELIVERED</u> by the said <u>PETER CORNELIS SPYKER</u> in the presence of: P VAN DYK	}	PETER SPYKER
<u>SIGNED, SEALED AND DELIVERED</u> by the said <u>CHRISTOPHER JOHN SUMNER</u> in the presence of: ALAN MARTIN	}	C J SUMNER
<u>SIGNED, SEALED AND DELIVERED</u> By the said <u>KEITH JAMES WILSON</u> in the presence of: E RUSSELL	}	KEITH WILSON

#### SCHEDULE

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## **1 INTERPRETATION**

- 1.1 In this Deed and in any document or statement issued under it, unless a different meaning is indicated—

**"Act"** means—

- (a) the *Agents Act 2003* in force in the Australian Capital Territory; and
- (b) the Travel Agents Act in force in any other State;

**"AFTA"** means the Australian Federation of Travel Agents Limited;



**"Acting Chief Executive Officer"** means the person employed or appointed as such under clause 4A.1(c)(ii);

**"agency"** means the government body administering the Act;

**"Appeal Committee"** means the committee established under clause 22;

**"bank"** means a bank—

- (a) as defined in the *Banking Act 1959* of the Commonwealth of Australia; or
- (b) that carries on banking business on behalf of a State under the authority of the laws of that State;

**"Board"** means the Board of Trustees referred to in clause 4;

**"Chief Executive Officer"** means the person employed as such under clause 4A.1(c);

**"claim"** means a claim for compensation made under clause 16;

**"client account"** means an account that only holds money received in advance in respect of travel arrangements or travel-related arrangements;

**"compensation"** means any compensation payable pursuant to this Deed to a person;

**"contribution"** means any contribution determined by the Board under clause 6;

**"direct pecuniary loss"** means the loss of the money actually paid by a person by whatever means to a travel agent;

**"Failure to account"** includes a failure:

- (a) to arrange or procure the services that are the subject of the travel arrangements or travel-related arrangements other than where the failure to arrange or procure the services is due to the insolvency or other collapse of an operator, apart from an operator referred to in clause 1.2; and
- (b) to provide a refund for money or other valuable consideration paid by the person in respect of the services not arranged or procured;

**"fee"** means a fee determined by the Board under clause 6;

**"Fund"** means the Travel Compensation Fund referred to in clause 5;

**"levy"** means a levy determined by the Board under clause 6;

**"licensing authority"** means the person or body in a State responsible for licensing travel agents under the Act;

**"loss"** means any direct pecuniary loss or other loss;

**"management"** includes direction, conduct and control;

**"Management Committee"** means the committee established under clause 20;

**"member"** means—

- (a) a member of a committee; or
- (b) a member of a Management Committee;

**"Minister"** means the Minister of the Crown in a State responsible for the Act;

**"Ministerial Council"** means the Ministerial Council established under the Participation Agreement;

**"money"** means the lawful currency of any Country, State or Nation which such Country, State or Nation uses as its medium of exchange and a measure of value;

**"notice"** includes a notification;

**"operator"** means a person who operates—

- (a) any transport system or transport facility; or
- (b) any hotel, lodging house or other place of accommodation; or
- (c) any restaurant or other eating or drinking place; or
- (d) any place of entertainment, leisure or study; or
- (e) any other facility or place in respect of which any travel arrangement or travel-related arrangement is made;

**"other loss"** means the loss of valuable consideration (including money) incurred by a claimant compensable under this Deed;

**"participant"** means a person who is—

- (a) accepted as a participant of the Fund under clause 10; or
- (b) declared to be a participant of the Fund under clause 11;

**"Participation Agreement"** means the Agreement made on 19 September 1986 between certain States to establish the scheme;

**"person"** includes a body corporate, firm, partnership or other body;

**"scheme"** means the co-operative scheme referred to in the Participation Agreement;

**"Standing Committee"** means the Standing Committee of Officials of Consumer Affairs;

**"State"** means a State or Territory that participates in the scheme;

**"travel agent"** means

- (a) other than in clause 15.9, a person who carries on business as a travel agent in a State within the meaning of the Act of that State;
- (b) in clause 15.9, any person who carries on business as a travel agent whether or not in a State and whether in Australia or elsewhere;

**"travel arrangement"** means any arrangement entered into in a State with a travel agent for the provision of services which in that State constitutes the carrying on of business as a travel agent in that State;

**"travel-related arrangement"** means—

- (a) any arrangement relating to—
  - (i) hotel and airport transfers; or
  - (ii) accommodation and meals; or
  - (iii) car hire; or
  - (iv) theatre and entertainment tickets; or
  - (v) travellers cheques drawn against someone other than the person providing them; and

- (b) any other arrangement that in the opinion of the Board is normally incidental to travel arrangements;

**"Trust"** means the Trust established under clause 2;

**"Trustee"** means a person appointed as a Trustee under clause 4;

**"year"** means the period from 1 January to the next succeeding 31 December.

- 1.2 A person who enters into a contract to provide services of which some are travel arrangements or travel-related arrangements and others are provided by the person as an operator is not an operator for the purpose of this Deed in respect of any of the services referred to in that contract.
  - 1.3 Any parts of speech or grammatical forms of a word or expression defined in this Deed have corresponding meanings.
  - 1.4 Words in the singular include the plural and words in the plural include the singular.
  - 1.5 A reference to—
    - (a) Parts and clauses is a reference to Parts and clauses, including subclauses and paragraphs, of this Schedule; and
    - (b) the Schedule is a reference to the Schedule to this Deed.
  - 1.6 A reference to a statute is a reference to—
    - (a) the statute as amended, consolidated or replaced by any other statute; and
    - (b) any orders, ordinances, regulations, rules and by-laws made under the statute.
  - 1.7 A heading does not affect the interpretation of this 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 object of the Trust is to provide a trust fund on the terms hereof for the benefit of—
    - (a) the Crown in the right of a State; and
    - (b) any person who pays money or other valuable consideration to a travel agent in respect of any travel arrangement or travel-related arrangement if—
      - (i) the travel agent fails to account for that money or consideration; or
      - (ii) the travel agent passes all or part of that money or consideration to another travel agent who fails to account for that money or consideration in the capacity as a travel agent; or
      - (iii) it appears likely that the travel agent or other travel agent will fail to account for that money or consideration as set out in clause 2.2(b)(i) or (ii).

**3 PURPOSES OF TRUST**

- 3.1 The purposes of the Trust are—
  - (a) to provide compensation to certain people who deal with travel agents; and
  - (b) to provide for the operation of the Fund; and

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

#### **4 TRUSTEES**

- 4.1 The Trust is to be operated by a Board of Trustees consisting of 9 Trustees appointed by the Ministerial Council of whom—
  - (a) one is the chairperson; and
  - (b) 2 are persons who have knowledge of the interests of travel consumers; and
  - (c) 2 are persons who have knowledge and experience of the travel industry; and
  - (d) one is another person who has knowledge and experience of the travel industry; and
  - (e) 3 are persons representing the Ministerial Council.
- 4.2 The Trustees are to be appointed by the Ministerial Council in the following manner:
  - (a) the appointment of chairperson is to be made from applications submitted as a result of public advertisement of the position;
  - (b) the appointments of the 2 persons referred to in clause 4.1(b) are to be made from—
    - (i) applications submitted as a result of public advertisement of the positions; and
    - (ii) nominations made by the Australian Consumers Association and the Consumers Federation of Australia;
  - (c) the appointments of the 2 persons referred to in clause 4.1(c) are to be made from at least 4 nominations made by AFTA from its members;
  - (d) the appointment of the person referred to in clause 4.1(d) is to be made from nominations made by the Australian Tourism Export Council Limited.
  - (e) the appointments of the 3 persons referred to in clause 4.1(e) are to be made—
    - (i) in respect of the first person, of a representative of the agency of New South Wales or Victoria on a rotating basis; and
    - (ii) in respect of the second person, of a representative of the agency of Queensland or Western Australia on a rotating basis; and
    - (iii) in respect of the third person, a representative of the agency of South Australia, Tasmania or the Australian Capital Territory on a rotating basis.

- 4.3 Nominations for the appointments of Trustees are to be—
- (a) made by the closing date as fixed by the Ministerial Council; and
  - (b) lodged with the Standing Committee.
- 4.4 The Standing Committee is to—
- (a) consider all nominations; and
  - (b) submit to the Ministerial Council a list of suitable persons from those nominations within 4 weeks after the closing date.
- 4.5 The Ministerial Council may reject any nomination and call for further nominations.
- 4.6 The Ministerial Council is to ensure that as far as practicable membership of the Board represents all the States.
- 4.7 The term of office of a Trustee is—
- (a) a period not exceeding 3 years from the date of the appointment as specified in the instrument of appointment for a Trustee appointed under clause 4.2(a), (b), (c) or (d); and
  - (b) a period not exceeding 2 years from the date of the appointment as specified in the instrument of appointment for a Trustee appointed under clause 4.2(e).
- 4.8 A Trustee is eligible for re-appointment.
- 4.9 A Trustee—
- (a) may resign by notice in writing to the Board; and
  - (b) is taken to have resigned if absent without leave from 3 consecutive meetings of the Board.
- 4.10 The Ministerial Council may remove a Trustee from office if the Trustee—
- (a) becomes bankrupt or makes any arrangement or composition with the Trustee's creditors generally; or
  - (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 that applies in the State where the Trustee resides; or
  - (c) is subject to any penalty in the Act or any Act relating to trustees; or
  - (d) being a participant, is found by the Board not to be eligible to remain a participant; or
  - (e) is an officer of a body corporate participant that is found by the Board not to be eligible to remain a participant; or
  - (f) is convicted, or proven guilty, of a criminal offence punishable on conviction by imprisonment for 2 years or more; or
  - (g) is for any other reason not fit to continue to be a Trustee.
- 4.11 The Ministerial Council may appoint a person to replace a Trustee if the Trustee resigns or is removed before the Trustee's term of office expires—
- (a) from any nominations previously made in respect of that office; or
  - (b) in any other manner it considers appropriate.

- 4.12 The Ministerial Council may extend the term of office of a Trustee for a period not exceeding 3 years.
- 4.13 Where the term of office of a Trustee has ceased other than by operation of clause 4.9 or clause 4.10, and the Ministerial Council has not made an appointment under clause 4.2 or clause 4.11 in respect of the office of the Trustee, or extended the term of office of the Trustee under clause 4.12, the Board may extend the term of office of the Trustee for a period not exceeding 6 months, but the appointment shall cease upon the Ministerial Council making an appointment or extending the term of office under clause 4.2, clause 4.11 or clause 4.12.
- 4.14 A Trustee appointed under clause 4.2(e)(iii) and (iv) representing an agency in a State must consult at regular intervals with a representative of the other agency or agencies referred to in the relevant subparagraph of that clause.

#### **4A GENERAL POWERS AND DUTIES OF BOARD**

4A.1 The Board has the following duties:

- (a) to pay out of the Fund any claim admitted under clause 16.7;
- (b) to pay out of the Fund any costs, charges and expenses incurred in—
  - (i) managing the Trust; or
  - (ii) exercising any of its powers; or
  - (iii) carrying out the purposes of the Trust; or
  - (iv) terminating the Trust; or
  - (v) paying the legal costs of the Board or a Trustee reasonably incurred in carrying out duties and exercising powers under this Deed;
- (c) —
  - (i) to employ a person as a Chief Executive Officer to manage the administration of the Fund; or
  - (ii) to employ or appoint a person as an Acting Chief Executive Officer to manage the administration of the Fund;
- (d) to give receipts and discharges for money received by or on behalf of the Board or otherwise relating to any matter provided for in this Deed;
- (e) to pay a Trustee the expenses, fees and allowances to which the Trustee is entitled;
- (f) to pay the expenses or costs, not otherwise provided for in this Deed that the Board determines to be reasonable;
- (g) to advise the Ministerial Council on any matter arising from its powers and duties that may affect any policy matter relating to the scheme;
- (h) to publish information concerning the operations of the Trust.

4A.2 The Board has the following powers:

- (a) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments;

- (b) for the purpose of conducting the affairs of the Trust, to raise money and secure over the whole or any part of the Fund the payment of money to any person, firm, association, body or bank in any manner or on any terms the Board thinks fit;
- (c) to insure or re-insure the Board and all past and present Trustees against any claims made upon or against them under this Deed and to settle the terms of the insurance and to pay from the Fund the premiums and charges for that insurance;
- (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 deal with any real or personal property or any interest in it;
- (f) to execute and release mortgages;
- (g) to open and operate upon any account with any bank or other financial institution;
- (h) to take any action the Board considers necessary—
  - (i) to adequately protect the Fund; or
  - (ii) to recover a debt owing to it; or
  - (iii) to release or compound that debt, or to give time for the payment of that debt;
- (i) to appear in any appeal brought against a decision made by the Board;
- (j) to institute or defend legal proceedings in the name of the Trust;
- (k) to make arrangements and enter into contracts to underwrite any part of the liabilities of the Trust;
- (l) to deposit securities included in the Fund with a bank;
- (m) to appoint actuaries, accountants, solicitors, barristers and other professional advisers to represent, advise and act on behalf of the Board;
- (n) to employ any persons to assist in the administration of the Fund or anything required or permitted to be done by the Board;
- (o) to do anything incidental to the performance of its functions.

4A.3 The Board, in exercising any power or performing any duty, must take into account any relevant decision of the Ministerial Council.

4A.4 The Board may delegate—

- (a) subject to clause 20.2, powers and duties relating to the administration of the Fund to the Management Committee; and
- (b) powers and duties relating to the administration of the Fund to the Chief Executive Officer or the Acting Chief Executive Officer other than the powers and duties under clauses 4A.1(c)(i), 4A.2(b), 4A.2(d), 4A.4, 15.3, 20, 21, 25, 27, 29 and 30.1.

4A.5 A Trustee is not liable to a participant or any other person bound by this Deed for—

- (a) any losses incurred in performing any duty or exercising any power as a Trustee other than those arising from the Trustee's own wilful neglect or default; or
- (b) the acts or defaults of any other Trustee; or
- (c) an act done in good faith and in conformity with the decisions of the Board.

4A.6 The Board is not liable for the neglect or default of any actuary, accountant, auditor, legal practitioner, banker or other agent employed or appointed in good faith by the Board.

4A.7 A Trustee—

- (a) is to be indemnified against any liability incurred in execution of the duties of the Trustee, other than if it arises from the Trustee's wilful neglect or default; and
- (b) has a lien on the Fund for that indemnity.

## **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 consists of the following:

- (a) any money or property transferred to, acquired, received or held by the Board for the purposes of the Trust;
- (b) any contributions, fees, levies and penalties;
- (c) any investments in the name of the Trust;
- (d) any income earned on money invested by the Board;
- (e) any money paid by an insurer under a contract of insurance or indemnity entered into by the Board;
- (f) any money recovered by the Board under this Deed or by some other action lawfully taken by it;
- (g) any other money lawfully paid into the Fund.

5.3 The Board may cause the books of account of the Fund to show separately money and property received and held for the purposes of meeting claims and administrative expenses of the Fund.

5.4 The Board is not prevented from transferring funds or property between separate accounts if it considers it to be appropriate.

## **6 CONTRIBUTIONS, FEES, LEVIES AND PENALTIES**

6.1 The Board is to determine the amount, method of calculation and manner of collection of all contributions, fees, levies and penalties payable to the Fund by participants and any other persons applying to be participants of the Fund.

6.2 The Board may fix any or all of the following:

- (a) an initial contribution payable upon application;



- (b) an additional contribution or special levy if it is of the opinion that 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 fee or late filing fee or penalty fee for any participant who fails to meet obligations under this Deed;
- (g) an additional fee, contribution or special levy for each location at which a participant carries on business as a travel agent in addition to the participant's first location.

6.3 The Board may waive or refund in part or whole any contribution, fee, levy or penalty if it considers the circumstances justify it.

## **7 INVESTMENT OF MONEY**

7.1 The Board is to pay any money received by it into any account kept by it.

7.2 The Board is to invest any of the Fund that is not required for the immediate purposes of the Trust in any one or more of the following:

- (a) bank-accepted bills and interest-bearing deposits with banks;
- (b) bonds or securities issued or guaranteed by a State Government or the Commonwealth Government;
- (c) units in cash trusts or other negotiable investment forms that—
  - (i) are guaranteed by, or have full recourse to, a bank; or
  - (ii) consist solely of investments guaranteed by a bank or investments specified in clause 7.2(a) and (b);
- (d) any other investments which trustees may lawfully make in the State where the investment is made.

7.3 The Board may realise investments at any time.

7.4 Any document relating to the operation of any account or investment is to be signed in the manner the Board directs.

7.5 The Board may authorise any person to make deposits to any account kept by it.

## **8 APPLICATION FOR ELIGIBILITY AS PARTICIPANT**

8.1 A person who intends to operate as a travel agent may apply in writing to the Board for a determination that the person is eligible to be a participant of the Fund.

8.2 An application is to be—

- (a) in a form specified by the Board; and
- (b) accompanied by the relevant contribution and application and administration fees.

8.3 The Board may require a person to supply any further information it reasonably requires to enable it to determine whether the person is eligible to be a participant.

- 8.4 If a person fails to comply with a requirement by the Board to supply further information within 3 months after the requirement is made, the application lapses.
- 8.5 If a person, in making an application or providing information, makes a statement that is false or misleading, the Board may require the person to show just cause why it should not determine that the person is not eligible to be a participant.

**9 ELIGIBILITY CRITERIA AS PARTICIPANT**

- 9.1 A person is eligible to be a participant if the Board considers that 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 enter into travel arrangements and travel-related arrangements.
- 9.2 In determining whether a person is eligible to be a participant, the Board may take into account whether the person, an employee of that person or, if the person is a body corporate, an officer of that body corporate—
- (a) has experience in the management of the financial affairs of a business; and
  - (b) has been involved in the management of a failed travel agency; and
  - (c) has been involved in the management of a travel agency in respect of which a claim has been made under this Deed; and
  - (d) is or has been a travel agent in respect of whom a claim has been made under this Deed; and
  - (e) has previously failed to meet a criterion in guidelines issued under clause 9.4; and
  - (f) has been involved in the management of another business; and
  - (g) has previously applied to be a participant.
- 9.3 In determining a matter under clause 9.1 or 9.2, the Board may take into account the financial resources of any legal entity with which a person or an employee of the person is or has been associated.
- 9.4 The Board is to develop and publish from time to time guidelines as to the criteria it may use to determine whether a person is eligible to be a participant.
- 9.5 In developing the guidelines, the Board is to have regard to the risk of potential claims involved in particular types of operations carried out in the business of a travel agent.
- 9.6 If the Board is not satisfied that a person is eligible to be a participant, it may require the person to comply with any one or more of the following conditions in order to be satisfied that the person is eligible as a participant:
- (a) that the person maintain and operate the business as a travel agent in a manner specified by the Board;
  - (b) that the person—
    - (i) maintain a trust account or client account in respect of any money received in the course of that business; or
    - (ii) increase the capital of that business; or
    - (iii) reduce the debt of that business; or

- (iv) provide in favour of the Board any security it requires in any form it determines; or
- (v) pay any costs incurred in connection with providing or releasing that security;
- (c) that the business be guaranteed or insured in a manner, or by a person or class of person, specified by the Board;
- (d) that the person maintain and operate books of account and other accounting records of the business in a manner specified by the Board;
- (e) that a report be obtained at the expense of the person from a duly qualified auditor or accountant nominated by the Board—
  - (i) stating that the accounting records of the business give a true and fair view of the financial position of the business; or
  - (ii) providing any other information the Board requires to determine whether the person has sufficient financial resources to carry on the business;
- (f) that the person provide full disclosure of the identity of any other person involved in the business.

9.7 The Board may—

- (a) determine a reasonable date or period of time for compliance with any condition referred to in clause 9.6; and
- (b) authorise payment of the cost of obtaining any report under clause 9.6(e) from the Fund if it considers it appropriate to do so.

## **10 ACCEPTANCE AS PARTICIPANT**

10.1 If the Board determines that an applicant is eligible to be a participant, the Board, on payment of the initial contribution and relevant fees, must—

- (a) accept that applicant as a participant; and
- (b) notify the relevant licensing authority that the person is a participant.

10.2 If the Board determines that an applicant is not eligible to be a participant, it must—

- (a) refuse the application; and
- (b) give notice to the relevant licensing authority and the applicant of—
  - (i) the refusal; and
  - (ii) the matters taken into account in making the determination.

## **11 DECLARED PARTICIPANT**

11.1 The Board is to declare that a person is a participant without determining the person's eligibility if the person—

- (a) is exempt from the requirement to hold a licence under section 3(2) of the Act in New South Wales or the equivalent provision in an Act of another State; and
- (b) gives written notice to the Board of the wish to be a participant; and
- (c) pays any relevant contribution.

- 11.2 The Board must declare that a person is no longer a participant under this clause if the person—
- (a) ceases to be exempt from the requirement to hold a licence under the Act; or
  - (b) fails to pay a contribution when it is due; or
  - (c) gives notice to the Board that the person wishes to cease to be a participant.
- 11.3 A person who is a participant under this clause is not required to comply with any other provision of this Deed.

## **12 INFORMATION BY PARTICIPANT**

- 12.1 A participant must provide the Board, on or before a date fixed by the Board, with any information the Board reasonably requires about the participant's financial resources.
- 12.2 The Board may vary the date on which a participant is required to provide the information.
- 12.3 If a participant, in providing information, makes a statement that is false or misleading, the Board may require the participant to show cause why it should not determine that the participant is no longer eligible to be a participant.
- 12.4 A participant must notify the Board of any of the following relevant changes within 14 days after they occur:
- (a) any changes in the structure of the ownership or management of the participant's business;
  - (b) any changes in the statutory officers of the participant's business;
  - (c) any changes in the place of business of the participant's business;
  - (d) if the participant has become a member, or ceased to be a member, of any franchised group of travel agents, or a group of travel agents trading under a common or substantially common trading name;
  - (e) if the participant has become, or ceased to be, a travel agent accredited by the International Air Transport Association.
- 12.5 A participant must notify the Board of any of the following events within 14 days after they occur—
- (a) the participant, or where the participant is a partnership or a body corporate, any partner or statutory officer of the participant, becomes bankrupt or makes any arrangement or composition with creditors;
  - (b) the winding up, receivership or administration of, or execution of a deed of administration in respect of, the participant or, where the participant is a partnership in which a partner is a body corporate, the winding up, receivership or administration of, or execution of a deed of administration, in respect of that body corporate;
  - (c) a court or tribunal, or an authority of the Commonwealth, or of a State, has ordered:
    - (i) that the participant, or where the participant is a partnership or a body corporate, any partner or statutory officer of the participant;

- (ii) that a manager employed by the participant in the participant's business; or
- (iii) where the participant is a partnership in which a partner is a body corporate, that a statutory officer or manager of that body corporate;

is not to hold office in or manage the affairs of a body corporate either indefinitely or for a specified period.

## **12A REMAINING ELIGIBLE AS PARTICIPANT**

12A.1 The Board may at any time determine whether a person remains eligible to be a participant.

12A.2 In order to determine whether a person remains eligible to be a participant, the Board may require the person to—

- (a) comply with any one or more of the conditions specified in clause 9.6; and
- (b) provide any information it reasonably considers necessary for that purpose; and
- (c) allow an employee or agent of the Board to examine, make or print copies of, or take extracts from, any books, documents or records relating to the person's business; and
- (d) give any assistance reasonably necessary for that purpose.

12A.3 The Board is to certify to the relevant licensing authority that a person remains eligible to be a participant if—

- (a) the Board so determines; and
- (b) the person pays any relevant contribution, fee, levy and penalty.

12A.4 If the Board determines that a person is no longer eligible to remain a participant, it is to give notice as soon as practicable to the relevant licensing authority and to the person—

- (a) of the determination; and
- (b) of the matters taken into account in making it.

## **12B CEASING TO BE PARTICIPANT**

12B.1 A participant must pay the annual renewal fee on or before the date fixed by the Board.

12B.2 If a participant fails to pay any contribution, fee, levy or penalty within 2 months of the due date or any further period the Board may allow, the Board may determine that the participant ceases to be a participant.

12B.3 If a participant fails to provide information required under clause 12 within 3 months or any other period the Board allows, the Board may determine that the participant ceases to be a participant.

12B.4 If the Board determines under clause 12A that a person is no longer eligible to remain a participant, the person ceases to be a participant as at the date of that determination.

12B.5 The Board may determine that a participant ceases to be a participant if—

- (a) the participant has not shown cause when required to do so under clause 12.3; or

- (b) it appears to the Board that the participant—
  - (i) has abandoned any premises from which the business of that participant is conducted; or
  - (ii) has ceased to carry on that business; or
- (c) any claims have been or, in the opinion of the Board, are likely to be made in respect of the business conducted by the participant.

12B.6 The Board may take into safe custody any books, records, property, client files, ticket stocks and other material a participant referred to in clause 12B.5(b) and (c) uses or has used in the business as a travel agent.

12B.7 A participant ceases to be a participant when the participant's licence under the Act is surrendered, revoked or cancelled.

## **12C REINSTATEMENT AS PARTICIPANT**

12C.1 The Board, on the written application of a person who ceased to be a participant, may reinstate that person as a participant.

12C.2 Before reinstating a person as a participant, the Board may require the person—

- (a) to pay part or all of the relevant application and administration fees and any relevant fee, levy, contribution or penalty; and
- (b) to provide the Board with any information that it reasonably requires about the person's financial resources.

12C.3 The Board is to notify the relevant licensing authority and the person of the reinstatement of the person as a participant.

12C.4 The Board is not to reinstate a person as a participant if the person has ceased to be a participant for a period exceeding 2 months.

## **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 Administrative Decisions Tribunal of that State;
- (b) if the person was an applicant or participant in Victoria, apply for a review of the decision to the Victorian Civil and Administrative Tribunal;

- (c) if the person was an applicant or participant in South Australia, appeal to the Administrative and Disciplinary Division of the District Court of that State;
- (d) if the person was an applicant or participant in Western Australia, appeal to the State Administrative Tribunal 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 Queensland Civil and Administrative Tribunal;
- (g) if the person was an applicant or participant in the Australian Capital Territory, appeal to the Australian Capital Territory Consumer and Trader 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 Board is to keep a register of participants that includes—

- (a) the names and addresses of each participant; and
- (b) any variation or change in the name or business name of a participant that is approved and notified by the relevant licensing authority; and
- (c) any other details the Board considers necessary.

14.2 A participant must notify the Board within 14 days of any variation or change—

- (a) in the name or business name of that participant; or
- (b) in the address of the place at which business as a travel agent is carried out.

14.3 Any person may inspect the register on payment of a fee determined by the Board.

#### **15 PAYMENT OF COMPENSATION**

15.1 The Board must pay compensation out of the Fund in accordance with the terms of the Deed to a person who—

- (a) enters into travel arrangements or travel-related arrangements directly or indirectly with a participant; and
- (b) has suffered or may suffer direct pecuniary loss arising from a failure to account by the participant and the failure to account arises from an act or omission by the participant or an employee or agent of the participant; and
- (c) is not protected against the direct pecuniary loss by a policy of insurance.

15.1A The Board must not pay compensation under clause 15.1 in excess of \$25,000 to any person in respect of any failure to account by a participant.

15.2 The Board may pay compensation out of the Fund in accordance with the terms of the Deed to—

- (a) a person referred to in clause 15.1 in relation to other loss arising from a failure to account as referred to in that clause; or

- (b) a person who has suffered any loss arising from a failure to account in relation to any travel arrangement or travel-related arrangement and the failure to account arises from an act or omission by another person who is not a participant, or an employee or agent of that other person; or
  - (c) a person referred to in clause 15.1 in respect of any direct pecuniary loss suffered by that person which exceeds \$25,000.
  - (d) a person other than a person referred to in clause 15.5 who suffers a loss in respect of travel arrangements or travel-related arrangements that are not within Australia.
- 15.2A Where compensation paid to any person under clause 15.1 or clause 15.2 remains unclaimed for a period of 2 years from the day it is paid then that person ceases to be entitled to and forfeits that compensation.
- 15.3 The Board may develop and publish guidelines that apply to the payment of compensation arising under clause 15.2, including emergency compensation under clause 18.
- 15.4 The Board must not pay compensation to a person in respect of loss referred to in this clause that arises before the commencement of the Act in the appropriate State.
- 15.5 Compensation payable under this clause is payable to a person—
  - (a) who is a resident of Australia in respect of any travel arrangements or travel-related arrangements, or
  - (b) who is actually present in Australia at the time when the person enters into any travel arrangements or travel-related arrangements and who suffers a loss; or
  - (c) who is not a person referred to in (a) or (b) but some part of the travel arrangements or travel-related arrangements is within Australia.
- 15.6 A travel agent or an operator who carries on or carried on a business comprising or including the provision of travel arrangements or travel-related arrangements may be paid compensation under this clause only if the travel agent or operator is exercising the right of a person to claim or receive compensation out of the Fund that has been assigned to the travel agent or operator.
- 15.7 The Board may pay compensation under this clause to a person in consideration of, or subject to, the assignment to the Board of the person's right and entitlement against another person.
- 15.8 Notwithstanding any other provision of this Deed the Board may in its absolute discretion determine to pay compensation in part only or in instalments or both and any part payment may be determined by the Board to be in full satisfaction of its obligations to pay compensation in respect of any claim.
- 15.9 The Board may decline to pay compensation under clause 15.1 or 15.2 to a travel agent.



## **16 CLAIMS FOR COMPENSATION**

- 16.1 A person is not entitled to compensation from the Fund unless the person makes a claim under this clause—
- (a) in the case of a claim for compensation under clause 15.1, 15.2(a) or 15.2(c) in respect of a participant whose participation has ceased, within 12 months after such participation ceased; and
  - (b) in every other case, within 12 months after the failure to account for money or other valuable consideration to which the claim relates.
- 16.2 The Board may accept a claim made later than 12 months if it considers it appropriate to do so.
- 16.3 A claim for compensation is to be made in a form specified by the Board.
- 16.4 The Board, if it is reasonably necessary to do so, may require that a person provide—
- (a) additional information relating to the claim; and
  - (b) copies of any document in the possession or under the control of the person that relate to the claim.
- 16.5 The Board may require that—
- (a) information be provided by statutory declaration or in any other manner; and
  - (b) copies of documents be verified in a particular manner.
- 16.6 The Board is not liable to make any payment for compensation to a person who has not complied with a requirement under clause 16.4 or 16.5.
- 16.7 The Board may decide—
- (a) to admit a claim in whole or in part; or
  - (b) to reject a claim.
- 16.8 Within 14 days of making a decision under clause 16.7, the Board is to notify in writing its decision to the person who made the claim of—
- (a) its decision; and
  - (b) the right of appeal under clause 19.

## **17 AMOUNT OF COMPENSATION**

- 17.1 The Board must—
- (a) determine the amount of compensation payable to a person under clause 15.1; and
  - (b) determine the amount of compensation payable to a person under clause 15.2.
- 17.2 The amount of compensation is not to exceed the pecuniary loss suffered, except insofar as the payment is made by way of emergency compensation under clause 18.

## **18 EMERGENCY COMPENSATION**

- 18.1 If a participant or former participant or other travel agent fails to meet, or, in the opinion of the Board, is unlikely to meet, an obligation to a person, the Board may pay out of the Fund the amount it determines is necessary to meet in whole or in part the emergency requirements of the person arising from the failure.

- 18.2 The Board must attempt to ensure that it does not make a payment prohibited by clause 15.
- 18.3 The Board is not liable for anything done in good faith under this clause, and likewise the Management Committee is not liable for anything done in good faith under this clause.

## **19 APPEALS**

- 19.1 A person may appeal against a decision of the Board under clause 16.7 that relates to any compensation referred to in clause 15.1—
- (a) if the person resides in Queensland or the matter to which the appeal relates is alleged to have taken place in Queensland, to the Queensland Civil and Administrative Tribunal;
  - (c) if the person resides in South Australia or the matter to which the appeal relates is alleged to have taken place in South Australia, to a judge of the District Court at Adelaide in that State; or
  - (c) if the person resides in Western Australia or the matter to which the appeal relates is alleged to have taken place in Western Australia, to a judge of the District Court at Perth in that State; or
  - (d) if the person resides in New South Wales or the matter to which the appeal relates is alleged to have taken place in New South Wales, to the Consumer, Trader and Tenancy Tribunal of New South Wales; or
  - (e) if the person resides in Victoria or the matter to which the appeal relates is alleged to have taken place in Victorian, to the Victorian Civil and Administrative Tribunal; or
  - (f) if the person resides in the Australian Capital Territory or the matter to which the appeal relates is alleged to have taken place in the Australian Capital Territory, to the Australian Capital Territory Consumer and Trader Tribunal; or
  - (g) if the person resides in Tasmania or the matter to which the appeal relates is alleged to have taken place in Tasmania, to the Appeal Committee in Tasmania.
- 19.2 An appeal is to be instituted within 1 month after receiving notice of the decision of the Board.
- 19.3 An appeal by a person referred to in clause 19.1(a), (b), or (c) is to be heard under the relevant Act as if it were an appeal relating to a refusal of participation in the compensation scheme under that Act.
- 19.4 An appeal by a person referred to in clause 19.1(g) is to be heard by the relevant Appeal Committee as a new hearing.
- 19.5 In the hearing and the determining of an appeal—
- (a) an Appeal Committee has the powers of the Board specified in clause 16; and
  - (b) an Appeal Committee may determine its own rules and procedures; and
  - (c) the decision of an Appeal Committee may be by majority; and

- (d) all questions of law are to be determined by the chairperson of an Appeal Committee.

## **20 MANAGEMENT COMMITTEE**

- 20.1 The Board may establish a Management Committee to assist it in the administration of the Fund consisting of—
  - (a) the chairperson of the Board who is to be the chairperson of the Management Committee; and
  - (b) the Chief Executive Officer or the Acting Chief Executive Officer; and
  - (c) at least 2 Trustees.
- 20.2 The Board may delegate to the Management Committee any of its powers and duties under this Deed other than those under clauses 4A.1(c)(i), 4A.2(b), 4A.2(d), 4A.4, 20, 21.1, 21.4, 25, 27, 29 and 30.1.
- 20.3 A member of the Management Committee is not liable for any action in respect of performing any duty or exercising any power in good faith as such a member.

## **21 COMMITTEES**

- 21.1 The Board may establish committees to assist it in its powers and duties consisting of at least 3 Trustees each.
- 21.2 The Board may vary the membership of a committee from time to time.
- 21.3 The Board may nominate one or more Trustee to act in the absence of a Trustee appointed to a committee.
- 21.4 The Board, by instrument in writing, may delegate to a committee any of its powers and duties under this Deed other than those under clauses 4A.1(c)(i), 4A.2(b), 4A.2(d), 4A.4, 20, 21.1, 21.4, 25, 27, 29 and 30.1.
- 21.5 A committee must exercise any delegated powers in accordance with any directions and subject to any conditions the Board specifies and a power so exercised is taken to be exercised by the Board.
- 21.6 A committee is to appoint one of its members who is a Trustee as chairperson of that committee.
- 21.7 A member of a committee is not liable for any action in respect of performing any duty or exercising any power in good faith as such a member.

## **21A CONDUCT OF MEETINGS**

- 21A.1 The Board is to meet at least twice a year.
- 21A.2 A committee or a Management Committee is to meet as often as it considers necessary.
- 21A.3 The Board, a committee or Management Committee, may—
  - (a) determine the procedure for the calling of meetings and conduct of business at those meetings; and
  - (b) adjourn any meeting as it considers appropriate.
- 21A.4 Any 3 Trustees, by notice to the other Trustees, may call a meeting of the Board.

- 21A.5 The Board, a committee or a Management Committee may conduct a meeting—
- (a) in person; or
  - (b) by audio or video conference facility; or
  - (c) by facsimile transmission; or
  - (d) by electronic mail; or
  - (e) by any other electronic medium approved by the Board.
- 21A.6 A Trustee or member who is not attending a meeting in person is taken to be present at the meeting if the Trustee or member—
- (a) is able to hear the entire meeting and is able to be heard by all the others attending the meeting; or
  - (b) participates by facsimile transmission, electronic mail or any other electronic medium approved under clause 21A.5(e).
- 21A.7 A meeting conducted otherwise than in person is taken to be held at a place agreed to by the Trustees or members present at the meeting if at least one of the Trustees or members was present during the whole of the meeting at that place.
- 21A.8 The quorum at a meeting—
- (a) of the Board, is 6 Trustees; and
  - (b) of the Management Committee, is 2 Trustees; and
  - (c) of a committee, is one-half of the total number of members or, if that is not a whole number, the next highest number.
- 21A.9 If the chairperson is absent from a meeting—
- (a) the Board may elect a Trustee who is present to chair the meeting; or
  - (b) the members present at that meeting may elect one of their number who is a Trustee to chair that meeting.
- 21A.10 Any question arising at a meeting is to be decided by a simple majority of votes of the Trustees or members present and voting.
- 21A.11 In the case of an equality of votes, the person chairing a meeting has a deliberative and a casting vote.
- 21A.12 A written resolution—
- (a) may consist of several identical copies of the same document each signed by one or more of the Trustees or members; and
  - (b) if signed by the majority of the Trustees or members, is valid as if it had been passed at a meeting duly convened and held.
- 21A.13 The Board, a committee and a Management Committee is to keep full and accurate minutes of proceedings at meetings.
- 21A.14 A Trustee is entitled to expenses, fees and allowances for attending meetings and transacting the business of the Board, a committee or a Management Committee as fixed by the Ministerial Council.

**22 APPEAL COMMITTEE**

- 22.1 An Appeal Committee is appointed by a Minister to hear and determine an appeal made under clause 19.1(g).
- 22.2 An Appeal Committee consists of 3 members one of whom is a legal practitioner of at least 7 years' standing who is the chairperson of the Appeal Committee.
- 22.3 A Trustee is not eligible to be a member of an Appeal Committee.
- 22.4 A member of an Appeal Committee is entitled to any expenses, fees and allowances the Board determines.

**23 SECRECY**

- 23.1 A person who is or has been a Trustee must not, either directly or indirectly, make a record of or communicate any information about another person acquired as a result of being a Trustee unless the information is recorded or communicated—
  - (a) in performing a duty or exercising a power under this Deed; or
  - (b) for the purposes of the Act or this Deed to a person employed in the administration of the Act; or
  - (c) in giving evidence or producing a document to a person or body that is entitled to hear or determine an application or an appeal relating to a licence under the Act; or
  - (d) in giving evidence or producing a document to a court or tribunal that is hearing any criminal or civil proceedings; or
  - (e) at the request of, and provided to, an agency of the Commonwealth of Australia or a State of the Commonwealth under a law of the Commonwealth or of that State; or
  - (f) with the written authority of that other person.
- 23.2 A contract with a person by which the person is employed in, or concerned with, the administration of the Trust, must provide that the person—
  - (a) is bound by provisions of this clause as if the person were a Trustee; and
  - (b) if entering into a subcontract with another person, is to provide in that subcontract that the other person is bound by the provisions of this clause.

**24 ACCOUNTS AND AUDIT**

- 24.1 The Board must cause—
  - (a) proper books of account to be kept in relation to all of the dealings and operations of the Trust; and
  - (b) the accounts of the Trust to be audited and a balance sheet, statement of income and expenditure, funds statement, supporting information and an auditor's certificate to be presented to the Board within 90 days after the end of each year.
- 24.2 The Board may appoint and determine the remuneration of the auditors of the Trust.

## **25 ANNUAL REPORT**

- 25.1 The Board must forward a report of the financial and operational activities of the Trust for each year to—
- (a) each Minister within 4 months after the end of that year; and
  - (b) each participant within 6 months after the end of that year.

## **26 NOTICES**

- 26.1 The Fund is to publish in the Government Gazette of each State a postal, facsimile or E-Mail address to which notices to the Fund can be delivered or sent.
- 26.2 A notice to the Fund is duly given if it is—
- (a) delivered or sent by prepaid post to an address published under clause 26.1;
  - (b) sent by facsimile to an address published under clause 26.1; or
  - (c) transmitted by E-Mail to an address published under clause 26.1.
- 26.3 A notice from the Fund to a participant is duly given if it is delivered or sent by prepaid post, sent by facsimile or transmitted by E-Mail to the last known postal, facsimile or E-Mail address of the participant.
- 26.4 A notice sent by post is taken to have been delivered on the third day following the day on which it was posted.
- 26.5 A notice sent to a facsimile address is taken to have been delivered on the next business day after it was sent.
- 26.6 A notice transmitted by E-Mail is taken to have been delivered on the next business day after transmission.

## **27 TERMINATION OF TRUST**

- 27.1 The Trust may be terminated by—
- (a) the unanimous resolution of the Board; or
  - (b) the unanimous decision of the Ministerial Council; or
  - (c) an order of the Supreme Court of New South Wales.
- 27.2 Upon termination of the Trust, any money standing to the credit of the Fund is to be applied as follows:
- (a) firstly, in the payment of 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 paid to another person before the termination of the Trust;
  - (b) secondly, in the payment of any balance to the States in proportions equivalent to the total number of participants in each State at the date of termination.

## **28 TRUST FUNDS NOT PAYABLE TO PARTICIPANTS**

- 28.1 The Board must not distribute among, or pay to all or any of, the participants any part of the Fund otherwise than as provided under this Deed.

**29 SUBSTITUTION OF DEED**

- 29.1 This Deed may be substituted by another trust deed by—
- (a) the Ministerial Council at its own discretion; or
  - (b) the Board by resolution passed by at least 75% of the Trustees and with the approval of the Ministerial Council.
- 29.2 If this Deed is substituted by another trust deed, any reference to this Deed or a provision of this Deed in any document, contract or agreement is to be read as a reference to the substituted trust deed or the equivalent provision of the substituted trust 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 4 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 6 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 Any legal action or proceedings 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.

**32 CONSEQUENTIAL PROVISIONS RESULTING FROM AMENDMENTS**

- 32.1 A reference in clause 13.1(a) to a contributor under clause 9.8 is to be read as a reference to a participant under clause 10.2.
- 32.2 A reference in clause 13.1(b) to clause 11.5 is to be read as a reference to clause 12A.4.
- 32.3 A reference in clause 13.1(c) to clause 12.2 is to be read as a reference to clause 12A.2.

- 32.4 The Ministerial Council may terminate or extend the term of office of a person who is a Trustee immediately before the substitution of clause 4 takes effect to ensure that the membership of the Board reflects the matters referred to in clause 4.2.
- 32.5 A person who is a Trustee immediately before the substitution of clause 4 takes effect continues as a Trustee until—
- (a) the Ministerial Council terminates the Trustee's term of office under clause 32.4; or
  - (b) the Trustee's term of office expires.

### **Schedule 3—Revocation of *Travel Agents Regulations 1996***

The *Travel Agents Regulations 1996* are revoked.

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

#### **Made by the Governor's Deputy**

with the advice and consent of the Executive Council  
on 18 August 2011

No 198 of 2011

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