

# Travel Agents Act 1986 No 5

[1986-5]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Corporations (Consequential Amendments) Act 2001* No 34 (not commenced)
- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2001](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Travel Agents Act 1986 No 5



New South Wales

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# Travel Agents Act 1986 No 5



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

- (1) Part 1, section 56 and Schedule 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**Commissioner** means the Director-General of the Department of Fair Trading holding office as such under Part 2 of the *Public Sector Management Act 1988*.

**compensation scheme** means the scheme prescribed under section 57.

**compensation scheme trustees** means the trustees by whom the compensation scheme is administered.

**corresponding Act** means any legislation in force in another State, or in a Territory of the Commonwealth, that provides for the licensing of a person who carries on business as a travel agent.

**director**, in relation to a body corporate, includes any person occupying or acting in the position of director of the body corporate, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position.

**exempted person** means a person to whom, by reason of subsection (2) or an order under section 5, section 6 (1) does not apply.

**licence** means travel agent's licence in force under this Act.

**officer** has the same meaning as it has in the *Companies (New South Wales) Code*.

**record** includes any book, account, document, paper or other source of information compiled, recorded, stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means.

**registered** means recorded in the register kept under section 15.

**regulations** means regulations made under section 57.

**this Act** includes regulations.

**Tribunal** means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

(2) This Act shall not be construed as requiring:

- (a) a Minister of the Crown,
- (b) a Government Department, an Administrative Office or a statutory corporation representing the Crown,
- (c) a prescribed public statutory authority, or
- (d) an officer or employee of the Crown or of any such Minister, Department, Office, corporation or authority in the exercise of his or her functions as such an officer or employee,

to hold a licence.

#### **4 Business as travel agent**

(1) For the purposes of this Act but subject to this section, a person carries on business as a travel agent if the person carries on a business (whether or not in the course of, or as incidental to, or in connection with, any other business) of:

- (a) selling tickets entitling another person to travel, or otherwise arranging for another person a right of passage, on a conveyance other than a prescribed conveyance,
- (b) selling to, or arranging or making available for, another person rights of passage to, and hotel or other accommodation at, one or more places:
  - (i) which are within or outside New South Wales, or

- (ii) some of which are within, and others of which are outside, New South Wales,
  - (c) purchasing for resale the right of passage on a conveyance other than a prescribed conveyance, or
  - (d) carrying on an activity prescribed for the purposes of this paragraph,
- or if the person holds out or advertises that the person is willing to carry on any activity referred to in paragraph (a), (b), (c) or (d).
- (2) A person does not carry on business as a travel agent by reason only of doing in the course of his or her employment anything referred to in subsection (1).
  - (3) A person does not carry on business as a travel agent:
    - (a) in respect of any activity referred to in subsection (1) (a) if the person carries on that activity in respect of a conveyance of which the person is the proprietor,
    - (b) in respect of any activity referred to in subsection (1) (b) if the person carries on that activity in respect of a conveyance and place of accommodation of which the person is the proprietor, or
    - (c) by reason only of carrying on an activity prescribed for the purposes of this paragraph or such an activity in circumstances so prescribed.
  - (4) A person does not carry on business as a travel agent by reason only of holding out, or advertising, that the person is willing to carry on an activity as referred to in subsection (3).
  - (5) In subsection (3), a reference to:
    - (a) the proprietor of a conveyance:
      - (i) includes a reference to a person who has lawful possession of, but not the property in, the conveyance, and
      - (ii) does not include a reference to a person who has the property in the conveyance but does not have possession thereof by reason of its being the subject of a mortgage, bill of sale, hire-purchase agreement or other hiring agreement, lease, licence or bailment, and
    - (b) the proprietor of a place of accommodation—is a reference to the person in possession of the land that is, or on which is situated, the place of accommodation.

## **5 Variation of application of Act**

- (1) The Governor may, by order published in the Gazette, declare that the provisions of this Act, or such of those provisions as are specified in the order:

- (a) do not have effect in relation to a specified person or to a specified class of persons,
- (b) have effect in relation to a specified person or to a specified class of persons to such extent as is specified,
- (c) do not have effect in relation to a specified activity or a specified class of activities,
- (d) have effect in relation to a specified activity or to a specified class of activities to such extent as is specified,
- (e) do not have effect in relation to a specified matter or to a specified class of matters,
- (f) have effect in relation to a specified matter or to a specified class of matters to such extent as is specified,
- (g) do not have effect in relation to a specified activity or to a specified class of activities engaged in by a specified person or specified class of persons or in relation to specified associated matters, or
- (h) have effect in relation to a specified activity or to a specified class of activities engaged in by a specified person or specified class of persons, or in relation to specified associated matters, to such extent as is specified.

**Editorial note—**

For orders under this subsection see the Historical notes at the end of this Act.

- (2) An order made under subsection (1):
  - (a) may specify the period during which the order shall remain in force, or
  - (b) may provide that its operation is subject to such terms and conditions as are specified in the order.
- (3) The Governor may, by order published in the Gazette, revoke or vary an order made under this section.
- (4) An order in force under this section, including an order that is varied under this section, has effect according to its tenor.
- (5) A person to whom an order under this section applies, including an order that is varied under this section, shall comply with the terms and conditions (if any) to which the operation of the order is subject.

Penalty—subsection (5): 50 penalty units.



## **Part 2 Licences**

### **Division 1 Travel agency business**

#### **6 Travel agents to be licensed**

(1) A person shall not:

- (a) carry on business as a travel agent otherwise than in accordance with the authority conferred on that person by a travel agent's licence, or
- (b) carry on business as a travel agent in partnership with a person who is not the holder of a travel agent's licence.

Penalty: 500 penalty units.

(2) No action lies for the recovery of any fee, commission or other reward for any service done or performed in the course of carrying on business as a travel agent by a person (other than an exempted person) who does not hold a licence.

#### **7 Unauthorised use of licence**

- (1) The holder of a licence shall not transfer or lend, or attempt to transfer or lend, the licence to another person or allow another person to use the licence.
- (2) A person shall not obtain the transfer of, or borrow or use, or attempt to obtain the transfer of, or attempt to borrow or use, a licence of which the person is not the holder.

Penalty: 50 penalty units.

### **Division 2 Issue of licences**

#### **8 Application for licence**

(1) An application for a licence may be made to the Commissioner:

- (a) by a natural person of or over the age of 18 years, or
- (b) by a body corporate if all persons concerned in the management of the body corporate are of or over the age of 18 years.

(2) An application shall be in writing in a form approved by the Commissioner and shall be signed:

- (a) where the application is made by a natural person—by that person, or
- (b) where the application is made by a body corporate—by at least 1 director of the body corporate.

- (3) An application shall be accompanied by the prescribed fee for the application and may be accompanied by the prescribed fee for the licence.
- (4) An application shall specify:
  - (a) the name and address:
    - (i) where the application is made by a natural person—of that person, or
    - (ii) where the application is made by a body corporate—of each director of the body corporate,
  - (b) where the application is made by a body corporate—the date and place of incorporation of the body corporate, its corporate name and the address of its registered office,
  - (c) the name under which the applicant proposes to carry on business as a travel agent,
  - (d) the address of the place that, if a licence were granted pursuant to the application, would be the principal place of business of the licensee,
  - (e) the address of any other place at which, if a licence were granted pursuant to the application, the licensee would carry on business as a travel agent,
  - (f) where the applicant intends to carry on business in partnership, the name and address of each natural person with whom the applicant intends to carry on business in partnership,
  - (g) where the applicant intends to carry on business in partnership with a body corporate:
    - (i) the date and place of incorporation,
    - (ii) the corporate name,
    - (iii) the address of the registered office, and
    - (iv) the name and address of each director,of each body corporate with which the applicant intends to carry on business in partnership,
  - (h) the name, address, and such other particulars as may be prescribed, of the persons it is proposed to have in charge in compliance with section 36 at each place referred to in paragraphs (d) and (e), and
  - (i) such other matters as may be prescribed.
- (5) Where an application is made for a licence and, before the application is granted or

refused, a change occurs in the particulars specified in the application in accordance with subsection (4), the applicant shall, within 14 days after the occurrence of the change, give to the Commissioner notice (in writing signed by the applicant or, where the applicant is a body corporate, by a director of the body corporate) specifying particulars of the change.

Penalty: 10 penalty units.

- (6) An applicant for a licence shall, if required to do so by the Commissioner, provide the Commissioner with such particulars additional to those included in the application, and with such documents in relation to those particulars, as the Commissioner requires.
- (7) A person shall not in, or in relation to, an application under this section, a notice under subsection (5) or any particulars provided under subsection (6), make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

Penalty: 50 penalty units.

- (8) It is a defence to a prosecution of a person for an offence under subsection (7) if the person proves that, when the application was made, the notice given or the particulars provided, the person:
- (a) believed on reasonable grounds that the false matter was true,
  - (b) believed on reasonable grounds that the misleading matter was not misleading, or
  - (c) in the case of an omission:
    - (i) believed on reasonable grounds that no material matter had been omitted, or
    - (ii) did not know that the omitted matter was material.

## **9 Investigation of application**

- (1) The Commissioner may make such inquiries as the Commissioner considers necessary in relation to an application for a licence.
- (2) The Commissioner of Police shall, if the Director-General of the Department of Fair Trading so requests, investigate an application for a licence and shall, as soon as practicable after completing the investigation, make a report on the investigation to the Director-General of the Department of Fair Trading.

## **10 Grant or refusal of licence**

- (1) Subject to this section, the Commissioner shall grant an application for a licence if the Commissioner is satisfied that the applicant is a participant in the compensation scheme or that the granting of the application results in the applicant being a

participant in the compensation scheme.

- (2) An application for a licence made by a natural person shall be refused if it is made to appear to the Commissioner that:
- (a) the applicant has not attained the age of 18 years,
  - (b) the applicant is disqualified from holding a licence under this Act or a corresponding Act,
  - (c) the applicant is disqualified under this Act or a corresponding Act from being involved in the direction, management or conduct of a business as travel agent,
  - (d) a person proposed to be employed for the purposes of section 36 (supervision of conduct of business) is not of good reputation or character or in any other way would not be a fit and proper person to be a licensee if the person were to apply for a licence,
  - (e) the applicant is not a person likely to carry on such a business honestly and fairly, or
  - (f) the applicant is in any other way not a fit and proper person to be a licensee.
- (3) Without affecting the generality of subsection (2) (f), the Commissioner may, in determining whether an applicant is not a fit and proper person to be a licensee, have regard (if such be the case) to the fact that the applicant:
- (a) has, during the period of 10 years that last preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in New South Wales or elsewhere involving fraud or dishonesty,
  - (b) was, at the time of the making of the application, bound in relation to such an offence by a recognizance,
  - (c) was, at the time of the making of the application, the subject of a charge pending in relation to such an offence,
  - (d) has, at any time, been convicted of an offence against this Act or any other enactment administered by the Minister,
  - (e) has been refused a licence under a corresponding Act, or
  - (f) has been the subject of action that, under a corresponding Act, had an effect similar to the effect under this Act of action under section 21 (1) (a), (b), (c), (d) or (g).
- (4) An application for a licence made by a body corporate shall be refused if it appears to the Commissioner that:

- (a) a person concerned in the management of the body corporate has not attained the age of 18 years,
  - (b) the body corporate is disqualified from holding a licence under this Act or a corresponding Act,
  - (c) the body corporate is disqualified under this Act or a corresponding Act from being involved in the direction, management or control of a business as travel agent,
  - (d) a person proposed to be employed for the purposes of section 36 (supervision of conduct of business) is not of good reputation or character or in any other way would not be a fit and proper person to be a licensee if the person were to apply for a licence,
  - (e) the body corporate is not likely to carry on such a business honestly and fairly,
  - (f) the reputation of the body corporate is such that it would not be a fit and proper person to be a licensee,
  - (g) an officer of the body corporate is disqualified from being involved in the direction, management or conduct of the business of a travel agent,
  - (h) a director of, or a person concerned in the management of, the body corporate is not of good reputation or character or in any other way would not be a fit and proper person to be a licensee if the director or person were to apply for the licence personally, or
  - (i) any person (other than an officer of the body corporate) who, in the opinion of the Commissioner, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly.
- (5) Without affecting the generality of subsection (4) (f), (h) or (i), the Commissioner may, in determining any matter referred to in those paragraphs, have regard (if such be the case) to the fact that a body corporate or person so referred to:
- (a) has, during the period of 10 years that last preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in New South Wales or elsewhere involving fraud or dishonesty,
  - (b) was, at the time of the making of the application, bound in relation to such an offence by a recognizance,
  - (c) was, at the time of the making of the application, the subject of a charge pending in relation to such an offence,
  - (d) has, at any time, been convicted of an offence against this Act or any other enactment administered by the Minister,

- (e) has been refused a licence under a corresponding Act, or
  - (f) has been the subject of action that, under a corresponding Act, had an effect similar to the effect under this Act of action under section 21 (1) (a), (b), (c), (d) or (g).
- (6) Where an application for a licence is refused, the Commissioner shall forthwith, by notice in writing served on the applicant, inform the applicant of the refusal and of the ground on which the refusal is based and, where the application was accompanied by the prescribed fee for the licence, the Commissioner shall, as soon as practicable, refund to the applicant that fee.
- (7) Where an application for a licence is granted, the Commissioner shall notify the applicant accordingly but shall not issue the licence unless the prescribed fee for the licence is, or has been, paid to the Commissioner.
- (8) The Commissioner may refrain from granting an application for a licence until:
- (a) any natural person to whom the application relates, and
  - (b) the directors and officers of any body corporate to which the application relates,
- or such of them as the Commissioner specifies or refers to, has or have appeared personally before the Commissioner and satisfied the Commissioner as to such relevant matters referred to in this section as the Commissioner thinks appropriate.

#### **10A Commissioner may refuse to grant licence in certain cases**

The Commissioner may refuse to grant a licence if the application for the licence does not comply with section 8 or the applicant has not complied with a requirement referred to in section 8 (6).

#### **10B Grant of approval for licence**

- (1) If the Commissioner would, but for the inability of the applicant for a licence to satisfy the Commissioner as to the matter referred to in section 8 (4) (d) or (e), grant the application for the licence, the Commissioner may defer consideration of the application and grant the applicant an approval for the licence in such form as the Commissioner may determine.
- (2) An approval for a licence does not authorise the person to whom the approval is granted to carry on business pursuant to the authority that would be conferred by the licence applied for by the applicant if that licence were granted.
- (3) An approval for a licence remains in force for such period as may be prescribed by the regulations.
- (4) If, during the period prescribed for the purposes of subsection (3), the applicant

satisfies the Commissioner:

- (a) as to the matter referred to in section 8 (4) (d) or (e) (as the case may be), and
- (b) that no change material to the applicant's application for the licence has occurred since the application was last considered by the Commissioner,

the Commissioner must, subject to section 10 (7), grant the application and issue the licence.

#### **11 Conditions of, and restrictions on, licence**

(1) The Commissioner may:

- (a) upon the granting of an application for a licence, and at any other time, impose conditions or restrictions subject to which the licence is to be held, and
- (b) upon application or of the Commissioner's own motion, at any time vary or revoke any of those conditions or restrictions or any other conditions or restrictions that the Commissioner may impose in relation to the holding of the licence.

(2) A licence is subject to:

- (a) a condition that the licensee shall, at all times during the currency of the licence, be a participant in the compensation scheme,
- (b) a condition that each place at which the licensee carries on business as a travel agent shall at all times comply with such standards, and with such other requirements, as may be prescribed,
- (c) any prescribed conditions and restrictions, and
- (d) any conditions and restrictions imposed under subsection (1) or any other provision of this Act, of which written notice has been served on the licensee.

(3) A licensee shall comply with any condition or restriction to which the licence is subject.

Penalty: 20 penalty units.

(4) Except in the case of a condition or restriction imposed under section 21 (1) (d), the Commissioner shall not impose conditions or restrictions to which a licence is to be subject, or vary conditions or restrictions to which a licence is subject, unless the Commissioner has first given the applicant for, or the holder of, the licence an opportunity to make oral or written submissions with respect to the conditions or restrictions proposed to be imposed or varied.

(5) A condition or restriction to which a licence is subject has effect whether or not it is endorsed on the licence, but a licensee shall, if the Commissioner so directs, produce

the licence to the Commissioner for endorsement thereon of the condition or restriction.

## **12 Name under which licensee may operate**

- (1) Subject to the *Business Names Act 1962*, a licence may authorise the licensee to carry on business as a travel agent under a name in addition to or in substitution for the name of the licensee.
- (2) A person shall not carry on business as a travel agent under a name other than the name of the licensee or the name under which the licensee is authorised so to do in accordance with subsection (1).

Penalty—subsection (2): 50 penalty units.

## **13 Form of licence**

- (1) Subject to section 10 (7), a licence:
  - (a) shall be in a form approved by the Commissioner,
  - (b) shall be signed and issued by the Commissioner, and
  - (c) where it authorises the licensee to carry on business under a name in addition to, or in substitution for, the name of the licensee—shall bear an endorsement to that effect.
- (2) The Commissioner may, on the application of a licensee, add or amend an endorsement referred to in subsection (1) (c).

## **14 Address of place of business**

- (1) A licensee shall, not later than 14 days after:
  - (a) a change of address of the principal place at which the licensee carries on business as a travel agent—apply to the Commissioner, in writing accompanied by the prescribed fee, for registration of the changed address,
  - (b) the licensee commences to carry on business as a travel agent at a new or additional address—apply to the Commissioner, in writing accompanied by the prescribed fee, for registration of the new or additional address, or
  - (c) the licensee ceases to carry on business as a travel agent at a particular address—apply to the Commissioner, in writing accompanied by the prescribed fee, for registration of the cessation of business at that address.

Penalty: 20 penalty units.

- (2) Where a licensee is required by subsection (1) (a) or (b) to apply for registration of the address of a place of business, the licensee shall include in the notification the name,



address, and such other particulars as may be prescribed, of the person it is proposed to have in charge at that place of business in compliance with section 36 (supervision of conduct of business).

### **15 Register of licensees**

- (1) For the purposes of this Act, the Commissioner shall keep a register of licensees that, without limiting the operation of subsection (2), includes the addresses of the principal and other places at which each licensee is authorised to carry on business as a travel agent and the name and address last notified to the Commissioner of the person in charge at each of those places in compliance with section 36.
- (2) Subject to this Act, the register shall contain the prescribed particulars and shall be kept in such form and manner as the Commissioner thinks fit.
- (3) The Commissioner may, on the application of a person, issue to the person a certificate stating whether or not a person specified in the certificate is or was, on a date or during a period specified in the certificate, the holder of a travel agent's licence.
- (4) The Commissioner may charge the prescribed fee, if any, for the issue of a certificate under subsection (3).

### **16 Term of, and authority conferred by, licence**

- (1) Except while it is suspended, a licence continues in force until, pursuant to the provisions of this Act, it is surrendered or cancelled.
- (2) Where a licensee ceases to participate in the compensation scheme, the licence is suspended until the licensee again participates in the scheme.
- (3) A licence authorises the licensee to carry on business as a travel agent under the name or names specified in the licence subject to and in accordance with this Act and the conditions and restrictions to which the licence is subject.
- (4) For the purposes of this Act, sections 17, 18 and 20 excepted, a person whose licence is suspended under subsection (2) or under section 20 (8) or 21 shall, while the suspension continues, be deemed to be a person who does not hold a licence.

### **17 Annual fee and annual statement**

- (1) Except where regulations made for the purposes of subsection (2) otherwise provide, a licensee shall, before the expiration of one month after each anniversary of the date on which the licence was granted, pay to the Commissioner in respect of the year commencing on that anniversary the prescribed fee for the licence.
- (2) The regulations may make provision for and with respect to the date and payment of the fee prescribed for the purposes of subsection (1) where licensees carry on

business in partnership.

- (3) A person who is or was a licensee during a year, or part of a year, commencing on the date, or on an anniversary of the date, on which the licence was granted shall lodge with the Commissioner a statement in respect of that year or part of a year that is in a form approved by the Minister and is signed:
  - (a) where the licensee who lodges the statement is a natural person—by that person, or
  - (b) where the licensee that lodges the statement is a body corporate—by at least 1 director of the body corporate.
- (4) The statement lodged under subsection (3) may, where the business to which the statement relates was carried on in partnership, be made and signed jointly by the partners as prescribed by the regulations.
- (5) A statement referred to in subsection (3) shall be accompanied by such documents as may be prescribed.
- (6) A person required under subsection (3) to lodge a statement shall lodge the statement (together with any documents required to accompany the statement under subsection (5)) within one month after the end of the year in respect of which, or part of which, the statement is lodged.
- (7) The Commissioner may, on the application of a person required to comply with subsection (1) or subsections (3) and (6), extend or further extend the time for compliance with the applicable subsection or subsections.
- (8) Where a licensee has failed to pay a fee, or lodge a statement, or pay a fee and lodge a statement, in accordance with this section and the regulations, the Commissioner shall give notice in writing to the licensee that, unless the fee is paid or the statement lodged, or the fee is paid and the statement lodged, together with the prescribed late fee, before a day specified in the notice, being a day that is not earlier than 14 days after the giving of the notice, the licence will be cancelled.
- (9) The Commissioner shall cancel the licence held by a person who fails to pay a fee or lodge a statement, or pay a fee and lodge a statement, as referred to in a notice given under subsection (8).
- (10) Subject to subsection (7), a person (not being a licensee) to whom subsections (3) and (6) apply shall comply with those subsections.

Penalty: 20 penalty units.
- (11) If, while a licence is in force, there occurs:
  - (a) between the time the application for the licence was granted and the time the first

statement is lodged under subsection (3)—a change in the particulars specified in, or in connection with, the application or provided in accordance with section 8 (6), or

- (b) between the lodging of successive annual statements under subsection (3)—a change in the particulars specified in the earlier of those statements,

not in either case being a change required to be notified under section 14 or a change of the person in charge at an unchanged place of business, the licensee shall, within 14 days after the occurrence of the change, give to the Commissioner notice in writing specifying particulars of the change.

Penalty: 20 penalty units.

- (12) A person shall not, in or in relation to a statement required to be lodged under subsection (3) or a notice required to be given under subsection (11), make a statement that is false or misleading by reason of the inclusion of any false or misleading matter or the omission of any material matter.

Penalty: 20 penalty units.

- (13) It is a defence to a prosecution of a person for an offence under subsection (12) if it is proved that, when the statement was lodged or the notice given, the person:
- (a) believed on reasonable grounds that the false matter was true,
  - (b) believed on reasonable grounds that the misleading matter was not misleading,
  - (c) in the case of an omission—believed on reasonable grounds that no material matter had been omitted, or
  - (d) in the case of an omission—did not know that the omitted matter was material.

## **18 Surrender of licence**

- (1) A licensee may (subject to section 20 (9)), by notice in writing given to the Commissioner and accompanied by the licence, surrender the licence.
- (2) Despite subsection (1), a licensee whose licence has been lost or destroyed may surrender the licence by giving to the Commissioner a notice in writing and specifying in the notice that the licence has been lost or destroyed, as the case may be.

## **19 Duplicate licence**

- (1) If the Commissioner is satisfied that a licence has been lost or destroyed, the Commissioner may, on payment of the prescribed fee, issue a duplicate licence.
- (2) A duplicate licence issued under subsection (1) has the same effect as the original licence.

## **Division 3 Disciplinary proceedings**

### **20 Notices to show cause**

- (1) Where, at any time, the Commissioner is of the opinion that there are reasonable grounds for believing that:
- (a) a licence has been improperly obtained or, at the time a licence was granted, there were grounds for refusing to grant it,
  - (b) a licensee has been convicted of an offence against this Act or any other enactment administered by the Minister,
  - (c) a licensee has failed to comply with this Act, a condition or restriction to which the licence is subject, a requirement under section 21 (1) (b) or an order of the Tribunal applicable to the licensee,
  - (d) a licensee has been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more,
  - (e) a licensee does not have, or is not likely to continue to have, sufficient financial resources to enable the licensee to continue to carry on business as a travel agent,
  - (f) the business to which a licence relates is being carried on in a dishonest or unfair manner,
  - (g) if a person were not a licensee, the Commissioner would be required by section 10 (2) or (4) to refuse an application by the person for a licence,
  - (h) a licensee has, for a period of one month or more, ceased to carry on the business to which the licence relates,
  - (i) a person (other than the licensee) involved in the direction, management or conduct of a business to which the licence relates is not a fit and proper person to be so involved,
  - (j) a licensee has been refused a licence under a corresponding Act,
  - (k) a licensee has been the subject of action that, under a corresponding Act, had an effect similar to the effect under this Act of action under section 21 (1) (a), (b), (c), (d) or (g), or
  - (l) a licensee is not, for any other reason, a fit and proper person to continue to hold a licence,

the Commissioner may, by notice in writing served on the licensee, call upon the licensee to show cause, within such period, being not less than 14 days, as is specified

in the notice, why the licensee should not, for such of the reasons referred to in paragraphs (a)-(l) as are specified in the notice, be dealt with in accordance with section 21 (1).

- (2) A notice may not be served on a licensee for the reason specified in subsection (1) (i) unless:
  - (a) the notice specifies the reasons why it is considered that the person involved in the direction, management or conduct of the business to which the licence relates is not a fit and proper person to be so involved, and
  - (b) a notice in writing is also served on the person so involved calling on the person to show cause, within the same period as is specified in the notice served on the licensee, why the person should not, for reasons specified in the notice (being the same as those specified under paragraph (a)) be disqualified in accordance with section 21 (2).
- (3) A notice may not be served on a licensee for the reason specified in subsection (1) (l) unless the notice specifies the reasons why it is considered that the licensee is not a fit and proper person to continue to hold a licence.
- (4) A licensee on whom a notice under subsection (1) has been served, a person with whom the licensee carries on, in partnership, the business to which the licence relates or, where the licensee is a body corporate, a director or officer of the body corporate may, within the period specified in the notice, make submissions, orally or in writing, with respect to the matters to which the notice relates.
- (5) A person on whom a notice under subsection (2) (b) has been served may, within the period specified in the notice, make submissions, orally or in writing, with respect to the matters to which the notice relates.
- (6) In order to determine:
  - (a) whether or not to serve a notice under subsection (1), or
  - (b) whether or not to take action under section 21,the Commissioner may make such investigations as the Commissioner thinks fit.
- (7) The Commissioner of Police shall, if the Director-General of the Department of Fair Trading so requests, make such investigations for the purposes of subsection (6) as are specified by the Director-General and shall, as soon as practicable after completing the investigation, make a report on the investigation to the Director-General.
- (8) The Commissioner may suspend a licence for any one or more of the following periods:

- (a) a period of not more than 14 days pending a determination as to whether or not a notice should be served on the licensee under subsection (1),
  - (b) where such a notice is so served—the period specified under subsection (1) in the notice,
  - (c) pending a determination as to whether or not action is to be taken under section 21—a period of not more than 14 days.
- (9) A licensee on whom notice to show cause has been served under this section may not surrender the licence unless the Commissioner has made a determination under section 21 in relation to each matter to which the notice relates.

## **21 Determination of disciplinary measures by Commissioner**

- (1) If, after compliance with section 20, the Commissioner is satisfied that any matter referred to in section 20 (1) has been established in relation to a licence, a licensee or the business carried on pursuant to a licence, the Commissioner may do any one or more of the following:
- (a) reprimand the licensee,
  - (b) require the licensee to comply within a specified time with a requirement specified by the Commissioner,
  - (c) suspend the licence for a period not exceeding 12 months,
  - (d) impose a condition or restriction to which the licence shall be subject,
  - (e) disqualify the licensee (or, if the licence has been surrendered, the former licensee) in accordance with subsection (2),
  - (f) where a notice was served on a person under section 20 (2) (b)—disqualify the person in accordance with subsection (2),
  - (g) except where the Commissioner acts in accordance with paragraph (a), (b), (c) or (d)—cancel the licence.
- (2) A person is disqualified in accordance with this subsection if either or both of the following disqualifications is or are imposed:
- (a) a disqualification from holding a licence,
  - (b) a disqualification from being involved in the direction, management or conduct of business as a travel agent,
- either permanently or for such period as is specified by the Commissioner when imposing the disqualification.

- (3) Where, under subsection (1) (b), the Commissioner requires a licensee to comply with a requirement specified by the Commissioner, the licensee shall comply with the requirement within the time specified by the Commissioner under that paragraph.

Penalty: 10 penalty units.

- (4) Where the Commissioner disqualifies a licensee in accordance with subsection (2), the Commissioner shall cancel the licence.

- (5) Where the Commissioner suspends or cancels a licence under this section, the suspension or cancellation shall take effect on and from such day as is determined by the Commissioner and notified by notice in writing served on the licensee.

- (6) Where the Commissioner:

(a) suspends a licence—the licensee, or

(b) cancels a licence—the former licensee,

shall return the licence to the Commissioner within a period specified by the Commissioner in the notice served under subsection (5).

Penalty: 10 penalty units.

- (7) A person disqualified in accordance with subsection (2) shall not, while disqualified, act in contravention of the disqualification.

Penalty—subsection (7): 50 penalty units.

## **Division 4 Reviews by the Tribunal**

### **22 Rights of review by the Tribunal**

- (1) If the Commissioner refuses to grant an application for a licence or imposes conditions or restrictions to which a licence is to be subject, the applicant or licensee may apply to the Tribunal for a review of the decision of the Commissioner.
- (2) If the Commissioner suspends or cancels a licence or imposes a disqualification in accordance with section 21 (2), the former licensee or the person disqualified may apply to the Tribunal for a review of the decision of the Commissioner.
- (3) If an applicant, or a prospective applicant, for a licence is refused participation in the compensation scheme, the applicant or prospective applicant may apply to the Tribunal for a review of the refusal.
- (4) If the participation of a licensee in the compensation scheme has been terminated otherwise than by the licensee, the licensee, may apply to the Tribunal for a review of the termination.

### **23 Determination of review of disciplinary action may include fine**

- (1) If the Tribunal, after completing consideration of an application under section 22 (2), is satisfied that any matter referred to in section 20 (1) has been established, it may fine an applicant licensee an amount not exceeding an amount equal to 10 penalty units.
- (2) Nothing in subsection (1) limits any other powers that the Tribunal has under Division 3 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

### **24 Determination of review concerning compensation scheme**

- (1) After completing consideration of an application for review under section 22 (3) or (4), the Tribunal may:
  - (a) if the application relates to a refusal referred to in section 22 (3)—admit the applicant to participation in the compensation scheme conditionally on the applicant being or becoming licensed, or
  - (b) if the application related to a termination referred to in section 22 (4)—annul the termination, or
  - (c) in either case—dismiss the application.
- (2) Nothing in subsection (1) limits any other powers that the Tribunal has under Division 3 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.
- (3) Subject to Chapter 7 of the *Administrative Decisions Tribunal Act 1997*, a decision by the Tribunal under subsection (1) (a) or (b) is taken to be a decision made in accordance with the law governing the compensation scheme and is to be given effect accordingly.

### **25 (Repealed)**

## **Division 5 Death of licensee**

### **26 Death of licensee**

- (1) Where a licensee dies, a person who is, or who is named as, or who intends to apply to become, a legal personal representative of the deceased licensee may, within 28 days after the death or such longer period as the Commissioner allows, apply to the Commissioner to be allowed to carry on the business as a travel agent of the deceased licensee during:
  - (a) the period that commences with the date of death of the licensee and ends 6 months later, or
  - (b) the period that commences with the date of death of the licensee and ends immediately before the next succeeding anniversary of the date on which the licence was granted,



whichever is the longer.

- (2) The Commissioner may grant or refuse an application under this section and, where the Commissioner grants the application, may impose such conditions as the Commissioner thinks fit, being conditions subject to which the business to which the application relates may be carried on.
- (3) A personal representative authorised under this section to carry on the business of a deceased licensee shall, subject to this Act and any conditions imposed under this section, be deemed to be, while so authorised, the holder of the licence of the deceased licensee.

## **27 Endorsement of conditions etc of licence**

Where, under section 26, the Commissioner imposes conditions subject to which a personal representative is authorised to carry on the business to which a licence relates, the personal representative shall, upon being required by the Commissioner so to do within a specified time, produce the licence to the Commissioner within that time for endorsement of the conditions.

Penalty: 10 penalty units.

## **Division 6 Unjust conduct by travel agents**

### **28 Interpretation**

For the purposes of this Division, conduct of a person who carries on business as a travel agent (whether or not the person is a licensee or is an exempted person) is unjust if it is conduct:

- (a) that is dishonest or unfair,
- (b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought,
- (c) that consists of the contravention of this Act or the regulations or any other enactment administered by the Minister, or
- (d) that, in the case of a licensee, consists of the failure to comply with a condition or restriction to which the licence is subject or an order of the Tribunal applicable to the licensee.

### **29 Undertakings by travel agent**

- (1) Where it appears to the Commissioner that a person who carries on business as a travel agent has, in the course of that business, repeatedly engaged in unjust conduct, the Commissioner may:
  - (a) request the person to execute a deed in terms approved by the Commissioner

whereby the person gives undertakings as to:

- (i) the discontinuance of the unjust conduct,
- (ii) the person's future conduct, and
- (iii) the action the person will take to rectify the consequences of the person's unjust conduct, or

(b) apply to the Tribunal for an order under section 31 (1).

(2) Where a person executes a deed under subsection (1) (a) and observes the undertakings given in the deed:

(a) a notice may not be served under section 20 or any thing done under section 21, and

(b) the Commissioner may not apply for an order under section 31 (1),

by reason of any conduct to which the undertakings relate.

### **30 Register of Undertakings**

(1) Where a person executes a deed containing undertakings as referred to in section 29 (1) (a), the Commissioner shall:

(a) lodge a copy of the deed with the Registrar of the Tribunal, and

(b) give a copy of the deed to the person who executed it.

(2) The Commissioner shall retain all deeds and shall register the deeds in a Register of Undertakings that is kept by the Commissioner in such form and manner as the Commissioner thinks fit and contains the prescribed particulars.

(3) The Register of Undertakings may, at any reasonable time, be inspected by any person free of charge.

(4) A person who gives undertakings in a deed executed under section 29 (1) (a) shall observe the undertakings.

Penalty: 50 penalty units.

(5) A prosecution for an offence under subsection (4) shall not be instituted except by the Commissioner with the leave of the Tribunal given when making an order in accordance with section 31 (2).

### **31 Restraint of unjust conduct**

(1) Where, on the application of the Commissioner, the Tribunal is satisfied after inquiry that a person who carries on business as a travel agent has repeatedly engaged in

unjust conduct, the Tribunal may order the person to refrain from engaging in unjust conduct in the course of carrying on that business as a travel agent and the person shall comply with the order.

Penalty: 50 penalty units.

- (2) Where, on the application of the Commissioner, the Tribunal is satisfied that a person has failed to observe an undertaking given by the person in a deed executed under section 29 (1) (a), the Tribunal may make an order under subsection (1) against the person and, in the case of an undertaking referred to in section 29 (1) (a) (iii), an order to observe that undertaking within a time specified by the Tribunal when making the order.
- (3) Where the Commissioner applies under subsection (1) or (2) for an order under subsection (1) against a body corporate and the Tribunal is satisfied that the unjust conduct or breach of undertaking to which the application relates was engaged in with the consent or connivance of a person who, at the time of the conduct or breach, was a director of, or a person concerned in the management of, the body corporate, the Tribunal may, in addition to any order it may make under this section, make an order prohibiting the person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking under section 29 (1) (a), by the body corporate or any other body corporate of which the person is a director or in the management of which the person is concerned and the person to whom the order relates shall comply with the order.

Penalty: 50 penalty units.

- (4) An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise) as the Tribunal thinks fit, including conditions as to the future conduct of the licensee and conditions specifying the action to be taken by the licensee to rectify the consequences of the licensee's unjust conduct.

### **32 Variation etc of restraining order**

The Tribunal may, on the application of the Commissioner, vary or discharge an order made under section 31.

## **Part 3 Conduct of business**

### **33 Certain particulars to be displayed**

A licensee shall cause to be displayed at each place at which business is carried on pursuant to the licence a legible notice in the prescribed form that contains the prescribed particulars and is clearly visible to persons entering the place of business.

Penalty: 10 penalty units.

### **34 Advertisements**

A licensee shall not cause or permit to be published an advertisement (other than a radio or television advertisement) relating to the business carried on pursuant to the licence unless the advertisement legibly specifies the number of the licence and:

- (a) except as provided by paragraph (b)—the name of the licensee, or
- (b) where the licensee is authorised by the licence to carry on business otherwise than under the name of the licensee—the name of the licensee followed by the words “trading as” and the name or names under which the licensee is authorised to carry on business.

Penalty: 10 penalty units.

### **35 Name to appear on documents**

- (1) A licensee shall not, in the course of carrying on business pursuant to the licence, issue a letter, statement, invoice, cheque, receipt or other document on which there does not appear in legible characters the name of the licensee identified as such, whether or not the licensee is authorised by the licence to carry on business under a name other than the name of the licensee.

Penalty: 10 penalty units.

- (2) A reference in subsection (1) to the name of a licensee includes, in the case of a licensee who carries on business in partnership with another licensee or other licensees, a reference to the names of all the partners.
- (3) Subsection (1) does not affect the operation of section 20 of the [Business Names Act 1962](#).

### **36 Supervision of conduct of business**

A licensee shall not carry on business as a travel agent unless, at each place at which the licensee so carries on business, there is present and in charge of the day-to-day conduct of the business at that place a person (whether or not the person is the licensee) who has the prescribed qualifications.

Penalty: 10 penalty units.

### **37 Employment of disqualified person**

- (1) Except with the approval of the Commissioner, a licensee shall not employ a person for the purposes of the business carried on pursuant to the licence if the person:
  - (a) is disqualified under this Act from holding a licence or is disqualified under a corresponding Act from holding a licence under the corresponding Act,

- (b) is disqualified under this Act or a corresponding Act from being involved in any capacity in the carrying on of business as a travel agent,
- (c) has been refused a licence under this Act on a ground referred to in section 10 (2) (e) or (f) or a licence under a corresponding Act on a similar ground, or
- (d) is a person whose adverse qualities were responsible for a body corporate being refused a licence on a ground referred to in section 10 (4) (g) or (h) or a licence under a corresponding Act on a similar ground.

Penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence under subsection (1) if it is proved that the person responsible for the prohibited employment had made reasonable inquiries regarding the person employed and had no reason to believe that the person employed was within the prohibition.

### **38 Orders etc that may be made on conviction**

- (1) In this section, a reference to the conviction of a person includes a reference to the making of an order in respect of a person under section 10 of the [Crimes \(Sentencing Procedure\) Act 1999](#).
- (2) Where the court before which a person is convicted of an offence against this Act is the Supreme Court, the Court may, in addition to any penalty it may impose, make any order, finding or determination relating to anything done or omitted to be done by the person convicted including an order for payment of compensation by the person convicted.
- (3) Where the court before which a person is convicted of an offence against section 6 (1) is the Supreme Court, the Court may, in addition to any penalty it may impose, order the person to pay to the Crown an amount assessed by the Court as not exceeding the proceeds derived by the person from the commission of the offence.
- (4) Before making an order under subsection (2) or (3), the Supreme Court may require notice to be given to, and may hear, such persons as the Court thinks fit.
- (5) For the purpose of making an order against a person under subsection (3), the Supreme Court may:
  - (a) take into account such matters as the Court thinks fit,
  - (b) to the extent specified by the Court—treat any interest in real or personal property acquired by the person by means of proceeds derived from the commission of the offence as proceeds derived by the person from commission of the offence, and
  - (c) treat the equivalent, in money terms, of any interest in real or personal property derived by the person from commission of the offence as proceeds derived by the

person from commission of the offence.

- (6) Subject to subsection (7), where a body corporate is ordered under subsection (2) or (3) to make a payment, the persons who, at the time of the commission of the offence giving rise to the order for payment, were directors of the body corporate are jointly liable with the body corporate, and they and the body corporate are each severally liable, to make the payment ordered and are so liable as if the order had been to that effect.
- (7) Where it is proved that an offence by a body corporate giving rise to an order for payment made under subsection (2) or (3) was committed without the knowledge or consent of a director of the body corporate, the director is not liable as provided by subsection (6).
- (8) Without affecting any other right of appeal, an order for payment made under subsection (2) or (3) is appellable as if it were, or were part of, a penalty imposed in respect of the offence giving rise to the order.
- (9) On appeal against a conviction referred to in subsection (2) or (3), an order made under the subsection may be confirmed, varied or revoked.
- (10) An order for payment made under subsection (2) or (3) may be enforced as if it were a judgment in a civil matter given by the court.
- (11) The Crown shall pay to the compensation scheme trustees for the purposes of the compensation scheme an amount equivalent to any amount paid to the Crown pursuant to an order under subsection (3).

### **39 Temporary restraint on disposition of property**

(1) Where:

- (a) proceedings are instituted in the Supreme Court against a person for an offence against section 6 (1),
- (b) an order against a person is made under section 38 (2) or (3), or
- (c) a person is, because of an order made under section 38 (2) or (3), under the liability imposed by section 38 (6) on directors of a body corporate,

the Court may, by order, prohibit:

- (d) the person from disposing of, or otherwise dealing with, any interest in specified property, and
- (e) any other specified person from disposing of, or otherwise dealing with, any interest in specified property:
  - (i) which is vested in the person referred to in paragraph (d) and in respect of

which that other person has a power of disposition, or

(ii) which is held by that other person for the person so referred to,

otherwise than in such manner as may be specified in the order.

- (2) Before making an order under this section, the Supreme Court may require notice to be given to, and may hear, such persons as it thinks fit.
- (3) An order under this section may be given or served in such manner as the Supreme Court directs or as may be prescribed by rules of the Court.
- (4) Any person who holds an interest in property the subject of an order under this section may apply for the revocation or variation of the order.
- (5) Any person to or upon whom an order made under subsection (1) is given or served in accordance with this section and who, while it is in force, acts in contravention of or fails to comply with the order shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding 20 penalty units or to imprisonment for a term not exceeding 6 months, or both.
- (6) In this section, **property** includes real and personal property and money.

#### **40 Compensation scheme trustees to have certain rights by subrogation and otherwise**

(1) In this section:

**unlisted person** means a person (other than an exempted person or the holder of a licence) who carries on business as a travel agent under a name or names that is not included in a list in force under subsection (2).

- (2) The Commissioner shall as soon as practicable after the commencement of this section and from time to time thereafter, publish in the Gazette a list in which is specified:
  - (a) the name or names under which each holder of a licence at the time of preparation of the list was authorised to carry on business as a travel agent,
  - (b) the date on which the list comes into force, being a date that is not earlier than the date of publication of the list in the Gazette, and
  - (c) the date on which the list ceases to be in force.
- (3) Where a payment is made to a claimant under the compensation scheme by reason of an act or omission by a person carrying on business as a travel agent, the compensation scheme trustees are subrogated to the rights of the claimant in relation to the act or omission.
- (4) Where the rights conferred by subsection (3) on the compensation scheme trustees

are exercisable against a body corporate, those rights are enforceable jointly against the body corporate and the persons who were its directors at the time of the act or omission and severally against the body corporate and each of those directors.

- (5) Where it is proved that an act or omission by a body corporate occurred without the knowledge or consent of a director of the body corporate, rights are not enforceable as provided by subsection (4) against the director in relation to the act or omission.
- (6) Where an act or omission referred to in subsection (3) was the act or omission of a person who, at the time of the act or omission, was an unlisted person, any other person who, in the course of carrying on a business, provided the unlisted person with goods or services in relation to which the act or omission occurred shall, for the purposes of subsections (3), (4) and (5) but in relation only to the act or omission in so far as it involved those goods or services, be deemed to have, at the time of the act or omission, carried on business as a travel agent in partnership with the unlisted person.
- (7) A person who, in the course of carrying on a business, provides an unlisted person with goods or services for disposal in a manner that would constitute the carrying on by the unlisted person of business as a travel agent shall be deemed to have aided, abetted, counselled and procured the carrying on by the unlisted person of business as a travel agent.
- (8) Subsection (6) does not have effect in relation to an act or omission that occurs in relation to goods or services, and subsection (7) does not have effect in relation to goods or services, that are provided at a time when there is no list in force under subsection (2).

#### **41 Accounts to be kept**

A person who carries on business as a travel agent shall:

- (a) keep such accounting and other records as correctly record and explain the transactions and financial position of the business,
- (b) keep the records in such a manner as will enable true and fair profit and loss accounts, and balance sheets, for the business to be prepared from time to time,
- (c) keep the records in such a manner as will enable profit and loss accounts, and balance sheets for the business, to be conveniently and properly audited, and
- (d) keep the records in the English language or, where the records are not kept in writing, in such manner as will enable the records to be readily converted into writing in the English language.

Penalty: 50 penalty units.



## **Part 4 Miscellaneous**

### **42 Other rights and remedies**

- (1) Except to the extent that this Act expressly provides otherwise, nothing in this Act modifies or excludes a right or remedy that a person would have had if this Act had not been enacted.
- (2) For the purposes of any Act, matters arising under this Act are matters relating to the interests of consumers and this Act is an Act designed to protect the interests of consumers.

### **43 Delegation by Commissioner**

- (1) The Commissioner may delegate to a public servant the exercise of any of the functions of the Commissioner under this Act.
- (2) A delegation under this section:
  - (a) shall be in writing,
  - (b) may be general or limited, and
  - (c) may be revoked, wholly or partly, by the Commissioner.
- (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.
- (4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Commissioner.
- (5) A delegation under this section does not prevent the exercise of a function by the Commissioner.
- (6) A function purporting to have been exercised by a delegate under this section shall, unless the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

### **44 Powers of entry and inspection**

- (1) For the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with by a person carrying on business as a travel agent, an investigator appointed under section 18 of the *Fair Trading Act 1987* or any other person authorised in writing in that behalf by the Commissioner may:
  - (a) enter premises where the business is being carried on or on which it is believed on reasonable grounds that records relating to the business are kept,
  - (b) require the production of records,

- (c) inspect and require explanations of any records, and
- (d) either:
  - (i) take notes, copies and extracts of or from any record or statement produced pursuant to this section, or
  - (ii) remove any such record to the custody and control of the Commissioner.
- (2) Where a record is removed under subsection (1) (d) (ii), the Commissioner may make copies of the record and:
  - (a) shall at all reasonable times permit inspection of the record, or the making of additions to the record, at the place where the record is kept by the Commissioner if the inspection is, or the additions are, made by or on behalf of the licensee whose record it is, and
  - (b) shall return the record:
    - (i) as soon as practicable, or
    - (ii) in accordance with any directions given by the Tribunal on application made in accordance with the rules of the Tribunal.
- (3) Where the Commissioner, or an investigator or authorised person referred to in subsection (1), requires production under that subsection of a record that is not in writing, or is not written in the English language, or is not decipherable on sight, the requirement to produce the record shall be deemed to be a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.
- (4) A person shall not:
  - (a) wilfully delay or obstruct the Commissioner, an investigator or any other person in the exercise of powers under this section,
  - (b) refuse or fail to produce, or conceal or attempt to conceal, any record or statement the person is required under subsection (1) or (2) to produce,
  - (c) being a person who appears to be engaged, whether as an employee or otherwise, in any activity involved in carrying on the business to which any such record or statement relates—refuse or fail to answer a question, or give an explanation, relating to any such record or statement where the question is put to the person, or the explanation is required of the person, by a person entitled to require production of the record or statement who first informs him or her that he or she is required and obliged by this section to answer the question or give the explanation, or

- (d) being a person who appears to be so engaged—give to a question relating to any record or statement an answer that he or she knows is false or misleading or give an explanation of any record or statement that he or she knows is a false or misleading explanation.

Penalty—subsection (4): 50 penalty units.

#### **45 Production of records**

- (1) In this section:

**authorised person** means:

- (a) the Commissioner, or
  - (b) a person authorised in writing by the Commissioner to exercise the powers conferred by this section, or
  - (c) an investigator appointed under section 18 of the *Fair Trading Act 1987*.
- (2) For the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with by a person carrying on business as a travel agent, an authorised person may, by instrument in writing, require the person so carrying on business to produce specified records, or records of a specified class or description, to a specified person at a specified place at a specified time or within a specified period.
  - (3) Where an authorised person requires production under subsection (2) of a record that is not in writing, or is not written in the English language, or is not decipherable on sight, the requirement to produce the record shall be deemed to be a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.
  - (4) A person shall not refuse or fail to produce any record or statement in accordance with a requirement made of the person under subsection (2).

Penalty: 50 penalty units.

- (5) An authorised person may inspect and take notes, copies and extracts of or from any record or statement produced pursuant to this section.

#### **46 (Repealed)**

#### **47 Limitation**

Notwithstanding anything in any Act, proceedings for an offence against this Act, or for aiding, abetting, counselling or procuring the commission of such an offence, may be brought within the period of 3 years that next succeeds the commission of the offence or, with the consent of the Attorney General, at any later time.

#### **48 Offence by body corporate**

Where an offence against this Act committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, the person, as well as the body corporate, shall be deemed to have committed that offence and is liable to be proceeded against and punished accordingly.

#### **49 Who may take proceedings for offences**

- (1) Proceedings for an offence against this Act may be taken and prosecuted by any person acting with the authority of:
  - (a) the Minister, or
  - (b) a prescribed officer.
- (2) An authority to prosecute purporting to have been signed by the Minister or a prescribed officer is evidence of that authority without proof of the signature of the Minister or the prescribed officer.
- (3) In proceedings for an offence against this Act, the informant may conduct his or her case personally, or by counsel or attorney, or by an agent authorised by the informant in writing.

#### **50 Disposal of proceedings**

- (1) Proceedings for an offence against this Act (the regulations excepted) shall be disposed of summarily before:
  - (a) a Local Court constituted by a Magistrate sitting alone, or
  - (b) with the written consent of the Minister—the Supreme Court in its summary jurisdiction.
- (2) Proceedings for a breach of the regulations shall be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.
- (3) A monetary penalty imposed by a Local Court for an offence against this Act shall not exceed 50 penalty units notwithstanding that, but for this subsection, the maximum monetary penalty that could be imposed would exceed 50 penalty units.

#### **51 Evidence**

- (1) A certificate signed by the Commissioner to the effect that a person specified therein was or was not, on a day or during a period so specified, the holder of a licence so specified is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.

- (2) A certificate signed by the Commissioner to the effect that a person specified therein was, on a day or during a period so specified, authorised for the purposes of section 44 or 45 is, without proof of the signature or of the official character of the person by whom it purports to have been signed, admissible in evidence in any proceedings and is evidence of the matters so certified.

## **52 Legal action by compensation scheme trustees**

The compensation scheme trustees may sue and be sued in the name of the “Travel Compensation Fund” and, in any action brought by them it shall be presumed, unless the contrary is proved, that any condition precedent to the bringing of the action imposed on them by the compensation scheme has been complied with.

## **53 Service of documents**

- (1) Where, under this Act, a document or notice is required or permitted to be served on or given to a person, the document or notice may be served or given:
- (a) where the person is a natural person, by giving it to or serving it personally on the person or by sending it by post to the person at the person’s usual or last known place of residence or business, or
  - (b) where the person is a corporation:
    - (i) by delivering it to a person who is or apparently is concerned in the management of the corporation, or
    - (ii) by leaving it at the registered office of the corporation with a person apparently employed at that office, being a person who has or apparently has attained the age of 16 years, or
    - (iii) without limiting the other provisions of this paragraph, where the corporation is the holder of a licence, by leaving it at the address of the principal place of business of the licensee (as shown on the register of licensees) with a person apparently employed at that place of business, being a person who has or apparently has attained the age of 16 years, or
    - (iv) by sending it by prepaid post addressed to the corporation at that registered office or, where the corporation is the holder of a licence, the address of the principal place of business of the licensee (as shown on the register of licensees).
- (2) In subsection (1) (b), **registered office** means:
- (a) the office of the corporation that is the registered office or principal office in accordance with the law of the State or Territory of the Commonwealth by or under which the corporation is incorporated,

- (b) where the corporation is not incorporated in Australia, an office registered under the law of a State or Territory of the Commonwealth as a registered office of the corporation, or
- (c) in the case of a corporation that has no such registered office or principal office, the principal place of business of the corporation in the State or, if it has no place of business in the State, its principal place of business in Australia.

(2A) In this section:

**register of licensees** means the Register kept in accordance with section 15.

- (3) Where a document or notice is required or permitted to be served on or given to the compensation scheme trustees, the document or notice may be served or given in the manner provided by the compensation scheme.
- (4) For the purposes of this Act, where a document or notice is properly addressed, prepaid and posted as a letter, the document or notice shall, unless the contrary is proved, be deemed to have been given to the person to whom it is addressed at the time at which the letter would be delivered in the ordinary course of post.

#### 54 Secrecy

- (1) This section applies to a person who is or has been:
  - (a) a member of the Tribunal,
  - (b) the Commissioner,
  - (c) an authorised person referred to in section 44 (1) or 45 (1),
  - (d) the Registrar of the Tribunal,
  - (e) the Deputy Registrar of the Tribunal,
  - (f) a member of the staff assisting the Commissioner or the Registrar of the Tribunal,  
or
  - (g) a person employed under section 19 of the *Fair Trading Tribunal Act 1998*.
- (2) A person to whom this section applies shall not, either directly or indirectly, except in legal proceedings or in the exercise or performance of a power, authority, duty or function under or in connection with this Act, the *Fair Trading Act 1987*, the *Fair Trading Tribunal Act 1998* or the corresponding Acts, or proposed Acts, of the legislature of the Commonwealth or of another State or of a Territory, make a record of, or divulge or communicate to any person, any information concerning the affairs of any person acquired by the person by reason of the person's office or employment under or for the purposes of this Act.

Penalty: 20 penalty units.

## **55 Repeals**

Each Act specified in Schedule 1 is, to the extent specified in that Schedule in relation to that Act, repealed.

## **56 Savings and transitional provisions**

Schedule 2 has effect.

## **57 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.
- (2) The regulations may:
  - (a) prescribe a scheme for compensating persons who suffer a pecuniary loss by reason of an act or omission by a person who carries on, or carried on, business as a travel agent,
  - (b) prescribe the scheme by reference to a schedule comprising a copy of the trust deed by which the scheme is established, and
  - (c) from time to time amend that schedule to incorporate amendments of the trust deed of which the Commissioner is notified by the compensation scheme trustees, and
  - (d) make provision for or with respect to appeals against the administrators of any scheme prescribed under this subsection and with respect to the functions of the Fair Trading Tribunal established by the *Fair Trading Tribunal Act 1998* in determining any such appeal.
- (3) The regulations may prescribe matters that may be taken into account for the purposes of section 20 (1) (e).
- (4) The regulations may provide that the fee referred to in section 8 (3), 17 (1) or 17 (8) is to be:
  - (a) a specified amount, or
  - (b) an amount calculated in a specified manner.
- (5) A regulation may impose a penalty not exceeding 20 penalty units for a breach of the regulation.
- (6) A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,
- or may do any combination of those things.

## Schedule 1 Repeals

(Section 55)

*Travel Agents Act 1973 No 71*—the whole Act.

*Notice of Action and Other Privileges Abolition Act 1977 No 19*—so much of Schedule 1 as amends the *Travel Agents Act 1973*.

*Travel Agents (Amendment) Act 1978 No 42*—the whole Act.

*Miscellaneous Acts (Public Finance and Audit) Repeal and Amendment Act 1983 No 153*—so much of Schedule 2 as amends the *Travel Agents Act 1973*.

*Statute Law (Miscellaneous Amendments) Act 1984 No 153*—so much of Schedule 16 as amends the *Travel Agents Act 1973*.

## Schedule 2 Savings and transitional provisions

(Section 56)

### 1 Definitions

In this Schedule:

**appointed day** means the day on which section 55 commences.

**Board** means the Travel Agents Registration Board constituted under the repealed Act.

**new licence** means a travel agent's licence granted under this Act.

**old licence** means a licence in force under the repealed Act immediately before the appointed day other than a licence held on behalf of another person.

**repealed Act** means the *Travel Agents Act 1973*.

### 2 (Repealed)

### 3 Unfinished business of Board

(1) Notwithstanding the repeals effected by this Act, the Board continues in existence on and after the appointed day for the purposes only of discharging the duties imposed on the Board by subclause (2).

(2) The Board shall, on and after the appointed day:



- (a) consider and decide any objection lodged under section 12 (6) of the repealed Act before the appointed day that was undecided immediately before that day and any such objection lodged on or after the appointed day in relation to an application made before that day,
- (b) hold any hearing that would have been required, but had not been commenced, under section 13 (7) of the repealed Act in relation to an application or objection lodged under the repealed Act before the appointed day,
- (c) complete any hearing of the nature referred to in paragraph (b) that had been commenced, but not completed, before the appointed day,
- (d) hold any hearing that would have been required, but had not been commenced, under section 14 of the repealed Act before imposing conditions or restrictions under that section in relation to a licence upon the granting of the licence under paragraph (f) or (g),
- (e) complete any hearing of the nature referred to in paragraph (d) that had been commenced, but not completed, before the appointed day,
- (f) upon the completion of a hearing referred to in paragraphs (b) and (c)—grant or refuse the application to which the hearing related,
- (g) grant or refuse an application under section 12 of the repealed Act that was lodged before the appointed day and for the grant or refusal of which under the repealed Act a hearing referred to in paragraph (b) or (c) would not have been required,
- (h) upon the completion of a hearing referred to in paragraphs (d) and (e)—impose or vary conditions or restrictions in accordance with section 14 of the repealed Act,
- (i) consider and determine any application made under section 15 or 23 of the repealed Act before the appointed day and not determined before that day,
- (j) where a complaint was made under section 35 or 36 of the repealed Act before the appointed day but a notice under section 38 (1) of that Act had not issued in relation to the complaint before that day:
  - (i) issue such a notice and act under sections 38 (6), 39, 40 and 41 of the repealed Act in relation to the notice, or
  - (ii) refund the deposit that accompanied the complaint and refer the complaint to the Commissioner who shall deal with the complaint as if it were a complaint under section 9 of the *Fair Trading Act 1987*,
- (k) complete any action by the Board under section 37 (3) of the repealed Act that had been commenced, but not completed, before the appointed day, and

- (l) where a notice under section 38 (1) or (3) of the repealed Act was issued before the appointed day—complete any action under sections 38 (6), 39, 40 and 41 of the repealed Act in relation to the notice that had not been completed before that day.
- (3) On and after the appointed day and until the dissolution of the Board under clause 4:
    - (a) such of the provisions of the repealed Act as, but for its repeal, would have been necessary or convenient for the purpose of giving effect to subclause (2) (including provisions conferring or imposing powers, authorities, duties and functions on the registrar and inspectors appointed under that Act) continue in force on and after that day to the extent necessary for that purpose,
    - (b) those powers, authorities, duties and functions may, for the purposes of paragraph (a), be exercised or performed by the Commissioner, and
    - (c) for the purposes of paragraph (a), section 16 (5) (a) of the repealed Act as continued in force as provided by that paragraph shall be construed as if the reference therein to the repealed Act included a reference to this Act.
  - (4) A decision made by the Board under subclause (2) (f) or (g) in relation to an application for a licence under the repealed Act shall be deemed to be:
    - (a) except where the application was made by a firm—a decision of the Commissioner in relation to a like application under this Act, or
    - (b) where the application was made by a firm—a decision of the Commissioner made in relation to each member, or prospective member, of the firm as if each member, or prospective member, had made a like application for individual licences under this Act.
  - (5) A decision made by the Board under subclause (2) (h) shall be deemed to be a decision of the Commissioner made under section 11 (1) following submissions made under section 11 (4).
  - (6) A decision made by the Board under subclause (2) (i) in relation to an application under section 23 of the repealed Act shall be deemed to be a decision of the Commissioner made in relation to a like application under section 37 of this Act.
  - (7) Where, under subclause (2) (k), the Board determines:
    - (a) to suspend or cancel the licence held by a defendant (not being a licence held on behalf of another person)—the suspension or cancellation, as the case may be, operates in relation to the old licence held by the defendant and continued in force by this Act as if it were a suspension or cancellation of that licence by the Commissioner in accordance with section 21,
    - (b) to suspend the licence held on behalf of a defendant—the determination operates

as if it were an action by the Commissioner in accordance with section 21 disqualifying the defendant for the period of the suspension from holding a licence, or

- (c) to disqualify the defendant (whether or not upon a determination to cancel a licence) permanently or for a specified period from holding a licence—the determination operates as if it were an action by the Commissioner in accordance with section 21 disqualifying the defendant, permanently or for the specified period, as the case may be, from holding a licence.

#### **4 Dissolution of Board**

- (1) Where the Minister is of the opinion that the duties imposed on the Board by clause 3 have been discharged, the Governor may, by notification published in the Gazette, appoint a day for the dissolution of the Board.
- (2) On the day appointed under subclause (1), the Board is dissolved and a person who, immediately before that day, held office as a member of the Board ceases on that day to hold that office.
- (3) A person who, by the operation of this clause, ceases to hold office as a member of the Board is not entitled to be paid any remuneration or compensation by reason of ceasing to hold that office.

#### **5 Undetermined appeals**

Where an appeal under section 42 of the repealed Act against a decision or determination of the Board was instituted, but not decided, before the appointed day, the decision on the appeal shall be deemed to be a decision of the Tribunal under section 22 on an appeal from a decision or determination of the Commissioner.

#### **6 Travel Agents Administration Account**

- (1) In this clause:

**dissolution date** means the day appointed by the Governor under clause 4 (1).

- (2) On the dissolution date, there vests in the Crown:
  - (a) any money that, immediately before the dissolution date, was payable to the Board under section 16 (3) of the repealed Act,
  - (b) all money standing to the credit of the Travel Agents Administration Account established under section 16 (4) of the repealed Act,
  - (c) any investment made under section 16 (7) of the repealed Act and current immediately before that date, and
  - (d) any other property (other than the Travel Agents Compensation Fund) that,

immediately before the dissolution date, was vested in the Board.

## 7 Application of Travel Agents Compensation Fund

(1) In this clause:

**corporation** means the corporation sole constituted by subclause (2).

**new fund** means money held in the Travel Industry Account established under subclause (4) and investments vested in the corporation.

**old fund** means the Travel Agents Compensation Fund established under section 43 of the repealed Act.

(2) For the purposes of this clause, the Minister is hereby constituted as a corporation sole with the corporate name “the Minister (Travel Industry Fund)” and an official seal.

(3) On the appointed day:

(a) money standing immediately before that day to the credit of the bank account established under section 44 of the repealed Act,

(b) investments subsisting immediately before that day under section 50 of the repealed Act, and

(c) any right to payment of money that accrued to the Board before the appointed day,

vest in the corporation.

(4) There shall be established in the Special Deposits Account in the Treasury and account to be called the “Travel Industry Account” into which the corporation shall cause to be paid:

(a) the money referred to in subclause (3) (a),

(b) any money received on or after the appointed day that, but for the repeals effected by section 55 would have been payable to the Board for payment into the bank account established under section 44 of the repealed Act,

(c) income due on or after the appointed day from investments vested in, and made by, the corporation, and

(d) the proceeds of realisations of those investments.

(5) The corporation may exercise in relation to the new fund the powers conferred on the Board under section 50 of the repealed Act in relation to the old fund.

(6) The Governor may, on the recommendation of the Minister, approve a scheme for the application of the new fund and may, on the like recommendation, from time to time

vary the scheme.

- (7) A scheme recommended for the purposes of subclause (6) may include provision for:
- (a) the discharge of any liabilities of the old fund outstanding immediately before the appointed day,
  - (b) the settlement of claims that, but for the repeals effected by this Act, could have been made against the old fund in respect of pecuniary loss suffered or incurred by reason of a failure to account that occurred before the appointed day,
  - (c) payments to the compensation scheme trustees, including such amount in relation to each holder of an old licence as is necessary to enable the licensee to participate in the compensation scheme,
  - (d) the payment of such costs approved by the Minister as relate to research, education and promotion dealing with matters with which this Act is concerned,
  - (e) the provision of funds for research into matters relevant to travellers and the travel industry, and
  - (f) conferring on the Commissioner such powers and functions as, under the repealed Act, would have been exercisable by the Board in relation to the matters referred to in paragraphs (a) and (b),

and any powers and functions conferred in accordance with paragraph (f) may be exercised as if they had been conferred by this Act.

- (8) The new fund may be applied only for the purposes of subclause (5) and for giving effect to a scheme in force under subclause (6) and may not be applied for any other purpose.

## **8 Transfer of assets, liabilities etc of Board**

- (1) Except to the extent that clauses 3, 6 and 7 otherwise provide, on the appointed day:
- (a) subject to subclause (4), any real or personal property (including any estate or interest in, or right to control or manage, real or personal property) that, immediately before the appointed day, was vested in the Board vests in the Crown,
  - (b) any money that, immediately before the appointed day, was payable to the Board becomes payable to the Crown instead of the Board,
  - (c) any liquidated or unliquidated claim that, immediately before the appointed day, was enforceable by the Board becomes enforceable by the Crown instead of the Board,
  - (d) any liquidated or unliquidated claim that, immediately before the appointed day,

was enforceable against the Board becomes enforceable against the Crown instead of the Board,

- (e) any suit, action or proceeding pending immediately before the appointed day at the suit of the Board becomes a suit, action or proceeding pending at the suit of the Crown instead of the Board,
  - (f) any suit, action or proceeding pending immediately before the appointed day against the Board becomes a suit, action or proceeding pending against the Crown instead of the Board,
  - (g) any contract, agreement or undertaking entered into with the Board and in force immediately before the appointed day becomes a contract, agreement or undertaking entered into with the Crown instead of the Board, and
  - (h) any security or charge given to or by the Board and in force immediately before the appointed day becomes a security given to or by the Crown instead of the Board.
- (2) Where a suit, action or proceeding instituted against the Board becomes by the operation of subclause (1) a suit, action or proceeding against the Crown, sections 6 and 7 of the *Claims against the Government and Crown Suits Act 1912* apply to, and in relation to, the suit, action or proceeding as if it had been instituted against a nominal defendant who had been appointed under that Act and had subsequently died.
- (3) Any money received on and after the appointed day that, but for the repeals effected by this Act, would have been payable to the credit of the Travel Agents Compensation Account established under section 44 of the repealed Act shall be paid to the credit of the Travel Industry Account established under clause 7.
- (4) Any money that, immediately before the appointed day, was held by the Board in accordance with Regulation 32A of the Regulations made under the repealed Act shall be dealt with by the Board as unclaimed money under the *Unclaimed Money Act 1982*.

## 9 Licences

- (1) In this clause:

**prescribed day**, in relation to an old licence, means:

- (a) where, if the repealed Act had continued in force, the appointed day would have been a day on which, or within a prescribed time after which, an annual fee would have been payable under section 15C of the repealed Act by the licensee—the appointed day, or
- (b) in any other case—the day first occurring after the appointed day that, if the repealed Act had continued in force, would have been a day on which, or within a

prescribed time after which, an annual fee would have been payable under section 15C of that Act by the licensee.

- (2) Subject to this Act, an old licence (other than a licence held by a firm) held by a participant in the compensation scheme continues in force on and after the appointed day as if it were a new licence the first anniversary of the granting of which is the prescribed day for the old licence.
- (3) Where, immediately before the appointed day, a firm held an old licence, each member of the firm as then constituted who is a participant in the compensation scheme shall be deemed to have held an old licence the same as that held by the firm and, subject to this Act, each such old licence deemed to have been held by a member of the firm continues in force on and after the appointed day as if it were a new licence the first anniversary of the granting of which is the prescribed day for the old licence.
- (4) Where:
  - (a) the annual fee for a licence continued in force by subclause (2) or (3) and any late fee is paid in accordance with section 17, and
  - (b) not later than the latest day for the payment of that fee the Commissioner is satisfied that the licensee is a participant in the compensation scheme,the Commissioner shall issue the licensee with a new licence which shall be deemed to have been issued on the prescribed day for the old licence and shall be dated accordingly.
- (5) For the purposes of sections 11 and 22 (1), the Commissioner shall be deemed, before a licence is issued under subclause (4), to have granted an application for the licence made under section 8.
- (6) Section 22 (3) (b) applies in relation to the holder of an old licence continued in force under subclause (2) or (3) as if the licensee were the holder of a new licence.
- (7) Unless it is earlier surrendered or is earlier suspended or cancelled, an old licence continued in force by subclause (2) or (3) expires:
  - (a) at the expiration of the period of 1 month that next succeeds the prescribed day for the licence, or
  - (b) if, during that period, the licensee becomes entitled under subclause (4) to be issued with a new licence—upon the issue of the new licence.
- (8) Subject to any appeal under the repealed Act pending immediately before the appointed day:
  - (a) the cancellation of an old licence has the same consequences as the cancellation

of a new licence held by the holder of the old licence,

- (b) the disqualification of a person from holding an old licence has the same consequences as a disqualification of the person from holding a new licence expiring, where the disqualification was not permanent, at the expiration of the period imposed in relation to the old licence, and
- (c) where a period of suspension of an old licence had not expired immediately before the appointed day, the new licence issued under subclause (4) to the holder of the old licence is suspended until the expiration of that period.

#### **10 Certain information to be provided by licensee**

- (1) The Commissioner may, by instrument in writing, require the holder of a licence under the *Travel Agents Act 1973* to provide the Commissioner, within such time as is specified in the instrument, with such information so specified as may be necessary or convenient for the purpose of enabling the Commissioner to prepare for the implementation of the provisions of this Act.
- (2) A failure by the holder of a licence to comply with a requirement under subclause (1) shall be deemed to be a failure to comply with a condition to which the licence is subject.

#### **11 Regulations**

- (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequential upon the enactment of this Act, including provisions requiring a reference in any Act, other than this Act, to the *Travel Agents Act 1973* or a provision thereof, to be construed as a reference to this Act or a provision of this Act.
- (2) A provision made under subclause (1) after the appointed day may be made with effect on and from the appointed day or a later day.
- (3) To the extent to which a provision made under subclause (1) takes effect on and from a day that is earlier than its publication in the Gazette, the provision does not operate:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before that day of publication, or
  - (b) to impose a liability on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before that day of publication.
- (4) A provision made under subclause (1) has effect notwithstanding anything in this Schedule, clauses 3, 4, 5 and 11 excepted.