

Queensland



# TRAVEL AGENTS ACT 1988

**Reprinted as in force on 23 November 1994  
(includes amendments up to Act No. 82 of 1993)**

**Reprint No. 1**

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the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This Act is reprinted as at 23 November 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (Pt 4, Div 2)
- express gender specific provisions in a way consistent with current legislative drafting practice (s 24)
- use different spelling consistent with current legislative drafting practice (s 26(2))
- use standard punctuation consistent with current legislative drafting practice (s 27)
- use conjunctives and disjunctives consistent with current legislative drafting practice (s 28)
- use expressions consistent with current legislative drafting practice (s 29)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current legislative drafting practice (s 35)
- omit provisions that are no longer required (ss 36 and 39)
- number and renumber certain provisions and references (s 43)
- correct minor errors (s 44).

**Also see Endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in the reprint, including—**
  - **Table of changed names and titles**
  - **Table of obsolete and redundant provisions**
  - **Table of corrected minor errors**
  - **Table of renumbered provisions.**

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# TRAVEL AGENTS ACT 1988

[as amended by all amendments that commenced on or before 23 November 1994<sup>2</sup>]

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

### PART 1—PRELIMINARY

#### Short title

1. This Act may be cited as the *Travel Agents Act 1988*<sup>3-8</sup>.

#### Commencement

2.(1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Parts 2 and 4 shall commence on the day appointed by proclamation for the commencement of those Parts.

(3) Except as provided by subsections (1) and (2), this Act or the provisions thereof specified in the proclamation shall commence on the day or days appointed by proclamation for the commencement of this Act or, as the case may be, those provisions.

#### Objective of Act

3. The principal objective of this Act is to—
  - (a) provide for the licensing of travel agents in Queensland; and
  - (b) provide for the regulation of the conduct of business as a travel agent; and

- (c) provide access to the Travel Industry Compensation Fund by consumers entitled to compensation under this Act.

### **Appointed day**

5. For the purposes of this Act, the Governor may by proclamation appoint a day in this Act referred to as the appointed day.

### **Definitions**

6. In this Act—

**“authorised name”** in respect of a licensed travel agent means—

- (a) the name of the travel agent as it appears in the licence; or
- (b) a name in which the travel agent is authorised by the Commissioner to carry on business.

**“authorised officer”** means—

- (a) the Commissioner; or
- (b) an inspector; or
- (c) a police officer whilst carrying out an investigation under this Act at the request of the Commissioner; or
- (d) another person authorised in writing in that behalf by the Commissioner.

**“Commissioner”** or **“Commissioner for Consumer Affairs”** means the Commissioner appointed under the *Fair Trading Act 1989*.

**“compensation fund”** means the compensation fund maintained as provided in Part 5.

**“compensation scheme”** means the scheme established by the trust deed.

**“compensation scheme trustees”** means the trustees for the time being by whom the compensation scheme is administered.

**“corresponding law”** means a law of another State or of a Territory declared by regulation to be a corresponding law for the purposes of this Act.

**“exempted person”** means a person to whom, by reason of section 7(2) or



an order in council under section 10, section 12 does not apply.

“**inspector**” means an inspector appointed under the *Fair Trading Act 1989*.

“**licence**” means a licence in force at the material time under this Act.

“**officer**” of a body corporate has the meaning given by the Corporations Law.

“**sale**” in respect of rights, includes the conferral or assignment of the rights.

“**trust deed**” means the trust deed approved for the time being under section 36.

“**vehicle**” includes a boat, aircraft and other means of transport.

### **Act binds Crown**

**7.(1)** This Act binds the Crown not only in right of Queensland but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

**(2)** This Act shall not be construed as rendering the Crown in right of Queensland or in any other capacity liable to be prosecuted for an offence.

### **Crown etc. not required to obtain licence**

**8.** This Act shall not be construed as requiring the Crown in right of Queensland or a prescribed statutory body to hold a licence.

### **Business of travel agent**

**9.(1)** For the purposes of this Act but subject to this section, a person carries on business as a travel agent if the person, in the course of a business, sells or arranges for the sale of or advertises that he or she is willing to sell or arrange for the sale of—

- (a) rights to travel; or
- (b) rights to travel and accommodation.

**(2)** A person does not carry on business as a travel agent—

- (a) by reason only of anything done in the course of his or her employment;
- (b) by reason only of selling, or arranging for the sale of, rights to travel in a vehicle owned by him or her;
- (c) by reason only of selling, or arranging for the sale of, rights to accommodation at a place owned by him or her.

(3) For the purposes of this section, a person is the owner of a vehicle or place of accommodation if the person has lawful possession of the vehicle or place of accommodation.

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

10. The Governor in Council may, by order in council, exempt conditionally or unconditionally specified persons or persons of a specified class or specified transactions or transactions of a specified class from the application of this Act or a specified provision of this Act.

### **Administration of Act**

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

## **PART 2—RESTRICTION ON CARRYING ON BUSINESS AS TRAVEL AGENT**

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

12.(1) A person shall not—

- (a) carry on business as a travel agent otherwise than in accordance with the authority conferred on the person by a licence; or
- (b) carry on business as a travel agent in partnership with a person who is not a licensee.

Maximum penalty—1 000 penalty units.

(2) An unlicensed person shall not hold himself or herself out as a travel agent.

Maximum penalty—1 000 penalty units.

(3) Where a person is convicted of an offence against subsection (1), the court by which the conviction is recorded shall order the person to pay to the Crown an amount estimated by the court to be the amount of the profit that has accrued to the person or any other person with whom the person has a business or personal association in consequence of the commission of the offence.

(4) Any amount recovered by the Crown in pursuance of an order under subsection (3) shall be paid into the compensation fund.

(5) 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.

### **Injunction upon application by Commissioner**

13. Upon application by the Commissioner that a person who is not an exempted person and is not a licensee has carried on business as a travel agent, the Supreme Court may issue an injunction restraining that person from carrying on the business as a travel agent whilst not an exempted person or a licensee.

## **PART 3—LICENCES**

### *Division 1—Issue of licences*

#### **Application for a licence**

14.(1) An application for a licence shall—

- (a) be made to the Commissioner; and
- (b) be in writing in the prescribed form; and

(c) be accompanied by the prescribed application fee.

(2) An applicant for a licence shall furnish to the Commissioner the prescribed information and such other information as the Commissioner may require.

(3) Where an application is made for a licence, the applicant shall—

- (a) cause the application to be advertised in the prescribed manner and form; and
- (b) cause a copy of the advertisement to be served on the Commissioner.

(4) The Commissioner shall cause a copy of an application received to be served on the Commissioner of the Police Service.

(5) The Commissioner may require information sought under this section to be given, verbally on oath or in writing by declaration under the *Oaths Act 1867*, as the case may be, and for that purpose the Commissioner or any justice may administer an oath or take a declaration.

### **Investigation of application**

15.(1) The Commissioner may make such inquiries as the Commissioner considers necessary in respect of an application for a licence.

(2) The Commissioner of the Police Service may investigate an application for a licence.

### **Objection to application**

16.(1) Any person (including the Commissioner of the Police Service) may, within 10 days from the date on which the application for a licence was last advertised pursuant to section 14(3), lodge with the Commissioner for Consumer Affairs a written objection to the application setting out the grounds of the objection.

(2) The Commissioner for Consumer Affairs may, on the application of an interested person, and subject to such conditions as the Commissioner thinks fit, extend the period for lodging objections.

(3) Subject to subsection (4), the Commissioner for Consumer Affairs shall serve the applicant for a licence and the Commissioner of the Police

Service with a copy of each objection lodged under subsection (1).

(4) Where the Commissioner of the Police Service has lodged an objection, a copy thereof need not be served on him or her.

### **Applicant may make submission upon objections**

17. Upon receipt of a copy of an objection to his or her application for a licence, the applicant may within 7 days of receipt of the copy lodge with the Commissioner his or her submissions in writing upon that objection.

### **Determination of application**

18.(1) Upon the expiration of—

- (a) 10 days from the date on which the application for a licence is last advertised pursuant to section 14(3); or
- (b) where an objection to the application is duly lodged 7 days after the applicant is served with a copy of the objection;

whichever is the later, the Commissioner shall approve the application if the Commissioner is satisfied—

- (c) that—
  - (i) where the applicant is a natural person—
    - (A) the applicant is of or over the age of 18 years and holds the prescribed qualifications; and
    - (B) the applicant is likely to carry on a business as a travel agent honestly and fairly; and
    - (C) the applicant is otherwise a fit and proper person to hold a licence; or
  - (ii) where the applicant is a body corporate—every person who is an officer of the body corporate or who, in the opinion of the Commissioner, is in a position to control or influence substantially the affairs of the body corporate—
    - (A) is of or over the age of 18 years and holds the prescribed qualifications; and

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- (B) is likely to carry on the business of the body corporate or exercise that control or influence honestly and fairly; and
  - (C) is otherwise a fit and proper person to be an officer of that body corporate or to exercise that control or influence in respect of the business of a travel agent; and
- (d) that the applicant has made suitable arrangements to fulfil the obligations that may arise under this Act; and
  - (e) that the trustees under the trust deed have certified—
    - (i) that the applicant is eligible for membership of the compensation scheme established by the trust deed; and
    - (ii) that the applicant will be admitted as a member of the compensation scheme on being licensed; and
  - (f) that the applicant is not disqualified under this Act or a corresponding law from holding a licence under this Act or the corresponding law or being involved in the direction, management or conduct of the business of a travel agent.

(2) For the purposes of subsection (1)(e), where the application for membership of the compensation scheme made by an applicant for a licence at least 3 calendar months before the appointed day has not been determined at the appointed day, the trustees under the trust deed shall be deemed to have certified as required in subsection (1)(e) in respect of the applicant until the application is determined.

(3) Where the Commissioner refuses to approve an application for a licence, 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 that fee.

(4) Where the Commissioner approves an application for a licence, the Commissioner shall notify the applicant accordingly but shall only issue the licence if the prescribed fee for the licence is or has been paid to the Commissioner.

(5) The Commissioner may refrain from determining an application for a

licence until—

- (a) a natural person to whom the application relates; and
- (b) the directors and officers of a 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 any matter relevant to the application.

(6) Where, before the appointed day, a licence is issued, it shall not take effect until the appointed day.

### **Duration of licence**

**19.(1)** A licence shall, subject to this Act, remain in force until—

- (a) the licence is surrendered or cancelled; or
- (b) the licensee dies or, in the case of a body corporate, is dissolved.

**(2)** A licensee shall, not later than the prescribed date in each year—

- (a) pay to the Commissioner the prescribed annual licence fee; and
- (b) lodge with the Commissioner an annual return containing the prescribed information.

**(3)** Where a licensee fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Commissioner may, by notice in writing to the licensee, require the licensee to make good the default and, in addition, to pay to the Commissioner the amount prescribed as a penalty for default.

**(4)** Where a licensee fails to comply with a notice under subsection (3) within 14 days after service of the notice, the licence shall, by force of this subsection, be suspended until the licensee complies with the notice.

**(5)** The Commissioner shall cause notice of a suspension under subsection (4) (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

**(6)** Where a licence has been suspended by virtue of subsection (4) for a continuous period of 6 months, the licence shall, by force of this subsection, be cancelled.

(7) A licensee may, with the consent of the Commissioner, surrender the licence.

### **Conditions of licence**

**20.(1)** A licence is subject to—

- (a) a condition that each place at which the licensee carries on business as a travel agent must comply with the prescribed requirements; and
- (b) a condition that the licensee shall, at all times during the currency of the licence, be a participant in the compensation scheme; and
- (c) any prescribed conditions; and
- (d) any conditions imposed by the Commissioner on granting the licence.

(2) The Commissioner may, by notice in writing given to a licensee, impose or revoke a condition of the licence or vary such a condition or impose a further condition.

(3) A licensee shall not contravene or fail to comply with a condition of his or her licence.

Maximum penalty—100 penalty units.

### **Licence not transferable**

**21.** Save where otherwise expressly provided in this Act, a licence shall not be transferable.

### **Duplicate licence**

**22.** If the Commissioner is satisfied that a licence has been lost or destroyed, the Commissioner may, upon payment of the prescribed fee, issue a duplicate licence which shall have the same effect as the original licence.



**Register of licences**

**23.(1)** For the purposes of this Act, the Commissioner shall keep a register of licences 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 34(1).

**(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 register shall be made available at all reasonable times for inspection by any person at the office of the Commissioner.

**(4)** 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, a licensee.

**(5)** The Commissioner may charge the prescribed fee (if any) for the issue of a certificate under subsection (4).

***Division 2—Disciplinary proceedings*****Notice to show cause**

**24.(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; or
- (b) a licensee has been convicted of an offence against this Act; or
- (c) a licensee has failed to comply with this Act, a condition or restriction to which the licence is subject or a requirement under section 25(1)(b) applicable to the licensee; or
- (d) a licensee has been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more; or
- (e) a licensee does not have, or is not likely to continue to have, sufficient financial resources to enable the licensee to continue to

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- carry on business as a travel agent; or
- (f) the business to which a licence relates is being carried on in a dishonest or unfair manner; or
  - (g) if a person were not a licensee—the Commissioner would refuse an application by him or her for a licence; or
  - (h) a licensee has, for a period of 1 month or more, ceased to carry on the business to which the licence relates; or
  - (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; or
  - (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 25(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) to (l) as are specified in the notice, be dealt with in accordance with section 25(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 25(2).

**(3)** A notice may not be served on a licensee for the reason specified in

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subsection (1)(1) 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, an officer of the body corporate may, within the period specified in the notice, make submissions, 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, in writing, with respect to the matter 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 25;

the Commissioner may make such investigations as the Commissioner thinks fit.

(7) The Commissioner of the Police Service shall, if the Commissioner for Consumer Affairs so requests, make such investigations for the purposes of subsection (6) in respect of matters specified by the Commissioner for Consumer Affairs as the Commissioner of the Police Service considers necessary to fulfil the request and shall, as soon as practicable after completing the investigation, make a report on the investigation to the Commissioner for Consumer Affairs.

(8) The Commissioner may suspend a licence for any 1 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 25, a period of not more than 14 days.

**Determination of disciplinary measures by the Commissioner**

**25.(1)** If, after compliance with section 24, the Commissioner is satisfied that any matter referred to in section 24(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 1 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 24(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.

Maximum penalty—20 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) A person disqualified in accordance with subsection (2) shall not, while disqualified act in contravention of the disqualification.

Maximum penalty—100 penalty units.

### *Division 3—Appeals*

#### **Appeals**

**26.(1)** Where the Commissioner makes a decision—

- (a) refusing to grant an application for a licence; or
- (b) imposing conditions or restrictions to which a licence is to be subject; or
- (c) suspending or cancelling a licence; or
- (d) imposing a disqualification in accordance with section 25(2);

the applicant, licensee, former licensee or person disqualified may appeal against that decision by giving written notice of appeal in or to the effect of the prescribed form to the Minister within 30 days after notice of that decision to the person appealing.

**(1A)** The notice of appeal shall set out the grounds of appeal.

**(2)** Upon receipt of a notice of appeal under subsection (1), the Minister shall decide whether to determine the appeal.

**(3)** After deciding to determine an appeal under subsection (1), the Minister may—

- (a) dismiss the appeal;
- (b) make any determination in relation to the matter of the appeal that could have been made by the Commissioner.

**(3A)** Any determination made pursuant to subsection (3)(b) shall be deemed (except for the purposes of subsection (1)) to be the decision of the

Commissioner instead of the decision appealed against.

(4) The Minister shall forthwith notify the appellant—

- (a) that the Minister has decided to determine the appeal and his or her determination; or
- (b) that the Minister has decided not to determine the appeal.

(5) If, upon the expiration of 30 days after the appellant gives notice of appeal pursuant to subsection (1) to the Minister, the Minister has not given a notice to the appellant as provided in subsection (4), the appellant shall be deemed to have been given on the date of that expiration a notice referred to in subsection (4)(b).

(6) An appellant who receives a notice referred to in subsection (4)(b), may appeal against the decision of the Commissioner (that was the subject of his or her appeal to the Minister) to a Judge of the District Court at Brisbane who shall have jurisdiction to hear and determine the same, subject to section 27, by—

- (a) dismissing the appeal; or
- (b) making any determination in relation to the matter of the appeal that could have been made by the Commissioner;

and, where the Judge makes a determination under paragraph (b), the determination shall be deemed to be a decision of the Commissioner instead of the decision appealed against.

(7) Where—

- (a) an applicant, or a prospective applicant, for a licence is refused participation in the compensation scheme; or
- (b) the participation of a licensee in the compensation scheme has been terminated otherwise than by the licensee;

the applicant, prospective applicant or licensee, as the case may be, may appeal against the refusal or termination to a Judge of the District Court at Brisbane who shall have jurisdiction to hear and determine the same.

(7A) An appeal under subsection (7) may be heard and determined concurrently with a related appeal under subsection (6).

(8) An appeal under subsection (6) or (7) shall be by way of a hearing *de novo* and shall be instituted within 30 days after notice of the decision or

determination of the Minister or, as the case may be, the Commissioner to the person aggrieved and no later by filing a notice of appeal in the registry of the District Court at Brisbane setting out the grounds of appeal and, subject to this division, by complying with any rules of court made with respect thereto.

(9) Subject to the rules of court, an appellant under subsection (6) or (7) shall, within 7 days after lodging the appeal, give notice in writing of the appeal, together with the grounds of the appeal, to the Commissioner and, in the case of an appeal under subsection (7), the compensation scheme trustees.

(10) Rules of court may be made under the *District Courts Act 1967* with respect to the institution, conduct and disposal of an appeal under subsection (6) or (7).

(10A) Until such rules of court are made, or in so far as such rules of court do not extend, the Judge hearing any appeal under this section may, in the particular case, give such directions as the Judge may think fit, and the directions shall, according to their tenor, have the force and effect of rules of court made for the purposes thereof.

(11) The proceeding on appeal under subsection (6) or (7) shall be deemed to be a proceeding before a District Court.

(12) Upon receipt of a notice of appeal duly lodged pursuant to subsection (6) or (7), the Commissioner shall forward to the registrar of the District Court at Brisbane copies, certified as true copies by the Commissioner of all relevant applications, objections, submissions, reports, orders determinations and decisions in the Commissioner's possession, which copies shall be evidence in the hearing of the appeal.

(13) The appeal under subsection (6) or (7) shall be limited to the grounds set out in the notice of appeal.

(14) The burden of proving any ground shall be upon the appellant.

(15) The Commissioner and the appellant may appear personally or may be represented before the court by a duly qualified legal practitioner.

(16) The decision of a Judge of the District Court upon an appeal under subsection (6) or (7) shall be final.

(17) An appeal under this section does not operate to stay the action appealed against unless the Minister or, as the case may be, a Judge of the

District Court otherwise orders and any conditions imposed by the Minister or the Judge when ordering the stay are complied with.

### **Determination of appeal against disciplinary action**

**27.(1)** Where a Judge of the District Court, after hearing an appeal under section 26 in respect of a decision imposing a disqualification in accordance with section 25(2), is satisfied that any matter referred to in section 24(1) has been established, the Judge may—

- (a) dismiss the appeal; or
- (b) exercise any 1 or more of the powers conferred on the Commissioner by section 25(1) which powers shall, for the purposes of this paragraph, be deemed to include a power to fine an appellant licensee an amount not exceeding an amount equal to 10 penalty units;

but, if the Judge declares that the Judge is not so satisfied, the decision of the Commissioner appealed against shall be deemed not to have been made.

**(2)** Where a Judge of the District Court acts under subsection (1)(b)—

- (a) the decision of the Judge shall (except to the extent that the Judge imposes a fine) be deemed to be a decision of the Commissioner under section 25(1) instead of the decision appealed against and shall be given effect accordingly; and
- (b) the amount of any fine imposed by the Judge is recoverable from the person fined as a debt due to the Crown.

### **Determination of appeal regarding compensation scheme**

**28.(1)** After hearing an appeal under section 26(7), a Judge of the District Court may—

- (a) where the appeal is against a refusal referred to in section 26(7)(a)—admit the appellant to participation in the compensation scheme conditionally upon the appellant being or becoming licensed; or
- (b) where the appeal is against a termination referred to in section 26(7)(b)—annul the termination; or



(c) in either case—dismiss the appeal.

(2) A decision by the Judge under subsection (1)(a) or (b) shall be deemed to be a decision made in accordance with the law governing the compensation scheme and shall be given effect accordingly.

#### *Division 4—Death of licensee*

##### **Death of licensee**

**29.(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.

##### **Endorsement of conditions etc. on licence**

**30.** Where, under section 29, 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.

Maximum penalty—20 penalty units.

## **PART 4—CONDUCT OF BUSINESS**

### **Notice to be displayed**

**31.** A person carrying on business as a travel agent in pursuance of a licence shall maintain in a conspicuous position in each place from which the business is carried on, a notice clearly showing—

- (a) the name of the licensee as it appears in the licence; and
- (b) such other matters as may be prescribed.

Maximum penalty—20 penalty units.

### **Travel agent to use authorised name**

**32.(1)** A licensed travel agent shall not carry on business as a travel agent under any name except an authorised name.

Maximum penalty—20 penalty units.

**(2)** A licensed travel agent shall ensure that the travel agent's authorised name appears—

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

Maximum penalty—20 penalty units.

### **Accounts to be kept**

**33.(1)** A person who carries on business as a travel agent shall keep such

accounting records as are necessary correctly to record and explain the financial transactions and financial position of the business and shall retain those records for a period of 7 years.

Maximum penalty—100 penalty units.

- (2) The accounting records referred to in subsection (1) shall—
- (a) contain sufficient information for the preparation and audit of true and fair profit and loss accounts and balance sheets; and
  - (b) be kept at the person's principal place of business in the State; and
  - (c) be kept in the English language.

### **Supervision of business of travel agent**

**34.(1)** The business conducted at any place from which a licensee carries on business as a travel agent shall be managed and supervised by a person (whether or not a licensee) with qualifications approved by the Commissioner.

(2) A licensee shall ensure that subsection (1) is complied with in respect of the business carried on by the licensee.

Maximum penalty—50 penalty units.

### **Employment of disqualified person**

**35.(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; or
- (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; or
- (c) has been refused a licence under this Act on a ground referred to in section 18(1)(c)(i)(B) or (C) 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 18 (1)(c)(ii)(B) or (C) or a licence under a corresponding Act on a similar ground.

Maximum penalty—100 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.

## **PART 5—THE COMPENSATION SCHEME**

### **Approval of trust deed**

**36.(1)** The Minister may for the purposes of this Act—

- (a) approve an instrument as the trust deed;
- (b) approve any amendment to the trust deed.

(2) The Minister shall promulgate the trust deed and any approved amendment to the trust deed by notification published in the Gazette.

### **Obligation of licensee to be a member of the compensation scheme**

**37.(1)** A licensee shall be a member of the compensation scheme established by the trust deed and, consequently, if the membership of a licensee in the compensation scheme is terminated, the licence is, by force of this section, cancelled.

(2) A licensee shall not cease to be a member of the compensation scheme unless the trustees terminate the licensee's membership in the scheme in accordance with subsection (3).

(3) Where the trustees decide to terminate the membership of a licensee in the compensation scheme, notice of the decision must be given to the licensee and—

- (a) the termination shall not take effect until a date fixed in the notice

(being at least 28 days after the date of service of the notice on the licensee) or, if there is an appeal, until the determination of the appeal; and

- (b) the licensee shall, by force of this subsection, be suspended from the date of service of the notice, until the termination takes effect or the decision is reversed by a Judge of the District Court.

### **Compensation fund**

**38.(1)** If already established and administered prior to the commencement of this Act, the compensation fund shall continue to be administered by trustees appointed for the time being under the trust deed.

**(2)** There shall be paid into the compensation fund—

- (a) the contributions required to be paid in accordance with this Part; and
- (b) any amounts required to be paid into the compensation fund in accordance with the trust deed and any corresponding law.

**(3)** There shall be paid out of the compensation fund—

- (a) any amount of compensation to which a person is entitled in accordance with this Part; and
- (b) any amounts required to be paid out of the compensation fund in accordance with the trust deed and any corresponding law.

### **Licensees required to pay contributions**

**39.(1)** Every licensee shall pay into the compensation fund such contribution as may be required by the regulations.

**(2)** If a licensee fails to pay a contribution, within the time allowed for payment by the regulations, the licence shall, by virtue of this subsection, be suspended until the contribution is paid.

**(3)** For the purposes of subsection (1), the Crown in right of Queensland shall be deemed to be a licensee.

**Persons entitled to compensation**

**40.(1)** Subject to the trust deed, a person who has suffered loss in consequence of—

- (a) the dishonesty or negligence of a person carrying on business as a travel agent; or
- (b) the death, disappearance or insolvency of a person carrying on business as a travel agent; or
- (c) the failure on the part of a person carrying on business as a travel agent to carry out contractual obligations properly;

is entitled to compensation.

**(2)** A person who is entitled to compensation under subsection (1) may make a claim for compensation in accordance with the trust deed.

**Claims**

**41.(1)** A claim for compensation shall be determined by the trustees in accordance with the trust deed.

**(2)** Subject to the trust deed, where the amount standing to the credit of the compensation fund is insufficient to meet all valid claims for compensation, the trustees shall apportion that amount between the claimants in such proportions as the trustees think just.

**(3)** A claimant who is dissatisfied with the decision of the trustees on the claim may, within 28 days after receiving notice of the decision, appeal against that decision to a Judge of the District Court at Brisbane.

**(3A)** The provisions of section 26 apply in respect of the appeal as if the claimant were an applicant for a licence who is refused participation in the compensation scheme.

**(4)** On an appeal a Judge of the District Court may confirm, vary or reverse a decision of the trustees.

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

**42.(1)** In this section—

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**“unlisted person”** means a person (other than an exempted person or a licensee) who carries on business as a travel agent under a name or names that is or are 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 licensee at the time of preparation of the list was authorised to carry on business as a travel agent; and
- (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) to (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).

### **Name in which trustees may sue and be sued**

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

(2) In proceedings brought by the trustees it shall be presumed, in the absence of proof to the contrary, that any provisions of the trust deed in relation to the bringing of proceedings have been satisfied.

## **PART 6—MISCELLANEOUS**

### **Delegation by Commissioner**

44.(1) The Commissioner may delegate to a member of the public service the exercise of any of the functions of the Commissioner under this Act.

(2) A delegation under this section—

- (a) shall be in writing; and
- (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.

### **Powers of entry etc.**

**45.(1)** An authorised officer may at any reasonable time—

- (a) enter premises where business as a travel agent is being carried on or on which it is believed on reasonable grounds that records relating to the business are kept; and
- (b) require the production of records kept or required to be kept under this Act; and
- (c) inspect and require explanations of any record; and
- (d) take notes, copies and extracts of or from any record or statement produced pursuant to this section; and
- (e) where in the opinion of the authorised officer it is not appropriate for any note, copy or extract of or from any record or statement to be taken on the premises at which it is produced—remove and detain that record or statement for a reasonable time to enable the note, copy or extract to be taken.

(2) Where an authorised officer referred to in subsection (1), requires a 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.

(3) A person shall not, without reasonable excuse—

- (a) hinder an authorised officer in the exercise of powers conferred by this section; or
- (b) fail to comply with a requirement of an authorised officer under this section; or

- (c) fail to answer a question put by an authorised officer under this section to the best of the person's knowledge, information and belief.

Maximum penalty—20 penalty units.

(4) A person is not required to answer a question or to produce records if the answer to the question or the production of the records would result in or tend towards self-incrimination.

(5) Before an authorised officer enters a dwelling house as provided in subsection (1)(a), save where the authorised officer has the permission of the occupier to his or her entry, the authorised officer shall obtain from a justice a warrant to enter.

(6) A justice who is satisfied on the complaint of an authorised officer that—

- (a) the business as a travel agent is being carried on; or
- (b) there are reasonable grounds for believing that records relating to the business as a travel agent are kept;

in premises, may issue a warrant directed to an authorised officer to enter the premises specified in the warrant for the purpose of exercising therein the powers conferred upon the authorised officer by this Act.

(7) A warrant issued under subsection (6) shall be, for a period of 1 month from the date of its issue, sufficient authority for the authorised officer at any reasonable time—

- (a) to enter the premises specified in the warrant; and
- (b) to exercise therein the powers conferred upon the authorised officer by this section.

## Secrecy

**46.** A person shall not divulge or communicate information that is or was acquired by the person by reason of being, or having been, employed or engaged in, or in connection with, the administration of this Act except—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration of this Act; or

- (c) to the Commissioner of the Police Service; or
- (d) with the approval of the Commissioner for Consumer Affairs, to a person employed in the administration of a corresponding law; or
- (e) for the purposes of legal proceedings.

Maximum penalty—20 penalty units.

### **Investigations**

**47.** The Commissioner of the Police Service shall, at the request of the Commissioner for Consumer Affairs cause a police officer to investigate and report upon any matter relevant to the determination of—

- (a) any application or other matter before the Commissioner for Consumer Affairs; or
- (b) any matter that might constitute proper cause for disciplinary action under this Act.

### **Annual report**

**48.(1)** The Commissioner shall, as soon as practicable after 30 June in each year, submit to the Minister a report upon the administration of this Act during the period of 12 months ending on that date.

**(2)** The Minister shall lay a copy of the report before the Legislative Assembly.

### **Service of documents**

**49.(1)** Any notice or document required or authorised by this Act to be given to or served on any person shall be deemed to have been duly served if it has been—

- (a) served on the person personally; or
- (b) posted by means of registered post addressed to the person at the person's last known address, or, in the case of a licensee, the person's address for service; or
- (c) in the case of a licensee—left for the person at his or her address

for service with a person apparently over the age of 16 years.

(2) The address for service of a licensee is the last address for service of which notice has been given in accordance with the regulations.

### **False or misleading information**

**50.** A person shall not, in furnishing any information required under this Act, make a statement that is false or misleading in a material particular.

Maximum penalty—20 penalty units.

### **Return of licences suspended or cancelled**

**51.** Where a licence is suspended or cancelled under this Act, the licensee or former licensee shall, at the direction of the Commissioner return the licence to the Commissioner.

Maximum penalty—20 penalty units.

### **Offences by bodies corporate**

**52.** Where a body corporate is guilty of an offence against this Act, every member of the governing body of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the member could not, by the exercise of reasonable diligence, have prevented the commission of that offence.

### **Offences generally**

**53.** A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act and if a specific penalty is not otherwise provided is liable to a penalty of 10 penalty units.

### **Proceedings for offences**

**54.(1)** An offence against this Act may be prosecuted in a summary way under the *Justices Act 1886* upon the complaint of—

- (a) the Commissioner; or

- (b) an inspector; or
- (c) any other person authorised in that behalf either generally or in the particular case by the Minister.

(2) A prosecution for an offence against this Act may be commenced within—

- (a) 1 year from the time when the matter of complaint arose; or
- (b) within 6 months after the matter of complaint was brought to the knowledge of the complainant;

whichever is the later to occur.

(3) An authority to prosecute purporting to have been signed by the Minister is evidence of that authority without proof of the signature of the Minister.

### **Fees and penalties**

55. Save where otherwise expressly provided by this Act, all fees and all penalties recovered and costs incurred in respect of proceedings under this Act shall be payable to the Consolidated Fund.

### **Evidence**

56. In a proceeding for the purposes of this Act—

- (a) it shall not be necessary to prove the appointment of the Commissioner or, an inspector, authorised officer or police officer;
- (b) a signature purporting to be that of the Commissioner or an inspector shall be taken to be the signature it purports to be until the contrary is proved;
- (c) a document purporting to be signed by the Commissioner to the effect that a person named therein was or was not, on a day or during a period so specified, the holder of a licence so specified shall upon its production in that proceeding be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the document;

- (d) a document purporting to be signed by the Commissioner to the effect that a person named therein was, on a day or during a period so specified, authorised for the purposes of section 45 shall upon its production in that proceeding be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the document;
- (e) an averment in a complaint of the date on which the commission of an offence against this Act came to the knowledge of the complainant shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that averment.

## **Regulations**

**57.(1)** The Governor in Council may make regulations, not inconsistent with this Act, with respect to—

- (a) prescribing a code of practice to be observed by persons who carry on business as travel agents;
- (b) providing for differing categories of licence that may be granted in respect of the different types of the business of travel agents specified in the regulations and prescribing the qualification for holders of licences of those differing categories;
- (c) prescribing, or providing for the calculation of, fees for the purposes of this Act;
- (d) prescribing the forms to be used for the purposes of this Act;
- (e) prescribing the records to be kept by licensees and the manner in which the records must be kept;
- (f) requiring periodic audits to be made of the accounts required by this Act to be kept and provide for the appointment of auditors;
- (g) regulating the form and content of advertisements concerning the services offered by persons carrying on business as travel agents;
- (h) providing for the furnishing of returns to enable calculation of contributions to the compensation fund;
- (i) prescribing penalties not exceeding 20 penalty units for contravention of, or noncompliance with any regulation;

- (j) matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed to achieve the objects and purposes of this Act and in respect of which no other means of prescription is provided for.

(2) A regulation may be of general or limited application and may vary according to the persons or classes of persons, the times, the places or the circumstances to which it is expressed to apply.

(3) A regulation made under subsection (1)(a) may refer to, or incorporate, in whole or in part, and with or without modification, a code of practice for the time being, or from time to time, adopted by a body which, in the opinion of the Governor in Council, represents the interests of a substantial number of persons licensed under this Act.

(4) A regulation made under subsection (1)(b) may provide that a prescribed qualification for the holder of a licence may be a qualification specified in the regulation or such other qualification as, in the particular case, the Commissioner accepts as qualifying a person to hold a licence.

### **Termination of Act**

**58.** This Act shall expire on 1 July 1995 and shall cease to be of force and effect.

### **Review of operation of Act**

**59.** Before the expiration of this Act the Minister shall arrange for a review of the effectiveness of the operation of this Act.

**ENDNOTES****1 Index to Endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 23 November 1994. Future amendments of the Travel Agents Act 1988 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

**3 List of legislation****Travel Agents Act 1988 No. 56**

date of assent 12 May 1988

ss 1–2 commenced on date of assent

ss 3–11, 14–30 and 36–58 commenced 1 July 1988 (proc pubd Ind Gaz 4 June 1988 p 385)

remaining provisions commenced 1 October 1988 (proc pubd Ind Gaz 4 June 1988 p 385)

**Note**—This Act expires 1 July 1995 (see s 58)

as amended by—

**Consumer Law (Miscellaneous Provisions) Act 1993 No. 82 s 3 Sch 1**

date of assent 17 December 1993

commenced on date of assent



## 4 List of annotations

### Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
exp	=	expires/expired
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
R1	=	Reprint No. 1
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

### Arrangement

s 4 om R1 (see RA s 36)

### Definitions

prov hdg sub 1993 No. 82 s 3 Sch 1

s 6 amd 1993 No. 82 s 3 Sch 1

def **“Commissioner or Commissioner for Consumer Affairs”** sub 1993 No. 82 s 3 Sch 1

def **“functions”** om R1 (see RA s 39)

def **“inspector”** sub 1993 No. 82 s 3 Sch 1

def **“Minister”** om R1 (see RA s 39)

def **“officer”** sub 1993 No. 82 s 3 Sch 1

## 5 Table of changed names and titles

TABLE OF CHANGED NAMES AND TITLES  
under the Reprints Act 1992 ss 23 and 23A

Old	New	Reference provision
Commissioner (of Police)	Commissioner (of the Police Service)	Police Service Administration Act s 11.1(1)(b)
Consolidated Revenue Fund	Consolidated Fund	Financial Administration and Audit Act 1977 s 112
member (of the police force)	police officer	Police Service Administration Act 1990 s 11.1(1)(c) (see also s 1.4)

## 6 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS  
under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
definitions to be read in context	Acts Interpretation Act 1954 s 32A
references to a Territory	Acts Interpretation Act 1954 s 36 def "Territory"
def "function(s)"	Acts Interpretation Act 1954 s 36 def "function"
def "Minister"	Acts Interpretation Act 1954 s 36 def "Minister"

## 7 Table of corrected minor errors

TABLE OF CORRECTED MINOR ERRORS  
under the Reprints Act 1992 s 44

Section	Description
43(2)	omit 'any provisons' ins 'any provisions'

## 8 Table of renumbered provisions

### TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

Previous	Renumbered as
6, def "authorised officer", 1st unnum para	6, def "authorised officer", (a)
6, def "authorised officer", 2nd unnum para	6, def "authorised officer", (b)
6, def "authorised officer", 3rd unnum para	6, def "authorised officer", (c)
6, def "authorised officer", 4th unnum para	6, def "authorised officer", (d)
10(1)	10
26(1), 2nd sentence	26(1A)
26(3), 2nd sentence	26(3A)
26(7), 2nd sentence	26(7A)
26(10), 2nd sentence	26(10A)
41(3), 2nd sentence	41(3A)
45(5)(a)	45(5)
45(5)(b)	45(6)
45(5)(b)(i)	45(6)(a)
45(5)(b)(ii)	45(6)(b)
45(5)(c)	45(7)
45(5)(c)(i)	45(7)(a)
45(5)(c)(ii)	45(7)(b)