

Queensland



TOURISM SERVICES ACT 2003

Act No. 61 of 2003

Queensland



TOURISM SERVICES ACT 2003

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Queensland



Tourism Services Act 2003

Act No. 61 of 2003

An Act to provide protection for tourists in dealings with inbound tour operators and tour guides, and for related purposes

[Assented to 13 October 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Tourism Services Act 2003*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act binds all persons

(1) This Act binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) Subsection (1) does not make the State, the Commonwealth or another State liable to be prosecuted for an offence or proceeded against for a relevant contravention.

4 Main purpose of Act

The main purpose of this Act is to provide for fair trading in the tourism services industry by—

- (a) establishing a registration system for inbound tour operators; and
- (b) providing for codes of conduct for inbound tour operators and tour guides including the setting of minimum standards for—
 - (i) carrying on the business of an inbound tour operator; or
 - (ii) tour guides; and
- (c) prohibiting unconscionable conduct by inbound tour operators and tour guides; and
- (d) promoting sound business practices by inbound tour operators and tour guides.

5 Non-application of Act

(1) This Act does not apply to a person to the extent the person merely provides a travel package, or guiding services for tourists—

- (a) on a not for profit basis; or
- (b) for a community purpose if all net proceeds from the package or services are applied solely to furthering the community purpose.

(2) In this section—

“**community purpose**” means—

- (a) a benevolent or philanthropic purpose, including, for example, the promotion of art, charity, culture, education, medicine, religion or science; or
- (b) a sporting or recreational purpose.

“**not for profit basis**”, for providing a travel package or guiding services, means the provision of the package or service—

- (a) does not have a significant commercial purpose or character; and
- (b) does not primarily seek to make a profit for anyone.

6 This Act’s interaction with other laws

This Act does not limit any other law.

Example—

The Criminal Code, sections 12 to 14 include some of the provisions that apply the criminal law of Queensland to particular acts or omissions occurring outside Queensland.

PART 2—INTERPRETATION

7 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

8 Meaning of “associated person” and “effective control”

(1) An “**associated person**” of an applicant for registration or renewal of registration is a person who is not the applicant but nevertheless is, or would be if the registration were granted or renewed, in effective control of the applicant’s business.

(2) An “**associated person**” of a registrant is a person who is not the registrant but nevertheless is in effective control of the registrant’s business.

(3) A person who is in “**effective control**” of a business includes a person who—

- (a) is regularly or usually in charge of the business; or
- (b) regularly directs staff of the business in their duties; or
- (c) is in a position to control or substantially influence the business.

(4) If an applicant for registration or renewal of registration, or a registrant, is a corporation, each executive officer of the corporation is taken to be an “**associated person**” of the applicant or registrant.

9 Meaning of “inbound tour operator” and “carry on the business of an inbound tour operator”

(1) An “**inbound tour operator**” is a person who alone or with others—

- (a) carries on a business of selling to any of the following entities who are overseas entities, for an inclusive price, travel packages¹ that include persons visiting, or travelling in, Queensland—
 - (i) wholesalers of travel packages;
 - (ii) retailers of travel packages;
 - (iii) corporate buyers of travel packages, including, for example, an overseas corporation that buys travel packages for its employees; or
- (b) holds himself, herself or itself out in any way as carrying on a business mentioned in paragraph (a); or
- (c) is entitled to share in the income of a business mentioned in paragraph (a).

¹ Travel package is defined in the dictionary in schedule 2.

(2) For subsection (1), it is immaterial whether or not the person—

- (a) has a place of business in Queensland; or
- (b) directly or indirectly provides other tourism services to persons who use a travel package of the inbound tour operator.

(3) A person mentioned in subsection (1)(a), (b) or (c) is taken to **“carry on the business of an inbound tour operator”**.

(4) Despite subsections (1)(c) and (3), a person is not an inbound tour operator, and is not taken to carry on the business of an inbound tour operator, only because the person is entitled to share, as a shareholder, in the income of the business of an inbound tour operator that is a corporation.

10 Meaning of “tour guide”

(1) A **“tour guide”** is an individual who, for reward, personally supplies guiding services to tourists.

(2) For subsection (1), an individual supplies guiding services for reward if the individual receives a payment or other benefit for supplying the services, regardless of—

- (a) who makes the payment or provides the other benefit; or
- (b) where the payment is made or the other benefit is provided.

Example of benefit other than money—

provision of accommodation, flights or food

(3) Also, for subsection (1), an individual is taken to supply guiding services for reward if he or she supplies the services as work experience, regardless of whether or not he or she is, or has an expectation he or she will be, later paid for supplying guiding services.

(4) Further, for subsection (1), an individual supplies guiding services whether the individual supplies the services for the whole, or only part, of the time the tourists are in Queensland.

11 Notes in text

A note in the text of this Act is part of this Act.

PART 3—REGISTRATION

Division 1—Requirement of registration

12 Requirement to be registered

(1) A person must not carry on the business of an inbound tour operator unless the person is a registrant whose registration is not suspended.

Maximum penalty—200 penalty units.

(2) It is a defence to an offence against subsection (1) for the person to prove the person is an exempt person.

Note—

The provisions of this Act about unconscionable conduct by inbound tour operators apply to all inbound tour operators whether or not they are exempt persons under this section.

(3) A person is an exempt person if—

- (a) the person carries on the business of an inbound tour operator; and
- (b) also carries on a business of selling to persons in Australia travel packages that include persons visiting or travelling in Queensland; and
- (c) either—
 - (i) the person has carried on the business of an inbound tour operator for 12 months immediately preceding the date of the alleged offence and the percentage of travel packages sold by the person in carrying on that business in that period is less than 20% of the total number of travel packages sold by the person in that period in carrying on business as mentioned in paragraphs (a) and (b); or
 - (ii) the person has not carried on the business of an inbound tour operator for 12 months immediately preceding the date of the alleged offence and, having regard to the business already carried on, and the business likely to be carried on, by the person in the 12 month period starting when the person started to carry on the business of an inbound tour operator, it is likely that the percentage of travel packages sold by the person in carrying on the business of an inbound

tour operator in that 12 month period will be less than 20% of the total number of travel packages likely to be sold by the person in that period in carrying on business as mentioned in paragraphs (a) and (b).

Examples for subsection (3)(c)(i)—

Example 1

Over the past 12 months X sells 10 travel packages to a retailer of travel packages who is an overseas entity and sells 90 travel packages to an inbound tour operator in Australia. X complies with subsection (3)(c)(i) because only 10% of the total number of travel packages sold by X were sold in carrying on the business of an inbound tour operator.

Example 2

Over the past 12 months Y sells 80 travel packages to a wholesaler of travel packages who is an overseas entity and sells 20 travel packages to an inbound tour operator in Australia. Y does not comply with subsection (3)(c)(i) because 80% of the total number of travel packages sold by Y were sold in carrying on the business of an inbound tour operator.

Example for subsection (3)(c)(ii)—

Z begins selling travel packages 3 months before the date of the alleged offence. Z advertises the packages in a way that is directed primarily at entities in Australia.

In that 3 month period Z sells 40 travel packages to entities within Australia and 5 packages to a retailer of travel packages who is an overseas entity. The 5 packages were sold on the first day of that period.

Z may be able to establish that, in the 12 months starting when Z commenced selling travel packages it is likely that the number of travel packages to be sold by Z in carrying on the business of an inbound tour operator will be less than 20% of the total number of travel packages likely to be sold by Z.

Division 2—Suitability for registration

13 Suitability for registration

(1) The commissioner may grant an application for registration, or renewal of registration, only if the commissioner is satisfied the applicant is a suitable person to hold registration.

(2) In deciding whether an applicant is a suitable person to hold registration, the commissioner may have regard to any issue relevant to the applicant's ability to carry on the business of an inbound tour operator in a competent and ethical way.

(3) Also, in deciding whether an applicant is a suitable person to hold registration, the commissioner may have regard to the fact that—

- (a) an order has been made against the applicant under part 9;² or
- (b) the tribunal has made an order against the applicant for a contravention of section 35(1);³ or
- (c) the applicant has been convicted of an offence against this Act, the *Fair Trading Act 1989*, the *Travel Agents Act 1988*, the *Trade Practices Act 1974* (Cwlth) or a corresponding law within the last 5 years.

14 When applicant is not a suitable person

The applicant is not a suitable person to hold registration if the applicant, or an associated person of the applicant—

- (a) is an individual who is under 18; or
- (b) is an insolvent under administration within the meaning of the Corporations Act, section 9; or
- (c) has been convicted of a disqualifying offence within the last 5 years; or
- (d) has breached an undertaking accepted by the commissioner under part 7 of this Act, or the *Fair Trading Act 1989*, part 5, division 1B, within the last 5 years; or
- (e) is a corporation that is an externally-administered body corporate within the meaning of the Corporations Act, section 9.

15 Inquiries about applicant's suitability to hold registration

(1) The commissioner may inquire about the applicant or an associated person of the applicant to help in deciding whether the applicant is a suitable person to hold registration.

(2) If asked by the commissioner, the commissioner of the police service must give the commissioner a written report about the criminal history of the applicant or a named associated person of the applicant.

2 Part 9 (Civil penalties, compensation orders and other orders for unconscionable conduct)

3 Section 35 (Unconscionable conduct)

(3) Subsection (2) applies to the criminal history—

- (a) that is in the possession of the commissioner of the police service; or
- (b) to which the commissioner of the police service ordinarily has access through arrangements with the police service of the Commonwealth or another State.

(4) Information required to be supplied under this section may be used only to decide whether the applicant is a suitable person to hold registration and must not be disclosed for any purpose other than as provided by section 94.⁴

(5) The commissioner must destroy a report given to the commissioner under this section as soon as practicable after it is no longer needed for the purpose for which it was requested.

Division 3—Conditions on registration

16 Definition for div 3

In this division—

“**change**” means amend, include or remove.

17 Registration may be granted or renewed on conditions

(1) The commissioner may grant or renew registration on the conditions the commissioner considers necessary or desirable—

- (a) for the proper carrying on of the business of an inbound tour operator; or
- (b) for another purpose consistent with the achievement of the main purpose of this Act.

Example of condition upon which registration may be granted or renewed—

a condition that the registrant not engage in conduct that was the subject of an undertaking by the registrant and accepted by the commissioner under this Act

(2) A condition may limit the carrying on of the business of an inbound tour operator.

4 Section 94 (Confidentiality of information)

(3) If the commissioner decides to grant or renew registration on a condition, the commissioner must give the registrant an information notice within 14 days after the decision is made.

18 Changing conditions of registration

(1) The commissioner may change a condition of registration—

- (a) on the application of the registrant; or
- (b) on the order of a court; or
- (c) on the order of the tribunal made in a disciplinary proceeding; or
- (d) on the commissioner's own initiative.

(2) An application under subsection (1)(a) must be made in the approved form and be accompanied by the application fee prescribed under a regulation.

(3) If the commissioner grants the application, the commissioner must give the registrant notice of the decision.

(4) If the commissioner decides to refuse the application, the commissioner must give the registrant an information notice for the decision within 14 days after the decision is made.

(5) Before changing a condition under subsection (1)(d), the commissioner must—

- (a) give notice to the registrant to whom the condition relates—
 - (i) of the way the commissioner proposes to change the condition; and
 - (ii) that the registrant may make written submissions to the commissioner about the proposal before a stated day that is at least 14 days after the notice is given to the registrant; and
- (b) have regard to the written submissions, if any, made to the commissioner by the registrant before the stated day.

(6) If the commissioner decides to change the conditions of registration under subsection (1)(d), the commissioner must give the registrant an information notice for the decision within 14 days after the decision is made.

(7) The decision under subsection (6) takes effect—

- (a) on the day the information notice is given to the registrant; or
- (b) if a later day is stated in the information notice, the later day.

19 Return of registration certificate for changing conditions

(1) If the commissioner changes a condition of registration under section 18, the commissioner may, by notice given to the registrant to whom the condition applies, require the registrant to produce the registration certificate, for changing, within a stated reasonable period of at least 14 days.

(2) The registrant must comply with the requirement, unless the registrant has a reasonable excuse.

Maximum penalty—100 penalty units.

Division 4—Applications for registration

20 Application for registration

(1) A person may apply to the commissioner for registration.

(2) The application must—

- (a) be in the approved form; and
- (b) state the names and business addresses of all associated persons of the applicant; and
- (c) be accompanied by the application fee and registration issue fee prescribed under a regulation.

(3) The applicant must state in the application whether the application is for registration for a term of 1 or 3 years.

(4) The commissioner may, by notice given to the applicant, require the applicant to give the commissioner further information or documents relevant to the application within a stated reasonable period of at least 14 days.

(5) If the applicant fails to comply with the commissioner's requirement within the stated reasonable period—

- (a) the applicant is taken to have withdrawn the application; and

- (b) the commissioner must refund the registration issue fee paid by the applicant, if any.

(6) Despite subsection (2)(c), the application need not be accompanied by the fees mentioned in subsection (2)(c) if the applicant holds a licence under the *Travel Agents Act 1988* or a law of another State that provides for the same matter as that Act.

Note—

Under section 82(1)(b) it is a ground for starting a disciplinary proceeding against a registrant that the registrant obtained registration because of a materially false or misleading representation or declaration.

21 Decision on application

(1) The commissioner must consider the application for registration and—

- (a) grant registration, with or without conditions; or
(b) refuse to grant registration.

(2) However, the commissioner must not consider the application unless it is properly made under section 20.

(3) If the commissioner decides to grant registration, the commissioner must grant registration for the term stated in the application for registration.

(4) If the commissioner decides to refuse to grant registration, the commissioner must—

- (a) give the applicant an information notice about the decision within 14 days after the decision is made; and
(b) refund the registration issue fee paid by the applicant, if any.

Division 5—Renewal of registration

22 Application for renewal of registration

(1) A registrant may apply to the commissioner for renewal of the registrant's registration before the registration expires.

(2) The application must—

- (a) be in the approved form; and

- (b) state the names and business addresses of all associated persons of the registrant; and
- (c) be accompanied by the registration renewal fee prescribed under a regulation.

(3) The registrant must state in the application whether the application is for registration for a term of 1 or 3 years.

(4) The commissioner may, by notice given to the registrant, require the registrant to give the commissioner further information or documents relevant to the application within a stated reasonable period of at least 14 days.

(5) If the registrant fails to comply with the commissioner's requirement within the stated reasonable period—

- (a) the registrant is taken to have withdrawn the application; and
- (b) the commissioner must refund the registration renewal fee paid by the registrant, if any.

(6) Despite subsection (2)(c), the application need not be accompanied by the fee mentioned in subsection (2)(c) if the registrant holds a licence under the *Travel Agents Act 1988* or a law of another State that provides for the same matter as that Act.

23 Decision on application

(1) The commissioner must consider the application for renewal of registration and—

- (a) grant the renewal, with or without conditions; or
- (b) refuse to grant the renewal.

(2) However, the commissioner must not consider the application unless it is properly made under section 22.

(3) If the commissioner decides to grant the renewal, the commissioner must grant registration for the term stated in the application.

(4) If the commissioner decides to refuse to grant the renewal, the commissioner must—

- (a) give the registrant an information notice about the decision within 14 days after the decision is made; and
- (b) refund the registration renewal fee paid by the registrant, if any.

24 Registration continues pending decision about renewal

(1) If a registrant applies for renewal of registration under section 22, the registration is taken to continue in force from the day it would, apart from this subsection, have ended until the day on which any of the following first happens—

- (a) the commissioner renews the registration;
- (b) if the commissioner decides to refuse to grant the renewal, the commissioner gives the registrant an information notice about the decision;
- (c) the registrant is taken to have withdrawn the application under section 22(5).

(2) If the commissioner renews the registration, the registration is taken to have been renewed from the day it would, apart from subsection (1), have ended.

(3) Subsection (1) does not apply if the registration is earlier cancelled or suspended.

Division 6—Surrender of registration**25 Surrender of registration**

(1) A registrant may surrender the registrant's registration by signed notice given to the commissioner.

(2) The surrender takes effect on the day the notice of surrender is given to the commissioner or, if a later day of effect is stated in the notice, the later day.

(3) The registrant must return the registration certificate to the commissioner within 14 days after the surrender takes effect, unless the registrant has a reasonable excuse.

Maximum penalty for subsection (3)—20 penalty units.

*Division 7—Registration certificates***26 Commissioner to issue registration certificates**

(1) The commissioner must, as soon as practicable after deciding to grant registration, or renewal of registration, give the registrant a certificate (a “**registration certificate**”).

(2) The registration certificate must be in the approved form and must contain the following—

- (a) the name of the registrant;
- (b) the date on which the registration, or renewal of registration, starts;
- (c) the date on which the registration, or renewal of registration, ends;
- (d) conditions of the registration, if any;
- (e) other particulars, if any, prescribed under a regulation.

27 Replacement of registration certificate

(1) A registrant may apply to the commissioner for the replacement of a damaged, destroyed, lost, or stolen registration certificate.

(2) The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.

(3) The commissioner must grant the application if the commissioner is satisfied the certificate has been damaged in a way that requires its replacement, destroyed, lost, or stolen.

(4) If the commissioner grants the application, the commissioner must issue another registration certificate to the registrant to replace the damaged, destroyed, lost, or stolen certificate.

(5) If the commissioner decides to refuse the application, the commissioner must give the registrant an information notice for the decision within 14 days after the decision is made.

Division 8—Register about registrations**28 Commissioner to keep register**

(1) The commissioner must keep a register about registrations.

(2) The register must contain the following details for each registrant—

- (a) the registrant's name;
- (b) the registrant's business name and trading name, if any;
- (c) the registrant's business address;
- (d) the dates when the current registration started and ends;
- (e) any conditions of the registration;
- (f) particulars of any cancellation, surrender or suspension of the registration;
- (g) the name, business name and trading name, if any, and business address of each associated person of the registrant.

(3) The register must be kept in the form and in the way decided by the commissioner.

(4) A person may, on payment of the fee, if any, prescribed under a regulation, inspect, or obtain a copy of an entry in, the register—

- (a) at the department's head office when it is open to the public; or
- (b) at another place decided by the commissioner.

(5) In this section—

“**entry**”, for the register, means all the details about a particular registrant.

Division 9—Immediate suspension and cancellation of registration**29 Immediate suspension**

(1) This section applies if the commissioner considers, on reasonable grounds, that—

- (a) a registrant is contravening, or has contravened this Act, the *Fair Trading Act 1989*, the *Travel Agents Act 1988*, the *Trade Practices Act 1974* (Cwlth) or a corresponding law; and

- (b) tourists may suffer, or have suffered, detriment because of the contravention.

Example for subsection (1)—

A registrant takes tourists to a retail outlet, for which the registrant receives a commission from the owner of the outlet, to purchase goods in circumstances that contravene section 35.⁵ The tourists purchase goods from the outlet. The tourists could have purchased goods of the same or a similar quality from other retail outlets in the vicinity at a considerably lower price. This was known to the registrant who failed to tell the tourists. Because of the contravention the tourists have suffered detriment.

(2) The commissioner may suspend the registrant's registration for not more than 28 days.

(3) The suspension—

- (a) must be effected by an information notice given to the registrant about the decision to suspend the registration; and
- (b) operates immediately the notice is given.

(4) The registrant must return the registration certificate to the commissioner within 14 days after the registrant is given the information notice, unless the registrant has a reasonable excuse.

Maximum penalty for subsection (4)—100 penalty units.

30 Suspension continues if disciplinary proceedings started

(1) This section applies if a registrant's registration is suspended under section 29 and while it is suspended the commissioner applies—

- (a) to the tribunal to start disciplinary proceedings against the registrant for the contravention and detriment that gave rise to the suspension; or
- (b) to the District Court under section 78⁶ in relation to the contravention.

(2) The suspension continues until the first of the following to happen—

- (a) the disciplinary proceedings are decided by the tribunal;
- (b) the commissioner withdraws the application;

5 Section 35 (Unconscionable conduct)

6 Section 78 (Application for order imposing civil penalties)

- (c) the tribunal or the District Court, on application by the registrant, orders that the suspension end.

31 Return of registration certificate after suspension

(1) This section applies if a registrant's registration certificate is returned to the commissioner after suspension under section 29, and the registration is still current when it stops being suspended under that section or section 30.

- (2) The commissioner must return the certificate to the registrant.

32 Immediate cancellation after conviction for serious offence etc.

(1) A person's registration is cancelled if the person is convicted of a serious offence or an order is made against the person under part 9.⁷

(2) The person must return the person's registration certificate to the commissioner within 14 days after the cancellation happens, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) In this section—

“corresponding law” means a law of another State or another country that provides for the same, or substantially the same, matter as the *Fair Trading Act 1989*, part 3,⁸ or a provision of that part.

“serious offence” means an offence under the *Fair Trading Act 1989*, part 3, or a corresponding law for which the maximum penalty is at least 100 penalty units, an amount at least equal to the value of 100 penalty units, or imprisonment.

7 Part 9 (Civil penalties, compensation orders and other orders for unconscionable conduct)

8 *Fair Trading Act 1989*, part 3 (Trade practices)

Division 10—Other provisions about registration**33 Requirement to notify changes in circumstances**

A registrant must, within 30 days after the happening of a change in the registrant's circumstances prescribed under a regulation, give the commissioner a signed notice stating details of the change.

Maximum penalty—50 penalty units.

34 Registration not transferable

Registration is not transferable to another person and does not vest in another person by operation of law.

PART 4—UNCONSCIONABLE CONDUCT**35 Unconscionable conduct**

(1) An inbound tour operator or tour guide must not, in relation to supplying services to a tourist, engage in conduct that is, in all the circumstances, unconscionable.

(2) For deciding whether an inbound tour operator or tour guide has contravened subsection (1), regard must not be had to any circumstances that were not reasonably foreseeable at the time of the alleged contravention.

(3) Subsection (1) is in addition to, does not limit, and is not in substitution for, any right, entitlement or remedy under common law or otherwise.

Note—

A proceeding for a contravention of subsection (1) may be taken under parts 7 to 10.⁹

⁹ Parts 7 (Undertakings), 8 (Injunctions), 9 (Civil penalties, compensation orders and other orders for unconscionable conduct) and 10 (Disciplinary proceedings)

36 Matters that may indicate unconscionable conduct

(1) Without limiting the matters to which regard may be had to decide if an inbound tour operator or tour guide has contravened section 35(1), regard may be had to all or any of the following—

- (a) the relative strengths of the bargaining positions of the inbound tour operator (the “**service provider**”), the tour guide (also the “**service provider**”) or a business associate of the inbound tour operator or tour guide (also the “**service provider**”) and the tourist;
- (b) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the tourist by the service provider;
- (c) the extent to which the service provider unreasonably failed to tell the tourist about—
 - (i) any intended conduct of the service provider that might affect the interests of the tourist; or
 - (ii) any apparent risk to the tourist from the intended conduct;
- (d) the extent to which the service provider failed to tell the tourist about any relationship between the service provider and an entity who was involved in the provision of a service to the tourist;

Examples of a relevant relationship between a service provider and an entity—

Example 1

A service provider owns, has a proprietary interest in, or receives a payment or other benefit from a retail establishment to which the service provider takes a tourist for the purpose of the tourist purchasing goods.

Example 2

An inbound tour operator publishes, or contributes material to, a brochure for the use of tourists that contains an itinerary for the tourists. The inbound tour operator is the owner of a retail establishment listed in the brochure as a place at which the tourists can purchase goods or services.

- (e) whether the tourist’s ability to protect the tourist’s interests was affected by the tourist’s cultural, language or religious characteristics;
- (f) the amount for which, and the circumstances under which, the tourist could have acquired identical or equivalent services—
 - (i) from a person other than the service provider; or

- (ii) without the help of the service provider;
- (g) if the service provider supplies a service of selling goods to a tourist, or taking a tourist to a place to purchase goods or services, the amount for which, and the circumstances under which, the tourist could have acquired identical or equivalent goods or services—
 - (i) from a person other than the service provider; or
 - (ii) without the help of the service provider;
- (h) whether the service provider acted to prevent or dissuade the tourist from making a choice about where to eat, shop, stay or visit in circumstances where it would have been reasonable to have allowed the tourist to make the choice;

Example of circumstance in which service provider acts to prevent choice—

To facilitate shopping by tourists, a service provider takes them to a retail outlet (the “**first outlet**”) in an area away from competing outlets. The provider is aware of competing outlets in places to be visited by the tourists as part of their itinerary but, before taking them to the first outlet, fails to tell them that they will have the opportunity to shop at these outlets also.

- (i) the extent to which, in a dealing with the tourist, the conduct of the service provider toward the tourist was consistent with the conduct of the service provider in a similar dealing with other tourists;
- (j) whether the service provider deceived or misled the tourist;

Examples of deceptive or misleading conduct—

Example 1

A service provider deceives a tourist by telling the tourist that goods the tourist can purchase from a particular retail outlet are ‘good value’, knowing that identical or equivalent goods are available for considerably lower prices from other retail outlets easily accessible by the tourist.

Example 2

A service provider misleads a tourist by telling the tourist that certain goods the tourist is considering buying from a particular retail establishment are likely to be confiscated by customs authorities, knowing that the information is untrue or having no reason to believe that it is true.

- (k) whether the service provider has contravened a code of conduct;
- (l) the provisions of any applicable industry code that the service provider has agreed to be bound by.

(2) In this section—

“apparent risk” means a risk the service provider should reasonably foresee but that may not be apparent to the tourist.

“business associate”, of an inbound tour operator or tour guide (the **“relevant person”**), means—

- (a) an employee of the relevant person; or
- (b) a person with whom the relevant person has a contractual relationship that relates to or affects the tourist, including, for example, a hotelier, restaurateur or retailer with whom the relevant person has a contractual interest that relates to or affects the tourist.

“help” includes direction or guidance, whether or not the tourist asked for the direction or guidance.

37 Not unconscionable conduct only because of legal proceedings

An inbound tour operator or tour guide does not, for section 35(1), engage in unconscionable conduct in relation to supplying services to a tourist only because the inbound tour operator or tour guide, in relation to supplying the services—

- (a) institutes legal proceedings; or
- (b) seeks to have a dispute or claim dealt with through a dispute resolution process.

PART 5—CODES OF CONDUCT

38 Codes of conduct

(1) A regulation may prescribe a code of conduct for inbound tour operators, and a code of conduct for tour guides, relating to supplying services to tourists.

(2) Without limiting subsection (1), a code of conduct may—

- (a) set minimum standards for carrying on the business of an inbound tour operator or for tour guides; or

- (b) establish principles that encourage and facilitate fair dealings between—
 - (i) inbound tour operators and tourists or tour guides and tourists; or
 - (ii) inbound tour operators and businesses or other entities with which tourists come, or are likely to come, in contact or tour guides and those entities; or
- (c) provide for a system of dispute resolution including by requiring an inbound tour operator or tour guide to have a written policy about resolving disputes.

PART 6—INVESTIGATION AND ENFORCEMENT

Division 1—Inspectors

39 Appointment

A person who is an inspector under the *Fair Trading Act 1989* is an inspector for this Act.

40 Limit on powers

(1) A signed notice given to an inspector or a regulation may limit the inspector's powers under this Act.

(2) In this section—

“**signed notice**” means a notice signed by the commissioner.

41 Issue of identity card

(1) The commissioner must issue an identity card to each inspector.

(2) The identity card must—

- (a) contain a recent photo of the inspector; and
- (b) contain a copy of the inspector's signature; and

- (c) identify the person as an inspector under this Act; and
- (d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

42 Production or display of identity card

(1) In exercising a power under this Act in relation to a person, an inspector must—

- (a) produce the inspector's identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 44(1)(b) or (2).

43 Return of identity card

A person who ceases to be an inspector must return the person's identity card to the commissioner within 21 days after ceasing to be an inspector, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

Division 2—Powers of inspectors

Subdivision 1—Entry of places

44 Power to enter places

(1) An inspector may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or

- (d) it is a place where an inbound tour operator carries on the business of an inbound tour operator and the place is open for carrying on the business or otherwise open for entry; or
- (e) it is a place where a tour guide carries on business as a tour guide and the place is open for carrying on the business or otherwise open for entry; or
- (f) the inspector reasonably believes that records relating to carrying on the business of an inbound tour operator, or business as a tour guide, are kept at the place and the place is open for carrying on business or otherwise open for entry.

(2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) Subsection (1)(d) to (f) does not authorise an inspector to enter a part of the place where an individual resides.

Subdivision 2—Procedure for entry

45 Entry with consent

(1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 44(1)(a).

(2) Before asking for the consent, the inspector must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
 - (i) the purpose of the entry; and

- (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the inspector consent to enter the place and exercise powers under this division; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the inspector must immediately give a copy to the occupier.

(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

46 Application for warrant

(1) An inspector may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

47 Issue of warrant

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act or of a relevant contravention; and

- (b) the evidence is at the place, or, within the next 7 days, may be at the place.

(2) The warrant must state—

- (a) that a stated inspector may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry; and
 - (ii) exercise the inspector’s powers under this division; and
- (b) the offence or relevant contravention for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

48 Special warrants

(1) An inspector may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the inspector’s remote location.

(2) Before applying for the special warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax a copy (the “**facsimile warrant**”) to the inspector if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the inspector—

- (a) the magistrate must tell the inspector—
 - (i) what the terms of the special warrant are; and
 - (ii) the date and time the special warrant was issued; and

- (b) the inspector must complete a form of warrant (a “**warrant form**”) and write on it—
- (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the special warrant; and
 - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The inspector must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the inspector completed a warrant form, the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) If—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

49 Warrants—procedure before entry

(1) This section applies if an inspector named in a warrant issued under this division for a place is intending to enter the place under the warrant.

(2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector’s identity card or other document evidencing the inspector’s appointment;

- (b) give the person a copy of the warrant or if the entry is authorised by a facsimile warrant or warrant form mentioned in section 48(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the inspector is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

(3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

Subdivision 3—Powers after entry

50 General powers after entering places

(1) This section applies to an inspector who enters a place.

(2) However, if an inspector enters a place to get the occupier's consent to enter a place, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.

(3) For monitoring or enforcing compliance with this Act, the inspector may—

- (a) search any part of the place; or
- (b) examine, inspect, photograph or film any part of the place or anything at the place; or
- (c) take an extract from, or copy, a document at the place; or
- (d) take into or onto the place any person, equipment or material the inspector reasonably requires for exercising a power under this division; or
- (e) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers mentioned in paragraphs (a) to (d).

(4) When making a requirement mentioned in subsection (3)(e), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

51 Failure to help inspector

(1) A person required to give reasonable help under section 50(3)(e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(2) If the help is required to be given to an inspector by answering a question or producing a document, it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

Subdivision 4—Power to seize evidence**52 Seizing evidence at a place that may be entered without consent or warrant**

Subject to section 54, an inspector who enters a place that may be entered under this division without the consent of the occupier and without a warrant, may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act or of a relevant contravention.

53 Seizing evidence at a place that may only be entered with consent or warrant

(1) Subject to section 54, this section applies if—

- (a) an inspector is authorised to enter a place under this division only with the consent of the occupier or a warrant; and
- (b) the inspector enters the place after obtaining the necessary consent or warrant.

(2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place if—

- (a) the inspector reasonably believes the thing is evidence of an offence against this Act or of a relevant contravention; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(3) If the inspector enters the place with a warrant, the inspector may seize the evidence for which the warrant was issued.

(4) The inspector also may seize anything else at the place if the inspector reasonably believes—

- (a) the thing is evidence of an offence against this Act or of a relevant contravention; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) hidden, lost or destroyed; or
 - (ii) used to continue, or repeat, the offence or relevant contravention.

(5) Also, the inspector may seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against this Act or a relevant contravention.

54 Limitation on power to seize

An inspector must not seize a thing under section 52 or 53 that the inspector knows or suspects is the property, or in the possession, of a tourist.

55 Receipt for seized things

(1) As soon as possible after an inspector seizes a thing (a “**seized thing**”), the inspector must give a receipt for the seized thing to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.

(3) The receipt must describe generally each seized thing and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing’s nature, condition and value.

56 Forfeiture of seized thing

(1) A seized thing is forfeited to the State if the inspector who seized the thing—

- (a) can not find its owner, after making reasonable inquiries; or
- (b) can not return it to its owner, after making reasonable efforts; or
- (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit an offence against this Act or a relevant contravention.

(2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner; and
- (b) subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

Example—

The owner of the thing has migrated to another country.

(3) If the inspector makes a decision under subsection (1)(c), resulting in the seized thing being forfeited to the State, the inspector must, as soon as practicable, give the owner an information notice for the decision.

(4) Subsection (3) does not apply if—

- (a) the inspector can not find the owner, after making reasonable inquiries; or
- (b) it is impracticable or would be unreasonable to give the information notice.

(5) Regard must be had to a thing's nature, condition and value—

- (a) in deciding—
 - (i) whether it is reasonable to make inquiries or efforts; and
 - (ii) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable; or
- (b) in deciding whether it would be unreasonable to give the information notice.

57 Forfeiture on conviction

(1) On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of—

- (a) anything used to commit the offence; or
- (b) anything else the subject of the offence.

(2) The court may make the order—

- (a) whether or not the thing has been seized; or
- (b) if the thing has been seized, whether or not the thing has been returned to its owner.

(3) The court may make any order to enforce the forfeiture it considers appropriate.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

58 Dealing with forfeited things etc.

(1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the commissioner as the commissioner considers appropriate.

(2) Without limiting subsection (1), the commissioner may destroy or dispose of the thing.

(3) Despite subsection (1), the commissioner must not deal with the thing in a way that could prejudice the outcome of an appeal, relevant to the thing, of which the commissioner is aware.

59 Access to seized things

(1) Until a seized thing is forfeited or returned, an inspector must allow a person who would be entitled to the seized thing, if it were not in the inspector's possession, to inspect it and, if it is a document, to take extracts from it or copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

60 Return of seized things

(1) If a seized thing is not forfeited, an inspector must return it to its owner at the end of—

- (a) 6 months; or
- (b) if a proceeding for an offence, a disciplinary proceeding or a proceeding under part 9, involving it is started within 6 months—the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), the inspector must immediately return the seized thing to its owner if the inspector is satisfied that—

- (a) its retention as evidence is no longer necessary; and
- (b) its return is not likely to result in its use in repeating an offence against this Act or a relevant contravention.

Subdivision 5—Power to require information**61 Power to require name and address**

(1) This section applies if an inspector—

- (a) finds a person committing an offence against this Act or a relevant contravention; or
- (b) finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act or a relevant contravention.

(2) The inspector may require the person to state the person's name and address.

(3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(4) The inspector may require the person to give evidence of the correctness of the stated name or address if the inspector reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(6) A person does not commit an offence against subsection (5) if—

- (a) the person was required to state the person's name and address by an inspector who suspected the person had committed an offence against this Act or a relevant contravention; and
- (b) the person is not proved to have committed the offence or relevant contravention.

(7) In this section—

“**address**”, of a person, includes the person's residential and business address and, for a person temporarily in Queensland, includes the place where the person is living in Queensland.

62 Power to require information

(1) This section applies if an inspector believes, on reasonable grounds—

- (a) an offence against this Act or a relevant contravention has been committed; and
- (b) a person may be able to give information about the offence or relevant contravention.

(2) The inspector may require the person to give information, including a document, about the offence or relevant contravention.

(3) The inspector may require the person to give the inspector the information at a stated reasonable place at a stated reasonable time.

(4) The person must comply with a requirement under subsection (2) or (3), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(5) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual or implicate the individual in a relevant contravention.

Subdivision 6—Compensation

63 Notice of damage

(1) This section applies if—

- (a) an inspector damages property when exercising or purporting to exercise a power; or
- (b) a person (the **“other person”**) acting under the direction or authority of an inspector damages property.

(2) The inspector must, as soon as practicable, give notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.

(3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector’s or other person’s control, the inspector may state the belief in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the inspector reasonably believes is trivial.

(6) In this section—

“owner”, of property, includes the person in possession or control of it.

64 Compensation

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under any of the following subdivisions of division 2¹⁰—

- subdivision 1 (Entry of places)
- subdivision 3 (Powers after entry)
- subdivision 4 (Power to seize evidence).

(2) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

10 Division 2 (Powers of inspectors)

(3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

Subdivision 7—General enforcement matters

65 False or misleading statements

A person must not state anything to an inspector the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

66 False or misleading documents

(1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the inspector, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

67 Obstructing inspectors

(1) A person must not obstruct an inspector in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) If a person obstructs an inspector in the exercise of a power under this Act and the inspector decides to exercise the power, the inspector must warn the person that—

- (a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
- (b) the inspector considers the person's conduct is an obstruction.

(3) In this section—

“**obstruct**” includes hinder, resist and attempt to obstruct.

68 Impersonation of inspector

A person must not pretend to be an inspector.

Maximum penalty—50 penalty units.

PART 7—UNDERTAKINGS

69 Commissioner may seek undertaking after contravention

(1) If the commissioner believes, on reasonable grounds, an inbound tour operator or tour guide has contravened this Act, the commissioner may, by written notice given to the inbound tour operator or tour guide—

- (a) state the act or omission the commissioner believes is the contravention; and
- (b) ask the inbound tour operator or tour guide to give the commissioner a written undertaking that the inbound tour operator or tour guide will not continue or repeat the act or omission.

(2) Subsection (3) applies if the inbound tour operator or tour guide gives the undertaking, the commissioner accepts it and either—

- (a) the contravention is conduct consisting of an act or omission and the inbound tour operator or tour guide does not repeat the conduct; or
- (b) the contravention is conduct consisting of a series of acts or omissions and the inbound tour operator or tour guide stops the conduct and does not later repeat it.

(3) A person can not start an offence proceeding or a proceeding under part 9 or 10¹¹ against the inbound tour operator or tour guide for the contravention, unless the commissioner withdraws his or her acceptance of the undertaking under section 70(1)(b).

70 Variation and withdrawal of undertakings

(1) If the commissioner accepts the undertaking—

- (a) it may be varied or withdrawn by the inbound tour operator or tour guide if the commissioner agrees to the variation or withdrawal; or
- (b) the commissioner may withdraw his or her acceptance of it, if the commissioner believes, on reasonable grounds, that—
 - (i) before it was accepted, the inbound tour operator or tour guide contravened this Act in a way unknown to the commissioner; and
 - (ii) had the commissioner known about the contravention, the commissioner would not have accepted the undertaking or would not have accepted it unless its terms were changed.

(2) The commissioner may also withdraw his or her acceptance of the undertaking if the commissioner believes, on reasonable grounds, the undertaking is no longer necessary.

(3) If the commissioner varies, or withdraws his or her acceptance of, or agrees to the variation or withdrawal of, the undertaking, the commissioner must give the inbound tour operator or tour guide notice of the variation, withdrawal or agreement.

(4) The variation or withdrawal takes effect when notice of the variation, withdrawal or agreement is given to the inbound tour operator or tour guide.

(5) The undertaking as varied under this section is taken to be accepted by the commissioner.

11 Part 9 (Civil penalties, compensation orders and other orders for unconscionable conduct) or 10 (Disciplinary proceedings)

71 Enforcement of undertakings

(1) If the commissioner believes, on reasonable grounds, an inbound tour operator or tour guide (the “**undertaker**”) has contravened a term of an undertaking accepted by the commissioner, the commissioner may apply to the District Court for an order under this section.

(2) If the court is satisfied the undertaker has contravened the term, the court may make 1 or more of the following orders—

- (a) an order directing the undertaker to comply with the term;
- (b) an order directing the undertaker to pay to the State an amount that is not more than the direct or indirect financial benefit obtained by the undertaker from, and reasonably attributable to, the contravention;
- (c) an order directing the undertaker to pay compensation to someone else who has suffered loss or damage because of the contravention;
- (d) an order directing the undertaker to give a security bond to the State for a stated period;
- (e) another order the court considers appropriate.

(3) The court may order the forfeiture to the State of all or part of a security bond given by an undertaker under subsection (2)(d) if—

- (a) the commissioner applies to the court for the order; and
- (b) the court is satisfied the undertaker contravened the term of the undertaking during the period for which the bond was given.

72 Register of undertakings

(1) The commissioner must keep a register of each undertaking accepted by the commissioner under this part.

(2) The register must be kept in the form and in the way decided by the commissioner.

(3) The register must contain a copy of the undertaking.

(4) A person may, on payment of the fee, if any, prescribed under a regulation, inspect, or obtain a copy of an entry in, the register—

- (a) at the department’s head office when it is open to the public; or
- (b) at another place decided by the commissioner.

(5) In this section—

“**entry**”, for the register, means all the details about a particular undertaking.

PART 8—INJUNCTIONS

73 Who may apply for an injunction

The following persons may apply to the District Court for an injunction—

- (a) the commissioner;
- (b) a person aggrieved by the conduct of another person who is carrying on the business of an inbound tour operator or who is a tour guide.

74 Grounds for injunction

The District Court may grant an injunction against a person if the court is satisfied the person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) contravening this Act; or
- (b) attempting to contravene this Act; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
- (f) conspiring with others to contravene this Act.

75 Court’s powers for injunctions

(1) The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—

(a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind.

(2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—

(a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and

(b) whether or not the person has previously failed to do the act or thing.

(3) An interim injunction may be granted under this part until the application is finally decided.

(4) The District Court may rescind or vary an injunction at any time.

76 Terms of injunction

(1) The District Court may grant an injunction in the terms the court considers appropriate.

(2) Without limiting the court's power under subsection (1), an injunction may be granted restraining a person from carrying on the business of an inbound tour operator, whether or not the person is a registrant or the business is carried on as part of, or incidental to, the carrying on of another business—

(a) for a stated period; or

(b) except on stated terms and conditions.

(3) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person's contravention of this Act.

77 Undertakings as to damages or costs

If the commissioner applies for an injunction under this part, no undertaking as to damages or costs may be required or made.

PART 9—CIVIL PENALITES, COMPENSATION ORDERS AND OTHER ORDERS FOR UNCONSCIONABLE CONDUCT

78 Application for order imposing civil penalties

(1) This section applies if an inbound tour operator or tour guide is alleged to have contravened section 35(1).¹²

(2) The commissioner, or a person (the “**injured person**”) who claims to have suffered financial loss because of the contravention, may apply to the District Court for an order requiring the inbound tour operator or tour guide—

- (a) to pay a money penalty to the State; or
- (b) to pay an amount to the injured person as compensation.

(3) An application by the commissioner may be made together with an application made by the commissioner under part 8.¹³

Note—

Under section 82(1)(a), (2) or (3) the contravention by a registrant, tour guide or inbound tour operator of section 35(1) is also a ground for starting a disciplinary proceeding against the person in the tribunal.

However, under section 97, either of the following actions may be taken, but not both—

- (a) a registrant, tour guide or inbound tour operator may be dealt with by way of a disciplinary proceeding;
- (b) the commissioner or injured person may make an application under section 78(2).

(4) The applicant must, at least 14 days before making the application, give notice of the intention to make the application to—

- (a) if the commissioner intends to make the application—any person the commissioner reasonably believes may have suffered financial loss because of the contravention, if practicable; and
- (b) if an injured person intends to make the application—the commissioner.

12 Section 35 (Unconscionable conduct)

13 Part 8 (Injunctions)

(5) The commissioner or an injured person may make a joint application under subsection (2), or may join in a proceeding started by the other.

79 Orders District Court may make

(1) This section applies if the District Court is satisfied the inbound tour operator or tour guide has contravened section 35(1).

(2) The court may order the inbound tour operator or tour guide to pay to the State, as a money penalty, an amount up to the limit of the court's civil jurisdiction for each contravention.

(3) If satisfied a person has suffered financial loss because of the contravention, the court may order the inbound tour operator or tour guide to pay to the person, as compensation, an amount, decided by the court, up to the limit of the court's civil jurisdiction.

(4) If—

- (a) the court proposes to order an inbound tour operator or tour guide to pay a money penalty under subsection (2) and compensation under subsection (3); and
- (b) the inbound tour operator or tour guide does not have the resources to pay both;

the court must prefer to make an order for compensation.

(5) If—

- (a) the court orders a corporation to pay a money penalty under subsection (2) or compensation under subsection (3); and
- (b) the corporation does not have the resources to pay either or both;

the executive officers of the corporation are jointly and severally liable to pay any amount not paid by the corporation.

(6) It is a defence to a liability under subsection (5) for an executive officer to prove that—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the conduct in question—the officer exercised reasonable diligence to ensure the corporation did not contravene section 35(1); or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the conduct in question.

(7) For subsection (1) or (3), if the court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

(8) In relation to an inbound tour operator who is a registrant, the court may also make any other order the tribunal could make in a disciplinary proceeding for a contravention of section 35(1).

80 Criteria for deciding amount to be ordered

To decide an amount an inbound tour operator or tour guide should be ordered to pay under section 79, the District Court may consider any or all of the following—

- (a) the inbound tour operator or tour guide's conduct before and after the contravention;
- (b) whether the conduct was deliberate;
- (c) the period over which the conduct happened;
- (d) the amount of financial loss caused by the contravention;
- (e) any similar past conduct of the inbound tour operator or tour guide, including conduct happening before the commencement of this section;
- (f) whether the conduct could have been prevented;
- (g) if the inbound tour operator is a corporation—the extent to which the executive officers of the corporation knew or should have known of the contravention;
- (h) any action the inbound tour operator took to remedy the contravention including, for example, compensating persons who suffered financial loss because of it;
- (i) the extent to which the inbound tour operator or tour guide cooperated with the commissioner to remedy the contravention and prevent future contraventions;
- (j) the inbound tour operator's or tour guide's financial position;
- (k) any other relevant factor.

PART 10—DISCIPLINARY PROCEEDINGS

81 Tribunal may conduct disciplinary proceeding

The tribunal may, on application by the commissioner, conduct a proceeding (a “**disciplinary proceeding**”) to decide whether a disciplinary ground is established.

82 Grounds for starting disciplinary proceedings

(1) Each of the following is a ground (a “**disciplinary ground**”) for starting a disciplinary proceeding against a registrant—

- (a) the registrant has contravened this Act;
- (b) the registrant obtained registration because of a materially false or misleading representation or declaration;
- (c) the registrant is not, or is no longer, a suitable person¹⁴ to be registered;
- (d) the registrant has contravened a condition of the registrant’s registration;
- (e) if the registrant’s registration is suspended under section 29, the contravention and detriment relating to the suspension.

(2) It is a ground (a “**disciplinary ground**”) for starting a disciplinary proceeding against a tour guide that the tour guide has contravened this Act.

(3) It is a ground (a “**disciplinary ground**”) for starting a disciplinary proceeding against an inbound tour operator that the inbound tour operator has contravened this Act.

Note—

If the contravention of this Act by a registrant, tour guide or inbound tour operator is also an offence against this Act, under section 97(2) the person may then be prosecuted for the offence or dealt with under this part, but not both.

14 See section 14 (When applicant is not a suitable person).

83 Orders the tribunal may make

(1) If the tribunal decides a disciplinary ground under this Act is established in relation to a registrant, tour guide or inbound tour operator, it may make 1 or more of the following orders—

- (a) an order reprimanding the registrant, tour guide or inbound tour operator;
- (b) an order that the registrant, tour guide or inbound tour operator pay to the commissioner, within the time stated in the order, a penalty of not more than an amount equal to—
 - (i) if the only disciplinary ground concerned is that the registrant, tour guide or inbound tour operator contravened this Act and the contravention is an offence—the maximum penalty for the offence; or
 - (ii) otherwise—200 penalty units;
- (c) an order suspending the registrant's registration for a stated period;
- (d) an order cancelling the registrant's registration;
- (e) an order imposing conditions on, or amending or revoking the conditions of, the registrant's registration;
- (f) an order that the registrant, tour guide or inbound tour operator pay to a person who has suffered financial loss because of an act or omission of the registrant, tour guide or inbound tour operator, as compensation, an amount, decided by the tribunal, up to the limit of a Magistrates Court's civil jurisdiction;
- (g) another order the tribunal considers appropriate to ensure a further disciplinary ground relating to the registrant, tour guide or inbound tour operator does not happen.

(2) The tribunal may make an order under subsection (1)(b) or (f) against a person only on the basis of evidence, submissions and other information received in accordance with the evidentiary law and practice applicable to a civil proceeding in a Magistrates Court.

(3) If—

- (a) the tribunal proposes to order a person to pay an amount to the commissioner under subsection (1)(b) and compensation under subsection (1)(f); and

(b) the person does not have enough financial resources to pay both; the tribunal must prefer to make an order for compensation.

84 Criteria for deciding amount to be ordered

To decide the amount a person may be ordered to pay under section 83(1)(b) or (f), the tribunal may consider any or all of the following—

- (a) the person's conduct before and after the disciplinary ground concerned happened;
- (b) whether the conduct was deliberate;
- (c) the period over which the conduct happened;
- (d) the amount of financial loss caused by the disciplinary ground;
- (e) any similar past conduct of the person, including conduct happening before the commencement of this section;
- (f) whether the conduct could have been prevented;
- (g) if the person is a corporation—the extent to which the executive officers of the corporation knew or should have known of the existence of the disciplinary ground;
- (h) any action the person took to remedy the disciplinary ground including, for example, compensating persons who suffered financial loss because of it;
- (i) the extent to which the person cooperated with the commissioner to remedy the disciplinary ground and prevent future disciplinary grounds happening;
- (j) the person's financial position;
- (k) any other relevant factor.

PART 11—REVIEW OF CERTAIN DECISIONS

85 Review by tribunal

(1) An applicant for registration may apply to the tribunal for review of the commissioner's decision to refuse to grant the registration.

(2) A person may apply to the tribunal for review of a decision of the commissioner to—

- (a) suspend the person's registration; or
- (b) cancel the person's registration; or
- (c) refuse to renew the person's registration; or
- (d) impose a condition on the person's registration; or
- (e) refuse to replace the person's registration certificate.

(3) The owner of a thing forfeited to the State because of a decision of an inspector given under section 56(1)(c) may apply to the tribunal for review of the decision.

PART 12—OFFENCES AND EVIDENCE

86 Proceeding for offence

(1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

(2) The proceeding must start within—

- (a) 1 year after the offence is committed; or
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

87 Orders court may make on conviction of registrant, tour guide or inbound tour operator

(1) This section applies if a court convicts a registrant, tour guide or inbound tour operator of an offence against this Act.

(2) In addition to any penalty imposed for the offence, the court may make 1 or more of the following orders—

- (a) if the offender is a registrant—
 - (i) an order suspending the registrant's registration for a stated period; or
 - (ii) an order cancelling the registrant's registration; or
 - (iii) an order imposing conditions on, or amending or revoking the conditions of, the registrant's registration;
- (b) in any case—an order that the registrant, tour guide or inbound tour operator pay a stated amount as compensation to a stated person who has suffered financial loss because of the registrant's, tour guide's or inbound tour operator's conduct relating to the offence.

(3) An order under subsection (2)(b) may be made on the application of the prosecution or the person who has suffered financial loss.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

Note—

Under section 82(1)(a), (2) or (3) the contravention by a registrant, tour guide or inbound tour operator of this Act is a ground for starting a disciplinary proceeding against the person in the tribunal.

However, under section 97, a registrant, tour guide or inbound tour operator can not be both prosecuted for an offence against the Act and dealt with by way of disciplinary proceedings for the one contravention.

88 Evidence

(1) This section applies to a proceeding under this Act.

(2) Unless a party, by reasonable notice, requires proof—

- (a) that a person is an inspector; or
- (b) of the authority of an inspector to do anything under this Act;

the fact of the person being an inspector or the authority must be presumed.

(3) A signature purporting to be the signature of the commissioner or an inspector is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by the commissioner and stating any of the following matters is evidence of the matter—

- (a) that a specified document is a registration certificate, or copy of a registration certificate, granted under this Act;
- (b) that on a specified day, or during a specified period, a specified person was or was not registered;
- (c) that registration—
 - (i) was or was not granted for a specified term; or
 - (ii) was or was not in force on a specified day or during a specified period; or
 - (iii) was or was not subject to conditions or a specified condition;
- (d) that a document is a copy of a record kept under this Act.

89 Executive officers must ensure corporation complies with Act

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) otherwise—the officer was not in a position to influence the conduct of the corporation in relation to the offence.

PART 13—OTHER MATTERS

90 Treatment of partnerships

(1) Subject to this section, this Act applies to a partnership as if the partnership were a person.

(2) For an application by, or registration or renewal of registration of, a partnership—

- (a) part 3, division 2¹⁵ applies as if each partner were an applicant; and
- (b) if a partner is not a suitable person to hold registration, the partnership is not a suitable person.

(3) An obligation or liability that, apart from this subsection, would be imposed by this Act on a person that is a partnership is imposed on each partner, but may be discharged by any of the partners.

(4) An amount that, apart from this subsection, would be payable under this Act by a person that is a partnership is jointly and severally payable by the partners.

(5) If, because of the operation of subsection (1), a contravention of, or an offence against a provision of, this Act is taken to have been committed by a partnership, the contravention or offence is taken to have been committed by each of the partners.

(6) However, it is a defence for a partner to prove—

- (a) if the partner was in a position to influence the conduct of the partnership in relation to the contravention or offence—the partner exercised reasonable diligence to ensure the partnership complied with the provision; or
- (b) the partner was not in a position to influence the conduct of the partnership in relation to the contravention or offence.

91 Complaint about conduct that contravenes this Act

(1) A person aggrieved by another person's conduct that the person believes contravenes this Act may make a written or oral complaint to the commissioner about the conduct.

15 Part 3 (Registration), division 2 (Suitability for registration)

(2) The commissioner may investigate the complaint and, if satisfied this Act has been contravened, may start an offence proceeding or another proceeding under this Act against the other person for the contravention.

(3) The commissioner may require that an oral complaint be put in writing before it is investigated.

(4) The investigation may take place and a proceeding may be started and continued against a person who was an inbound tour operator, registrant or tour guide when the matter of complaint arose even though the person is no longer an inbound tour operator, registrant or tour guide.

(5) For subsection (4), part 9 or 10¹⁶ applies as if a reference in the part to an inbound tour operator, registrant or tour guide included a reference to a former inbound tour operator, registrant or tour guide mentioned in the subsection and with other necessary changes.

92 Language of complaint

The complaint may be in a language other than English if it is written and the complainant is unable to make it in English.

93 Public warning statements

(1) The Minister or commissioner may make or issue a public statement identifying, and giving warnings or information about, any of the following—

- (a) contraventions of this Act that have resulted in disciplinary proceedings and persons who commit the contraventions;
- (b) conduct engaged in by inbound tour operators, whether or not they are registrants, or tour guides, that in all the circumstances the Minister or commissioner considers unconscionable;
- (c) the commission of offences against this Act and persons who commit the offences.

(2) The statement may identify particular contraventions, business practices, unconscionable conduct, offences and persons.

16 Part 9 (Civil penalties and compensation orders for unconscionable conduct) or 10 (Disciplinary proceedings)

(3) The Minister or commissioner must not issue a public statement or give a warning under this section unless satisfied that it is in the public interest to do so.

94 Confidentiality of information

(1) A person must not disclose information gained by the person in the administration of this Act.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a disclosure of information—

- (a) with the consent of the person to whom the information relates; or
- (b) in a public statement made or issued under section 93; or
- (c) otherwise in the administration of this Act; or
- (d) to the commissioner of the police service; or
- (e) with the approval of the commissioner, to a person administering a corresponding law; or
- (f) in a proceeding under this Act or a report of the proceeding; or
- (g) in a proceeding before a court in which the information is relevant to the issue before the court.

(3) This section does not limit the *Freedom of Information Act 1992*.

95 Protecting officials from liability

(1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

“official” means—

- (a) the Minister; or
- (b) the commissioner; or
- (c) an inspector.

96 Delegation by commissioner

(1) The commissioner may delegate the commissioner's powers under this Act to an appropriately qualified officer—

- (a) of the Office of Fair Trading established under the *Fair Trading Act 1989*; or
- (b) appointed under that Act.

(2) In this section—

“appropriately qualified” includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing for a member of the staff of the Office of Fair Trading—

the staff member's classification level in the office

97 Limit on action to be taken for contravention of this Act

(1) Subsection (2) applies if—

- (a) a person is alleged to have contravened a provision of this Act and the contravention is an offence; and
- (b) the person could be dealt with by way of a disciplinary proceeding for the contravention.

(2) The person may be prosecuted for the offence of contravening the provision or dealt with by way of a disciplinary proceeding for the contravention but must not be dealt with in both ways.

(3) If a registrant, tour guide or inbound tour operator is alleged to have contravened section 35(1),¹⁷ either, but not both, of the following actions may be taken—

- (a) the registrant, tour guide or inbound tour operator may be dealt with by way of a disciplinary proceeding for the contravention;
- (b) the commissioner or another person may make an application under section 78(2).¹⁸

17 Section 35 (Unconscionable conduct)

18 Section 78 (Application for order imposing civil penalties)

98 Review of certain sections

The Minister must review the operation of sections 9 and 12¹⁹ within 18 months after this section commences.

99 Approved forms

The commissioner may approve forms for use under this Act.

100 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about any of the following matters—

- (a) fees, including the refunding of fees, for this Act;
- (b) the keeping of records by inbound tour operators and former inbound tour operators;
- (c) advertising by inbound tour operators, including the form and content of advertisements.

(3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

PART 14—TRANSITIONAL PROVISION**101 Requirement to be registered does not apply in limited circumstances**

(1) Subsection (2) applies to a person who was carrying on the business of an inbound tour operator immediately before the commencement of section 12²⁰ and who continues to carry on that business.

(2) Section 12(1) does not apply to the person until the end of 3 months after the commencement of the section.

19 Sections 9 (Meaning of “inbound tour operator” and “carry on the business of an inbound tour operator”) and 12 (Requirement to be registered)

20 Section 12 (Requirement to be registered)

(3) However, if the person becomes registered in that period and the person's registration is cancelled or suspended in that period, section 12(1) applies to the person.

SCHEDULE 1**DISQUALIFYING OFFENCE PROVISIONS UNDER THE
CRIMINAL CODE**

schedule 2, definition “disqualifying offence”, paragraph (b)

1. Chapter 16 (Offences relating to the administration of justice)
2. Chapter 20 (Miscellaneous offences against public authority)
3. Chapter 36 (Stealing)
4. Chapter 37 (Offences analogous to stealing)
5. Chapter 38 (Stealing with violence—extortion by threats)
6. Chapter 40 (Other fraudulent practices)
7. Chapter 41 (Receiving property stolen or fraudulently obtained and like offences)
8. Chapter 42 (Frauds by trustees and officers of companies and corporations—false accounting)
9. Chapter 42A (Secret commissions)
10. Chapter 49 (Punishment of forgery and like offences)
11. Chapter 52 (Personation)
12. Chapter 56 (Conspiracy)

SCHEDULE 2

DICTIONARY

section 7

“approved form” means a form approved by the commissioner under section 99.

“associated person” see section 8.

“carry on the business of an inbound tour operator” see section 9.

“change”, for part 3, division 3, see section 16.

“code of conduct” means a code of conduct prescribed under section 38.

“commissioner” means the commissioner for fair trading appointed under the *Fair Trading Act 1989*.

“conviction” means the acceptance of a plea of guilty, or a finding of guilt, by a court, whether or not a conviction is recorded.

“corresponding law” means a law of another State or another country that provides for the same, or substantially the same, matter as this Act, the *Fair Trading Act 1989*, the *Travel Agents Act 1988*, the *Trade Practices Act 1974* (Cwlth) or a provision of this Act, the *Fair Trading Act 1989*, the *Travel Agents Act 1988* or the *Trade Practices Act 1974* (Cwlth).

“criminal history”, of a person, means the person’s criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than convictions for which the rehabilitation period has expired, and not been revived, under that Act.

“disciplinary ground” see section 82.

“disciplinary proceeding” see section 81.

“disqualifying offence” means an offence—

- (a) wherever committed in Australia involving fraud or dishonesty that is punishable by imprisonment for 3 months or more; or
- (b) against a provision of the Criminal Code mentioned in schedule 1; or

SCHEDULE 2 (continued)

- (c) against a provision of a law of another State or of the Commonwealth that provides for the same matter as a law mentioned in paragraph (b).

“executive officer”, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“facsimile warrant” see section 48(4).

“guiding services”, for tourists, means services that involve both accompanying the tourists and doing something else for the tourists including, for example, any of the following—

- translating for them
- giving them information or advice
- coordinating or leading their activities.

“inbound tour operator” see section 9.

“information notice”, for a decision of the commissioner or an inspector, is a written notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) if the decision may be reviewed by the tribunal—that the person to whom the notice is given may apply to the tribunal for review of the decision within 28 days after receiving the notice and how the person may apply.

“inspector” means a person who is an inspector for this Act under section 39.

“notice” means written notice.

“overseas entity” means an entity whose main place of business is outside Australia.

“place”, for part 6, includes a vehicle.

“registrant” means a person registered under part 3.

“registration” means registration under part 3.

“registration certificate” see section 26(1).

SCHEDULE 2 (continued)

“relevant contravention” means—

- (a) a contravention of section 35(1); or
- (b) a contravention of a code of conduct that is not an offence against this Act.

“seized thing” see section 55(1).

“sell” includes offer to sell.

“tour guide” see section 10.

“tourist” means an individual who—

- (a) is visiting, or travelling in, Queensland; and
- (b) in relation to the visiting or travelling, uses—
 - (i) a travel package arranged by an inbound tour operator; or
 - (ii) a service provided by an inbound tour operator or a tour guide.

“travel package” means the prearranged provision of a combination of activities, goods or services for 1 person that includes at least 2 of the following—

- (a) accommodation, with or without the provision of food;
- (b) guiding services;
- (c) food other than food provided with accommodation;
- (d) tourism activities;

Examples of tourism activities—

ballooning or rafting trips, bushwalking, fishing

- (e) translation services
- (f) transport, including transport to, from and within, Queensland;
- (g) visiting, or introductions to, retailers at a travel destination;
- (h) visiting tourist attractions at a travel destination, including, but not limited to, entry to the attractions;

Examples of tourist attractions—

theme parks, places of entertainment, beaches, national parks

- (i) other activities, goods or services prescribed under a regulation.

SCHEDULE 2 (continued)

“tribunal” means the Commercial and Consumer Tribunal established under the *Commercial and Consumer Tribunal Act 2003*.

“warrant form” see section 48(5)(b).