

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
AGENTS (AMENDMENT) ORDINANCE (NO.2) 1988

ORDINANCE NO. 47 OF 1988

The Agents Ordinance 1968 ("the Principal Ordinance") provides for the registration, licensing and control of real estate, business and stock and station agents.

The Agents (Amendment) Ordinance (No.2) 1988 ("the Ordinance") amends the Principal Ordinance to introduce a uniform scheme for the licensing and regulation of travel agents and to provide for general amendments including an increase in penalties. The Ordinance follows an agreement by the Standing Committee on Consumer Affairs Ministers to extend the scheme presently participated in by New South Wales, Victoria, Western Australia and South Australia to the other States and Territories.

Central to the uniform scheme is the protection of the pecuniary interests of those persons dealing with travel agents.

This protection is afforded through the establishment of a Travel Compensation Fund ("the compensation fund") and by requiring travel agents to participate in that fund. To be eligible for a licence, a travel agent must be eligible to contribute to the compensation fund and to have paid an initial contribution. Provision is made for the suspension of a travel agent's licence where that agent ceases to be a participant in the compensation fund.

Strict penalties apply to a person carrying on business as a travel agent whilst unlicensed. A person or body corporate found guilty of carrying on business as a travel agent without a licence to do so incurs a monetary penalty. In addition to this penalty the court may order the unlicensed agent to pay to the Registrar, for payment into the compensation fund, an amount not exceeding the profit derived by the unlicensed agent from carrying on that business.

Details of each of the provisions of the Ordinance are set out in the Attachment.

ISSUED BY AUTHORITY OF
THE MINISTER OF STATE
FOR THE ARTS AND TERRITORIES

Section 1 cites the short title of the Ordinance.

Section 2 provides that the Ordinance shall come into operation on such date as is fixed by the Minister by notice in the Gazette.

Section 3 defines "Principal Ordinance" as the Agents Ordinance 1968.

Section 4 amends section 3 of the Principal Ordinance, which concerns the application of the Principal Ordinance, by -

- (a) omitting "or" from paragraph (b);
- (b) adding paragraphs (d) and (e) which extend the exemption provisions of the Principal Ordinance to include a Minister of State or a prescribed authority;
- (c) adding new subsection 2 which provides that the Minister may, by notice in the Gazette, declare that a provision or provisions of the Principal Ordinance does or do not apply in relation to a person or class of persons.
- (d) adding new subsection 3 which provides that the Gazette notice shall be laid before each House of Parliament within 15 sitting days after the day on which the declaration is made;
- (e) adding new subsection 4 which provides that if a declaration is not laid before each House of Parliament it shall be void and of no effect;
- (f) adding new subsection 5 which provides that subsections 4 to 7 of section 12 of the Seat of Government (Administration) Act 1910 apply in relation to the declaration as if the references in those subsections to an Ordinance were references to a declaration under new subsection 3(2); and
- (g) adding new subsection (6) providing that references in section 12 of the Seat of Government (Administration) Act 1910 to subsection 12(3) of that Act shall be read as references to new subsection 3(4).

Section 5 deals with interpretation.

Section 6 inserts new sections 5A to 5F into the Principal Ordinance.

Sections 5A, 5B and 5C deal with the interpretation of real estate agents, stock and station agents and business agents respectively.

Subsection 5D(1) defines a travel agent as a person who carries on business as a travel agent, who in the course of carrying on business, performs the following activities:

- (a) sells tickets entitling another person to travel, or arranges for another person a right of passage, on a conveyance;
- (b) sells to another person, or arranges or makes available for another person rights of passage to, and accommodation at one or more places (whether or not the place, or any of the places is in the Territory);
- (c) purchases for resale the right of passage on a conveyance; or
- (d) holds out or advertises that he or she is prepared to carry on one of those activities referred to above.

Subsection 5D(2) provides that a person shall not be taken to carry on business as a travel agent where -

- (a) in respect of selling tickets or arranging a right of passage on a conveyance, the person is the proprietor of the conveyance or the conveyance is used for a return journey on the same day;
- (b) in respect of selling or arranging rights of passage and accommodation, the person is the proprietor of the conveyance and place of accommodation;
- (c) in respect of purchasing for resale the right of passage on a conveyance, the conveyance is used solely for a return journey on the same day; or
- (d) the person holds out or advertises that he or she is prepared to carry on an afore-mentioned activity.

Subsection 5D(3) defines a proprietor of a conveyance and place of accommodation.

Section 5E provides that a person shall not be taken to carry on business as an agent only because the person does anything referred to in section 5A, 5B, 5C or 5D in the course of his or her employment.

Section 5F(1) provides that the Board, in determining whether a person is a fit and proper person, for the purposes of the refusal of a travel agent's licence under subparagraphs 51(3)(e)(ii) and (f)(i) and (ii), the revocation of registration or licence under paragraph 77(1)(b) or the disqualification of a person from direction, management or conduct of an agents business under paragraph 82A(3)(a), may have regard to whether the person -

- (a) has been convicted of an offence involving fraud or dishonesty within the period of 10 years immediately preceding the day on which the application was made under

subparagraph 51(3)(e)(ii) or (f)(i) or (ii), or the day on which the Board considers whether to revoke an agents registration or licence under paragraph 77(1)(b) or to disqualify a person under paragraph 82A(3)(a);

- (b) has within that ten year period served any part of a term of imprisonment for an offence involving fraud or dishonesty;
- (c) is, at the time the application, revocation or disqualification is considered by the Board, bound in relation to such an offence by a recognizance, or is the subject of a charge pending in relation to such an offence;
- (d) has been convicted of an offence against the Principal Ordinance or a corresponding law;
- (e) has been refused a licence under a corresponding law; or
- (f) has been the subject of action taken under a law corresponding to the disciplinary action taken by the Board at an inquiry under section 75.

Subsection 5F(2) provides that a reference in subsection 5F(1) to a person's conviction shall be read as including a reference to an order made in relation to the person under section 556A of the New South Wales Crimes Act 1900 in its application to the Territory or under a law of a State or another Territory, that provides for the conditional release of offenders without proceeding to conviction.

Section 7 amends section 6 of the Principal Ordinance by substituting a new subsection (3) to provide that during the absence from duty of the Registrar the duties and powers of the Registrar shall be performed and exercised by the Deputy Registrar or, if more than one Deputy Registrar has been appointed, by the Deputy Registrar nominated for the purpose by the Minister.

Section 8 inserts new section 6A into the Principal Ordinance providing for inspectors to carry identity cards.

Subsection 6A(1) provides that the Minister shall cause to be issued to each inspector an identity card that specifies the name and appointment of the inspector and which displays a photograph of the inspector.

Subsection 6A(2) provides that a person appointed to be an inspector shall, upon ceasing to be such, return his or her identity card to the Minister.

Subsection 6A(3) provides that a person who, without reasonable excuse, contravenes subsection 6A(2) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

Section 9 amends section 7 of the Principal Ordinance by adding at paragraph (d) the Register of Travel Agents to the registers which the Registrar keeps.

Section 10 amends section 9 of the Principal Ordinance to provide that the members of the Board are increased from 5 to 7 members.

Section 11 amends section 13 of the Principal Ordinance by omitting "Minister" from paragraph (d) and substituting "Chairman" to provide the Chairman of the Board with the power to remove a member from that Board.

Section 12 amends section 16 of the Principal Ordinance by omitting "departmental member" from subsection 4 and substituting "Chairman".

Section 13 substitutes the following new heading to Part III -

"CARRYING ON BUSINESS WITHOUT A LICENCE AND RELATED MATTERS".

Section 14 amends section 18 of the Principal Ordinance by adding new subsection (4) which provides that a person shall not carry on business as a travel agent unless the person holds a travel agent's licence. The penalty for an offence against the section is increased from \$400 to \$2,000.

Section 15 amends section 19 of the Principal Ordinance by adding new subsection (4) which provides that a company shall not carry on business as a travel agent unless it holds a travel agent's licence. The penalty for an offence against the section is a fine of \$10,000.

Section 16 inserts new section 19A into Part III of the Principal Ordinance. Subsection 19A(1) provides that where a travel agent is convicted of an offence against subsection 18(4) or 19(4) the court may, in addition to imposing a penalty in respect of the offence, order the person to pay to the Registrar an amount determined by the court, being an amount not exceeding the profit derived by the agent from carrying on business as a travel agent in the period during which the agent was carrying on business without a licence. Subsection 19A(2) provides that the Registrar is to pay an amount equal to that amount paid to him, to the trustees of the Travel Compensation Trust Fund. Subsection 19A(3) provides that an amount payable under an order made pursuant to subsection 19(1) shall be recoverable in a court of competent jurisdiction as a debt due to the Commonwealth.

Section 17 repeals section 23 of the Principal Ordinance.

Section 18 amends section 41 of the Principal Ordinance, which concerns the issue of certificates of registration, by removing a reference to a Supreme Court order by omitting all the words from and including "or the Supreme Court" to and including "granted".

Section 19 amends section 42 of the Principal Ordinance by providing at new paragraph (c) that the eligibility criteria for the granting of a licence to a person to carry on business as a real estate agent be extended to provide that the person is to be of good fame and character.

Section 20 amends section 43 of the Principal Ordinance, which concerns the eligibility for the grant of real estate licences to companies, by -

- (a) substituting a new paragraph (1)(a) to provide that a company is eligible for the grant of such a licence to carry on business as a real estate agent where the company is not prohibited by its memorandum of association from carrying on business as a real estate agent;
- (b) omitting from paragraph (1)(c) "of the other directors" and substituting "director"; and
- (c) omitting subsection (2).

Section 21 amends section 44 of the Principal Ordinance by providing that the eligibility criteria for the granting of a licence to a person to carry on business as a stock and station agent be extended to provide that the person is to be of good fame and character.

Section 22 amends section 45 of the Principal Ordinance, which concerns the eligibility for the grant of stock and station licences to companies, by -

- (a) substituting a new paragraph (1)(a) to provide that a company is eligible for the grant of such a licence where the company is not prohibited by its memorandum from carrying on business as a stock and station agent;
- (b) omitting from paragraph (1)(c) of the other directors" and substituting "director"; and
- (c) omitting subsection (2).

Section 23 amends section 46 of the Principal Ordinance by providing at new paragraph (c) that the eligibility criteria for the granting of a licence to a person to carry on business as a business agent be extended to provide that the person is to be of good fame and character.

Section 24 amends section 47 of the Principal Ordinance, which concerns the eligibility for the grant of business licences to companies, by -

- (a) substituting a new paragraph (1)(a) to provide that a company is eligible for the grant of such a licence where the company is not prohibited by its memorandum of association from carrying on business as a business agent;
- (b) omitting from paragraph (1)(c) "of the other directors" and substituting "director"; and
- (c) omitting subsection (2).

Section 25 inserts new Divisions 3A and 3B after Division 3 of Part V of the Principal Ordinance. Division 3A comprises sections 47A, 47B and 47C, which detail the eligibility criteria for the grant of a travel agent's licence. Division 3B comprises sections 47D to 47H and deals with licences held by partnerships.

Section 47A provides that a natural person is eligible for the grant of a travel agent's licence if -

- (a) the person is at least 18 years of age;
- (b) the person has the prescribed qualifications;
- (c) the trustees of the compensation fund have determined under clause 9.6 of the Travel Compensation Fund Trust Deed (the "trust deed") that the person is eligible to be a contributor to the compensation fund;
- (d) the person has paid an initial contribution to the compensation fund in accordance with Part 6 of the trust deed;
- (e) the person is not disqualified under subsection 82A(1) or (2) or a corresponding law from holding a travel agent's licence; and
- (f) the person is not disqualified under subsection 82A(3) or a corresponding law from being involved in the direction, management or conduct of a travel agent's business.

Section 47B provides that a company is eligible for the grant of a travel agent's licence if -

- (a) each person involved in the management of the company is at least 18 years of age;
- (b) a director of the company has the prescribed qualifications;
- (c) the company is not prohibited by its memorandum of association from carrying on business as a travel agent;
- (d) the trustees of the compensation fund have determined under clause 9.6 of the trust deed that the company is eligible to be a contributor to the compensation fund;
- (e) the company has paid an initial contribution to the compensation fund in accordance with part 6 of the trust deed;
- (f) the company is not disqualified under subsection 82A(1) or (2) or a corresponding law from holding a travel agent's licence; and
- (g) no officer of the company is disqualified under subsection 82A(3) or a corresponding law from being involved in the direction, management or conduct of a travel agent's business.

Section 47C provides that for the purposes of paragraphs 47A(b) and 47B(b) a person has the prescribed qualifications if the person is of good fame and character, has 3 years experience in carrying on business as a travel agent or as an employee of a travel agent, and has a qualification set out in the Schedule.

Section 47D provides that where a licence issued in the name of one or more of a number of partners is held for the purposes of the partnership sections 47F, 47G and 47H apply in relation to the licensee and to each partner whether or not the partner's name appears on the licence or subsections 47E(1), (2), (3) or (4), as the case requires, has been complied with in relation to the partner.

Section 47E concerns the giving of notice to the Registrar of a partnership.

Subsection 47E(1) provides that where one or more of a number of partners applies for a licence for the purposes of the partnership, the applicant or applicants shall attach to the application written particulars of the name and residential address of each partner and the name under which the partners are or will be carrying on the business in respect of which the application is made.

Subsection 47E(2) provides that where a licensee enters into partnership with another person or persons after the licence is issued, and the licence is to be held for the purposes of the partnership, the licensee shall within 1 month after the partnership was formed give the Registrar written particulars of the name and residential address of each partner and the name under which the partners are or will be carrying on the business to which the licence relates. If the licence has already been issued the licensee shall within that 1 month period lodge the licence with the Registrar.

Subsection 47E(3) provides that where a licence issued before the commencement of this Ordinance is held by one or more of a number of partners for the purposes of the partnership, the licensee shall within 1 month after the commencement of the Ordinance give the Registrar written particulars of the name and residential address of each partner and the name under which the partners are carrying on business at the premises to which the licence relates. The licensee must also lodge the licence with the Registrar.

Subsection 47E(4) requires an applicant or licensee to provide the Registrar with the details of any change in the particulars referred to in subsection 47E(2), (3) or (4) within 1 month of such a change. Where the licence has been issued it is to be lodged with the Registrar with the prescribed fee.

Subsection 47E(5) requires the Registrar where a licence has been lodged pursuant to subsection 47E(2), (3) or (4), to endorse the particulars on the licence and to return the licence to the licensee as soon as practicable.

Section 47F provides that where a licence issued in the name of one or more of a number of partners is held for the purposes of the partnership, each partner has all the rights and duties of the licensee in relation to that licence.

Subsection 47G(1) provides that where a licence issued in the name of one or more of a number of partners is held for the purposes of the partnership, the licensee shall be taken to be guilty of a breach of the rules of conduct or to have been convicted of the relevant offence, respectively, where any of the partners who is involved in the direction, management or conduct of the business in respect of which the licence was issued, does anything that would constitute a breach of the rules of conduct if it were done by the licensee or is convicted of an offence under the Principal Ordinance.

Subsection 47G(2) provides that a reference in subsection 47G(1) to a person's conviction shall be read as including a reference to an order made in relation to the person under section 556A of the New South Wales Crimes Act 1900 in its application to the Territory or under a law of a State or another Territory that provides for the conditional release of offenders without proceeding to conviction.

Section 47H provides that where a licence held by one or more of a number of partners for the purposes of the partnership is suspended or cancelled as a result of an act or omission, the licence shall not be transferred and a licence shall not be issued while that suspension or cancellation is in force, to any person who was or is at the time of the act or omission, or while the suspension or cancellation is in force, a member of the partnership.

Section 26 amends section 48 of the Principal Ordinance by requiring further details in applications for licences by individuals. These amendments are effected by -

- (a) omitting from paragraph (1)(a) "writing and signed by the applicant" and substituting "accordance with a form made available by the Board for the purpose";
- (b) omitting paragraphs 1(b) and (c) and substituting new paragraphs 1(b), (c) and (ca) -

paragraph (1)(b) provides that the applicant must lodge his or her application with the Registrar not earlier than 7 days and not later than 14 days after the applicant has published in a newspaper circulating in the Territory notice of the fact that the applicant intends to apply for a licence and has served on the Commissioner of Police a notice of that intention and particulars of the applicant's full name, date and place of birth, present residential address and the address of any other place at which the applicant has resided during the 3 years immediately preceding the date of service of the notice;

paragraph (1)(c) provides that an application shall be accompanied by a copy of each notice published or served by the applicant pursuant to paragraph (1)(b) and a statement setting out the date on which each notice was published or served;

paragraph (1)(ca) provides that an application shall be accompanied by certificates by 2 persons certifying with respect to the fame and character of the applicant;

paragraph (1)(cb) provides that an application for a licence to carry on business as real estate agent, stock and station agent or business agent shall be accompanied by a written statement of the applicant's experience as such an agent or as an employee of such an agent;

paragraph (1)(cc) provides that an application for a travel agent's licence shall include a written statement of such particulars as are necessary to show that the applicant has the prescribed qualifications; and

- (c) omitting subsection (2) and substituting new subsections (2) and (3) -

subsection (2) provides that where an applicant for registration as a real estate agent, stock and station agent or business agent applies for a licence to carry on business as such an agent before the Board has considered the application for registration, the Board is not required to consider the application for the licence unless it grants the application for registration; and

subsection (3) provides that in section 48 "certificate of incorporation", in relation to a trade union, means the union's registration certificate.

Section 27 amends section 49 of the Principal Ordinance by requiring further details in applications for licences by companies.

These amendments are effected by -

- (a) omitting from paragraph (1)(a) all the words from and including "writing" to and including "company" (last occurring) and substituting "accordance with a form made available by the Board for the purpose";
- (b) omitting from paragraph (1)(b) "due" and substituting "certificate of";
- (c) omitting paragraph (1)(d) and substituting new paragraphs (1)(d) and (1)(da);

paragraph (1)(d) provides that an application for a licence to carry on business as a real estate agent, stock and station agent or a business agent shall be accompanied by a written statement of the experience as such an agent or as an

employee of such an agent of each director of the company who is registered or has applied for registration as such an agent;

paragraph (1)(da) provides that an application for a travel agent's licence shall be accompanied by a written statement providing particulars in respect of each director of the company who has the prescribed qualifications, as are necessary to show that the director has those qualifications.

- (d) omitting from subparagraph (1)(e)(i) "and" (last occurring); and
- (e) inserting a new subparagraph (1)(e)(iii) to require a company applying for a travel agent's licence to serve on the Commissioner of Police particulars of each person (other than a director of the company) who is to be present and in charge of conducting the applicant's business at each place of business being particulars of the person's full name, date and place of birth, present residential address and other addresses at which the person has resided during the immediately preceding 3 years.

Section 28 amends section 51 of the Principal Ordinance, which concerns the power of the Board to grant or refuse a licence, by -

- (a) omitting from subsection (2) all the words from and including "in the case" to and including "of the company" and substituting "any other person involved in the direction, management or conduct of the applicant's business as an agent";
- (b) omitting from subsection (2) "such a director" and substituting "other person";
- (c) omitting from paragraph (3)(a) all the words from and including "or in the case" to and including "of the company" and substituting "or another person";
- (d) omitting from paragraph (3)(a) "in pursuance of the last preceding subsection" and substituting "pursuant to subsection (2)";
- (e) omitting from paragraph (3)(c) "or" (last occurring); and
- (f) adding new paragraphs (3)(e) and 3(f) which concern the application for the grant of a travel agent's licence -

new paragraph 3(e) provides that the Board shall not refuse an application for the grant of a travel agent's licence unless the Board has reasonable grounds for believing that the applicant is not likely to carry on business as a travel agent honestly and fairly, the applicant is in any other way not a fit and proper person to hold a travel agent's licence or if a person employed or to be employed by the applicant in charge of the day to day conduct of the applicant's business

at a particular place were to apply for a travel agent's licence, the Board would be entitled to refuse the application by virtue of paragraph (b) or (d) or subparagraph (i) or (ii); and

new paragraph 3(f) provides that in the case of an application by a company for the grant of a travel agent's licence the Board shall not refuse an application for the grant of that licence unless the Board has reasonable grounds for believing that the reputation of the company is such that it would not be a fit and proper person to hold a travel agent's licence, if a director of a company or a person concerned in the management of the company was to apply for a travel agent's licence the Board would be entitled to refuse the application by virtue of paragraph (b), (d) or (e) or any person (other than an officer of the company) who has or is reasonably believed by the Board to have control or substantial control of the company is not of good fame and character or is not likely to exercise that control honestly and fairly.

Section 29 amends section 53 of the Principal Ordinance by -

- (a) omitting from subsection (1) all the words from and including "or the Supreme Court" to and including "granted";
- (b) omitting from subsection (2) all the words after "referred to" and substituting "in paragraph 43(1)(b), 45(1)(b) or 47(1)(b) or the prescribed qualifications, as the case requires"; and
- (c) by adding new subsection (3) which provides that a licence issued to a travel agent shall specify the name or names under which the licensee is authorised by the Board to carry on business.

Section 30 inserts a new section 53A into the Principal ordinance to provide that a licence is subject to a condition that each place at which the licensee carries on business as an agent shall comply with any prescribed requirements.

Section 31 amends section 54 of the Principal Ordinance, which deals with directors of licensed companies, by omitting subsections (6) and (7) and substituting new subsections (6), (7) and (8).

Subsection 54(6) provides that whether or not an objection is made by the Registrar under subsections 54(1) or (4) as to the competency of a director to carry on business as a licensed agent on his own account, the Board may require any or all of the directors of the company to attend before the Board and to give the Board, either orally or in writing, or both, any further information the Board requires in relation to the competence or qualifications of the director or directors.

Subsection 54(7) provides that the Board shall hold an inquiry where it considers that there may be grounds for believing that a director specified in an application for a licence or in an

application under subsection 54(2) for the name of a director to be added to an application or licence, has not had the experience referred to in paragraph 43(1)(b), 45(1)(b) or 47(1)(b) or has not the prescribed qualifications or is otherwise not competent to carry on business as a licensed agent on the director's own behalf or where there is an objection made under subsection 54(1) or (4).

Subsection 54(8) provides that the Board shall authorise the Registrar to specify in a licence the name of a director specified in the application for the licence or make an order under subsection 54(2) unless it is satisfied, after holding an inquiry into the matter, that the director has not had the experience referred to in paragraph 43(1)(b), 45(1)(b) or 47(1)(b) or has not the prescribed qualifications, the director is otherwise not competent to carry on business as a licensed agent on the director's own behalf or where the ground of objection under subsection 54(1) or (4) has been established.

Section 32 amends section 55 of the Principal Ordinance, which concerns trust moneys, by adding a new subsection (2) which provides that subsection 55(1) does not apply to travel agents.

Section 33 inserts section 55A in Division 2 of Part VI of the Principal Ordinance. Section 55A provides that Division 2, which deals with trust accounts, does not apply in relation to travel agents.

Section 34 amends section 60 of the Principal Ordinance, which deals with the keeping of accounting records by licensed agents, by -

- (a) inserting in subsection "(other than a travel agent)" after "licensed agent";
- (b) inserting a new subsection (1A) which provides that a licensed agent shall keep accounting and other records disclosing the particulars of any money received or paid by him or her in respect of an activity referred to in paragraph 5D(1)(a), (b) or (c) being an activity in respect of which the agent is, by virtue of section 5D, carrying on business as a travel agent;
- (c) omitting from subsection (3) subsection (1) and substituting "subsection (1) or (1A); and
- (d) by inserting in subsection (3) "or money referred to in subsection (1A)" after "trust moneys".

Section 35 amends section 61 of the Principal Ordinance to provide that a licensed agent shall give a receipt for money received by him or her in respect of an activity relating to his or her carrying on business as a travel agent. This amendment is achieved by -

- (a) inserting in subsection (1) "or money referred to in subsection 60(1A)" after "trust money"; and

(b) by omitting from subsection (3) "relating to trust money".

Section 36 inserts new section 61A in Division 4 of Part VI of the Principal Ordinance. Section 61A provides that sections 62 to 68 inclusive do not apply in relation to travel agents. Those sections concern the audit and inspection of trust accounts.

Section 37 repeals section 69 of the Principal Ordinance which concerned the Registrar's power of inspection. New powers for the inspection of books and documents are contained at Part VI B.

Section 38 amends section 70 of the Principal Ordinance by inserting in subsection (1) "or money referred to in subsection 60(1A)" after "trust moneys". This amendment excludes that money received by a travel agent, in the course of carrying on business as a travel agent, from the provisions of the section which concern the keeping of accounting and other records which disclose particulars of all business moneys. The fine set out at the foot of subsection 70(4) is increased to \$1,000 for a natural person and \$10,000 for a company.

Section 39 amends section 71 of the Principal Ordinance by substituting a new subsection (1) which provides that the manager or other principal officer of a bank at which a licensed agent (other than a travel agent) maintains a trust account or at which a licensed agent maintains a bank account for the purpose of holding money referred to in subsection 60(1A), shall, on receiving a written notice signed by the Registrar and delivered personally to the manager or other officer, permit the Registrar or an inspector specified in the notice to inspect and make copies of the account and any related documents or records held by the bank. Section 33 further amends section 71 by inserting in subsection (2) "or money referred to in subsection 60(1A)" after "trust moneys".

Section 40 inserts Parts VIA and VIB into the Principal Ordinance. Part VIA comprises new sections 71A to 71G and concerns the miscellaneous provisions relating to travel agents. Part VIB comprises new sections 71H to 71M and concerns the powers of an authorised officer to enter and inspect premises.

Section 71A provides that a travel agent shall not carry on business at any place unless the agent or another person who would by virtue of subsection 51(3) be entitled to be granted a travel agents licence if the person were to apply for one, is present and in charge of the day to day conduct of the business carried on at that place.

Section 71B deals with the participation by travel agents in the compensation scheme.

Subsection 71B(1) provides that a travel agent shall not carry on business unless the agent is a participant in the compensation scheme.

Subsection 71B(2) provides that if a licensed travel agent ceases to be a participant in the compensation scheme, the agent's licence is suspended until the agent again becomes a participant, or the licence is surrendered or revoked, whichever happens first.

Subsection 71B(3) provides that for the purposes of subsections 71B(1) and (2), a travel agent shall not be taken to be a participant in the compensation scheme unless the agent complies with any provisions of the trust deed that are applicable to the agent and any requirement made of the agent under the trust deed by the trustees of the compensation scheme.

Section 71C provides that in relation to a travel agent in the Australian Capital Territory, the trustees of the compensation scheme have, by force of the Principal Ordinance and not otherwise, the powers set out in the trust deed as amended from time to time.

Section 71D provides that the trustees of the compensation scheme may sue and be sued in the name of the "Travel Compensation Fund". In any action brought by the Trustees it shall be presumed, unless the contrary is established, that they complied with any condition precedent to bringing the action imposed on them under the compensation scheme.

Section 71E concerns the rights of compensation scheme trustees.

Subsection 71E(1) provides that where a payment is made to a claimant under the compensation scheme because of an act or omission of a travel agent, the trustees of the compensation scheme are subrogated to the rights of the claimant in respect of the act or omission.

Subsection 71E(2) provides that any rights exercisable by the trustees against a company are enforceable jointly and severally against the company and each person who was a director of the company at the time of the act or omission.

Subsection 71E(3) provides that the rights are not enforceable against a director if the director adduces evidence that the act or omission occurred without the director's knowledge and consent and that evidence is not rebutted.

Section 71F concerns dealings with unlicensed travel agents.

Subsection 71F(1) provides that a person shall be deemed to be carrying on business as an unlicensed travel agent where in the course of carrying on a business he or she provides an unlicensed travel agent with goods or services for disposal, or authorises an unlicensed travel agent to dispose of rights to goods or services provided by the person, knowing the agent to be unlicensed, where the disposal of the goods, services or rights would constitute carrying on business as a travel agent by the unlicensed person.

Subsection 71F(2) provides that if an act or omission referred to in subsection 71E(1) was the act or omission of an unlicensed travel agent any other person who in the course of carrying on a business, knowing the agent to be unlicensed, provided the unlicensed agent with goods or services, or authorised the unlicensed agent to dispose of rights to goods or services provided by the person, being goods, services or rights in relation to which the act or omission occurred, shall be deemed to have been carrying on business at the time of the act or omission as a travel agent in partnership with the unlicensed agent.

Subsection 71F(3) provides that subsections 71F(1) and (2) do not apply if the name or names under which the unlicensed agent was carrying on business, at the time the goods or services were provided or the disposal of the rights was authorised, was or were specified in a notice in force, at that time, under section 71G.

Subsection 71F(4) provides that subsection 71F(2) applies only for the purposes of section 71E and only to the extent that the act or omission involved the goods or services.

Section 71G provides that as soon as practicable after the commencement of the Ordinance and from time to time after that, the Board shall publish in the Gazette a notice specifying the name or names under which each person holding a travel agent's licence on the date on which the notice was prepared was authorised to carry on business as a travel agent - the date on which the notice comes into force, being a date not earlier than the date of publication of the notice and the date on which the notice ceases to be in force.

Section 71H concerns interpretation under Part VIB.

Subsection 71H(1) provides that for the purposes of Part VIB, a thing is connected with a particular offence if -

- (a) the offence has been committed with respect to it;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or it is intended to be used, for the purpose of committing the offence.

Section 71J concerns the entry and inspection of premises.

Subsection 71J(1) provides that an authorised officer may enter commercial premises during normal business hours, and may exercise the powers of an authorised officer referred to in subsection 71J(3), if the officer has reasonable grounds for believing that a person is carrying on business as an agent on the premises.

Subsection 71J(2) provides that an authorised officer may enter any premises and may exercise the powers of an authorised officer if the entry is made and the powers are exercised pursuant to a

warrant issued under subsection 71L(1); with the consent of the occupier of the premises or pursuant to an order of a court.

Subsection 71J(3) provides that for the purposes of subsections 71J(1) and (2) an authorised officer may -

- (a) require the occupier of the premises to give the officer his or her name and residential address;
- (b) inspect the premises;
- (c) require the occupier to produce to the officer any documents relating to an agent's money or relating to the transactions in respect of which the money was received;
- (d) inspect any documents referred to in paragraph 71J(c), and retain any such documents for as long as the officer considers necessary;
- (e) take extracts from, or make copies of, any documents referred to in paragraph 71J(3)(c);
- (f) require the occupier of the premises to cause all or part of the document or information to be displayed or printed out where any document of a kind referred to in paragraph 71J(3)(c), or any information relating to such a document, is stored or kept by means of a data processing device;
- (g) seize any thing that the officer has reasonable grounds for believing to be connected with an offence against the Ordinance; and
- (h) require the occupier to give the office such assistance as is necessary to enable the officer to exercise his or her powers under this section.

Subsection 71J(4) provides that an authorised officer who enters premises under subsection (1) is not authorised to remain on the premises if, on the request of the occupier of the premises, the officer does not show his or her identity card to the occupier.

Subsection 71J(5) defines the terms 'accounts', 'data processing device', 'documents', and 'records'.

Section 71K concerns consent for the authorised officer to enter and inspect premises.

Subsection 71K(1) provides that before seeking the consent of the occupier of premises or land for the purposes of paragraph 71J(2)(b), an authorised officer shall inform the occupier that he or she may refuse to give that consent.

Subsection 71K(2) provides that if the authorised officer obtains the occupier's consent for those purposes, the officer shall ask the occupier to sign a written acknowledgement -

- (a) that the occupier has given the officer consent, for the purposes of paragraph 71J(2)(b), to enter his or her premises and to exercise the powers of an authorised officer referred to in subsection 71J(3);
- (b) that the occupier has been informed that he or she may refuse to give that consent; and
- (c) of the day on which, and the time at which, that consent was given.

Subsection 71K(3) provides that where it is material, in any proceedings, for a court to be satisfied that an occupier has consented for the purposes of paragraph 71J(2)(b), and an acknowledgement in accordance with that subsection and signed by the occupier, is not produced in evidence, it shall be presumed that the occupier did not consent unless the contrary is established.

Section 71L concerns search warrants.

Subsection 71L(1) provides that where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be on any premises a thing of a particular kind connected with a particular offence against the Ordinance, and the information sets out those grounds, the magistrate may issue a search warrant authorising an authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable -

- (a) to enter the premises;
- (b) to search the premises for things of that kind; and
- (c) to exercise any of the powers of an authorised officer, referred to in subsection 71J(3).

Subsection 71L(2) provides that a magistrate shall not issue a warrant unless -

- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

Subsection 71L(3) provides that a warrant shall

- (a) state the purpose for which it is issued;
- (b) specify the nature of the offence in relation to which the entry and search are authorised;
- (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of day or night;

- (d) include a description of the kinds of things in relation to which the powers referred to in subsection 71J(3) may be exercised; and
- (e) specify the date, being a date not later than one month after the date of issue of the warrant, on which the warrant ceases to have effect.

Section 71M concerns the contravention of an authorised officer's requirements.

Subsection 71M(1) provides that a licensed agent shall not, without reasonable excuse, contravene a reasonable requirement made by an authorised officer who has entered premises in accordance with subsection 71J(1) or (2).

Subsection 71M(2) provides that a person (other than a licensed agent) who, without reasonable excuse, contravenes a reasonable requirement made by an authorised officer who has entered premises in accordance with subsection 71J(1) or (2) is guilty of an offence punishable on conviction, by a fine not exceeding \$1,000 in the case of a natural person or \$5,000 in the case of a company.

Section 41 amends section 72 of the Principal Ordinance by omitting subsections (3) and (4) and inserting a new subsection (3) which provides that a licensed agent (other than a travel agent) is guilty of a breach of the rules of conduct unless a registered agent is present and in charge of the day-to-day conduct of the licensed agent's business at each place at which the business is carried on.

Section 42 makes several amendments to section 75 of the Principal Ordinance, which concerns an inquiry into allegations against licensed agents for breaches of the rules of conduct.

Paragraph 42(a) omits paragraph 75(1)(b) and (c) and substitutes new paragraphs (1)(b)(c), (d), (e) and (f). Paragraph 75(1)(b) provides that the Board may order the agent to pay to the Registrar within the period specified in the order a fine not exceeding \$1,000 in the case of a natural person or \$5,000 in the case of a company. Paragraph 75(1)(c) provides that the Board may order the agent to pay the costs of the inquiry. Paragraph 75(1)(d) provides that the Board may disqualify a person involved in the direction, management or conduct of the agent's business from being so involved. Paragraph 75(1)(e) provides that the Board may, in the case of a registered agent, revoke the agent's registration. Paragraph 75(1)(f) provides that the Board may, in the case of a licensed agent, impose a condition or restriction on the licence, suspend the licence for a period determined by the Board or revoke the licence.

Paragraph 42(b) omits from subsection 75(2) "the last preceding subsection" and substitutes "paragraph (1)(b)".

Paragraph 42(c) omits from subsection 75(2) "Registrar" and substitutes "Board".

Paragraph 42(d) omits subsections 75(3) and (4) and substitutes a new subsection (3) which provides that where an application is made under paragraph 98(1)(e) for a review of a decision of the Board ordering an agent to pay a fine, time does not run for the purposes of subsection 75(2) from the date on which the application is made until the date or which the application is withdrawn, dismissed or heard and determined, as the case may be.

Section 43 substitutes a new section 77 into the Principal Ordinance. Section 77 concerns the revocation of a registration or licence.

Subsection 77(1) provides that the Board may, of its own motion or on the application of the Registrar, revoke an agent's registration or licence if -

- (a) the agent is carrying on business dishonestly or unfairly;
- (b) a person (other than the agent) who is involved in the direction, management or conduct of the agent's business is not a fit and proper person to be so involved in the business;
- (c) in the case of a licensed company, the company has carried on business for a period during which, if the name of only one person is specified in the company's licence as the name of a director who has had the experience referred to in paragraph 43(1)(b), 45(1)(b) or 47(1)(b) or the prescribed qualifications, as the case required - that person was not a director of the company, or if the names of 2 or more persons are so specified - both or all of those persons respectively were not directors of the company;
- (d) in the case of a travel agent, the trustees of the compensation fund have declared under clause 10.2 of the trust deed that the person is no longer a participant in the compensation scheme, or the Board has reasonable grounds for believing that the agent does not have, or is not likely to have, sufficient financial resources to enable the agent to carry on business;
- (e) the agent has contravened the Principal Ordinance;
- (f) the agent has been refused registration or a licence, or has been disqualified from being registered or from holding a licence, under a corresponding law;
- (g) registration or a licence granted to the agent under a corresponding law has been revoked or cancelled under that law;
- (h) the agent's registration or licence was obtained by means of misrepresentation, or was otherwise improperly obtained;

- (j) there were grounds for refusing to grant the registration or licence at the time it was granted that were unknown to the Board at that time;
- (k) the Board would be entitled to refuse to grant the agent registration or a licence, if the agent were not registered or licensed on a ground referred to in subsection 38(3) (failing to furnish further information, establish qualifications or to comply with the requirements under section 36 as to application for registration) or subsection 51(3) (being a ground that did not exist, or which was unknown to the Board, at the time the agent's registration or licence was granted);
- (l) the agent has been convicted of an offence involving fraud or dishonesty that is punishable by imprisonment for 3 months or more;
- (m) in any year, the annual prescribed fee in respect of the agent's registration or licence has not been paid on or before the anniversary in that year of the date on which the agent's certificate of registration or licence was issued; or
- (n) the agent has ceased carrying on business.

Subsection 77(2) provides that before revoking an agent's registration or licence, the Board shall direct the Registrar to give written notice -

- (a) to the agent; and
- (b) if the Board proposed to revoke the registration or licence on the grounds referred to in paragraph 77(1)(b), to that person;

calling upon the agent, or the agent and that person, as the case requires, to show cause why the registration or licence should not be revoked.

Subsection 77(3) provides that the notice given by the Registrar shall set out the grounds on which the Board proposes to revoke the agent's registration or licence and shall include a statement to the effect that the Board is entitled to revoke the registration or licence without further notice unless within 21 days after the date of the notice or within any further time allowed by the Board, the agent lodges with the Registrar written notice that the agent intends to show cause why the registration or licence should not be revoked.

Section 44 amends section 78 of the Principal Ordinance by omitting from subsection (1) "cancelled" and substituting "revoked".

Section 45 amends section 80 of the Principal Ordinance by omitting "such further time on application, lodge with the Board" and substituting "any further time allowed by the Board on the application of the agent, lodge with the Registrar".

Section 46 amends section 81 of the Principal Ordinance by omitting subsections (4) and (5).

Section 47 repeals section 82 of the Principal Ordinance and substitutes new sections 82 and 82A.

Section 82 provides that the Board may suspend a travel agent's licence -

- (a) for a period not exceeding 14 days pending a decision by the Board whether a notice is to be served on the agent pursuant to subsection 77(2);
- (b) where a notice under subsection 77(2) has been served on the agent - for a period of 21 days or for the period (being not less than 21 days) specified in the notice; or
- (c) for a period not exceeding 14 days pending a decision by the Board whether or not to revoke the agent's licence under subsection 77(1).

Section 82A concerns the disqualification of an agent from being registered or holding a licence.

Subsection 82A(1) provides that where an agent's registration or licence is revoked, the former agent is disqualified from being registered or holding a licence.

Subsection 82A(2) provides that the Board may disqualify a person from being registered or from holding a licence if -

- (a) the person has been refused registration or a licence under the Principal Ordinance or a corresponding law;
- (b) the person's registration or licence under a corresponding law has been revoked or cancelled under that law;
- (c) the person has been disqualified under a corresponding law from being registered or from holding a licence; or
- (d) the person has been disqualified under the Principal Ordinance or a corresponding law from being involved in the direction, management or conduct of an agent's business.

Subsection 82A(3) provides that the Board may disqualify a person from being involved in the direction, management or conduct of an agent's business if -

- (a) the Board has reasonable grounds for believing that the person is not a fit and proper person to be involved in the direction, management or conduct of an agent's business;
- (b) the Board would be entitled, by virtue of paragraph 51(3)(b) or (d), to refuse to grant the person a licence to carry on business as an agent if the person were to apply for one; or

(c) the person has been disqualified under this Ordinance or a corresponding law from holding a licence to carry on business as an agent.

Subsection 82A(4) provides that a disqualification remains in force during the period specified by the Board or if no period is specified, until the Board otherwise orders.

Section 48 amends section 83 of the Principal Ordinance by omitting subsection (2).

Section 49 inserts section 83A into Part IX of the Principal Ordinance.

Section 83A concerns the recording of the disqualification in the register.

Subsection 83A(1) provides that where an agent is disqualified under subsection 82A(1) from being registered or from holding a licence, the Registrar shall enter in the appropriate register details of the revocation of the former agent's registration or licence and of the disqualification. This entry shall include a note of the period during which the disqualification remains in force by virtue of subsection 82A(3).

Subsection 83A(2) provides that where a person is disqualified under subsection 82A(2) from being registered or from holding a licence, or is disqualified under paragraph 75(1)(e) or subsection 82A(3) from being involved in the direction, management or conduct of an agent's business, the Registrar shall keep a record of the details of the disqualification, including a note of the period during which the disqualification remains in force by virtue of subsection 82A(4).

Section 50 substitutes a new heading to Part X of the Principal Ordinance which refers to the appointment of a receiver or administrator.

Section 51 amends section 84 of the Principal Ordinance by adding new subsections (3), (4) and (5) to provide for the appointment of an administrator.

Subsection 84(3) provides that the Board may appoint a person to administer an agent's business if the agent's licence has been suspended or revoked.

Subsection 84(4) provides that the appointment of an administrator continues in force until the Board otherwise directs.

Subsection 84(5) provides that while the appointment of an administrator is in force, the agent, or if the agent is a company, a director of the company, shall not be involved in the direction, management or conduct of the agent's business.

Section 52 amends section 85 of the Principal Ordinance which concerns the notice of the appointment of a receiver or administrator to be given to a bank which maintains an account of the kind described in subsection 85(1) of the Principal Ordinance.

Paragraph 52(a) substitutes new subsections (1) and (2) to section 85.

Subsection 85(1) provides that where a receiver or administrator has been appointed in relation to an agent's business, the Board may by instrument -

- (a) give notice of the appointment to the person in charge of a bank at which the agent maintains a trust account, an account for the purpose of holding money referred to in subsection 60(1A) or an account for the purpose of holding other money received by the agent in the course of carrying on the business;
- (b) revoke the authority of the agent or an authorised person to withdraw money from the account.

Subsection 85(2) provides that where the Board has revoked the authority of an agent or authorised person to withdraw money from a bank account -

- (a) only the receiver or administrator, or a person authorised for the purpose by the receiver or administrator by written notice delivered to the bank, is authorised to withdraw money from the account; and
- (b) the bank shall not pay any money out of the account without the written authority of the receiver or administrator or a person referred to in paragraph 85(2)(a).

Paragraph 52(b) adds new subsections (4) and (5) at the end of section 85.

Subsection 85(4) provides that in the section unless the contrary intention appears, 'authorised person' means a person authorised by the agent to withdraw money from a bank account.

Subsection 85(5) provides that in the section, a reference to withdrawing money from a bank account shall be read as including a reference to signing a cheque for the payment of money out of a bank account.

Section 53 substitutes new section 86 into the Principal Ordinance. Section 86 concerns the powers, duties and liability of a receiver or an administrator.

Subsection 86(1) provides that a receiver or administrator appointed in relation to an agent's business may act on behalf of the agent and, for that purpose may carry out any function, and shall carry out any duty, that the agent is respectively permitted or required to carry out under the Principal Ordinance.

Subsection 86(2) provides that a person who is or was a receiver or administrator is not liable to an action, other than an action in negligence, or other proceeding for or in relation to an act done or omitted to be done in good faith in the performance or

purported performance of any function, or in the exercise or purported exercise of any power or authority, conferred on the person as receiver or administrator.

Subsection 86(3) provides that the Board is not liable for any loss sustained by an agent as a result of an act done or omitted to be done by a receiver or administrator, whether or not the receiver or administrator is liable.

Section 54 amends section 87 of the Principal Ordinance to provide for the remuneration of a receiver or administrator. The amendments are effected by -

- (a) substituting a new subsection (1) which provides that a receiver or administrator who is not a public servant shall be paid by the Commonwealth such remuneration as the Board determines. Further he or she is entitled to reimbursement by the Commonwealth of the expenses necessarily incurred by him or her in carrying out the receivership or administration;
- (b) inserting in subsection (2) "or administrator" after "receiver" (wherever occurring);
- (c) inserting in subsection (2) "or her" after "him"; and
- (d) by adding a new subsection (3) to provide that if a receiver or administrator is a public servant, the Board shall certify an amount that represents the amount of remuneration of the receiver or administrator that is referable to carrying out the receivership or administration, and that amount is recoverable as a debt due from the agent in relation to whose business the receiver or administrator was appointed;
- (e) by adding a new subsection (4) to provide that in the section, "public servant" means an officer or employee within the meaning of the Public Service Act 1922.

Section 55 amends section 88 of the Principal Ordinance, dealing with inquiries held by the Board.

Paragraph 55(a) substitutes a new subsection (2) to section 88 which provides that the Chairman shall cause written notice of the matter to be inquired into and of the time and place fixed for the hearing to be given -

- (a) in the case of an inquiry in relation to an application for registration or a licence -
 - (i) to the applicant;
 - (ii) to any person (other than the applicant) who is required to attend before the Board pursuant to subsection 51(2); and
 - (iii) to any person who has lodged an objection to the granting of the registration or licence;

(b) in any other case -

- (i) to the agent to whom the inquiry relates; and
- (ii) if the inquiry relates to a director or any other person involved in the direction, management or conduct of the agent's business - to that director or other person;

(c) to the member of the Board referred to in paragraph 9(1)(b);

(d) to 3 other members of the Board; and

(e) to the Registrar.

Paragraph 55(b) substitutes a new subsection (7) into section 88 which provides that an applicant or other person to whom notice of an inquiry is required to be given pursuant to subparagraph 88(2)(a)(i) or (ii) or 88(b)(i) or (ii) may be represented at the inquiry by an agent or by a legal practitioner".

Paragraph 55(c) omits from subsection 88(8) all the words from and including "barrister (first occurring) to and including "appointed" and substituting "legal practitioner to assist the Board, and the practitioner.

Paragraph 55(d) adds new subsections (10), (11) and (12) to section 88. Subsection (10) provides that a member of the Board shall not participate in an inquiry as a member if the inquiry concerns a matter directly affecting the member. Subsection (11) provides that subsections 16(3), (4), (5), (6), (7) and (9) apply in relation to an inquiry as if the references in those subsections to a meeting or meetings of the Board were references to an inquiry or inquiries held by the Board. Subsection (12) provides that, in the section, "legal practitioner" means a barrister and solicitor within the meaning of the Legal Practitioners Ordinance 1970.

Section 56 amends section 91 of the Principal Ordinance by substituting a new penalty at the foot of subsection (1) to provide that the penalty for failure to attend or produce documents is \$500 in the case of a natural person and \$2,500 in the case of a company.

Section 57 amends section 92 of the Principal Ordinance by -

- (a) substituting a new penalty at the foot of subsection (1) to provide that where a person refuses to be sworn or given evidence the penalty, on conviction, is a fine of \$500 in the case of a natural person or \$2,500 in the case of a company;
- (b) substituting a new subsection (2) which provides that a statement or disclosure made, or a document or thing produced, by a witness in the course of giving evidence before the Board, or any information, document or thing obtained as a direct or indirect consequence of the statement

or disclosure or the production of the first mentioned document or thing, is not admissible in evidence in civil or criminal proceedings in a court except in proceedings for an offence against the Principal Ordinance or in proceedings for giving false testimony at an inquiry before the Board.

Section 58 substitutes a new Part XII into the Principal Ordinance.

Part XII comprises sections 98 and 98A.

Section 98 deals with the review by the Administrative Appeals Tribunal ("the AAT") of certain decisions.

Subsection 98(1) provides that an application may be made for a review of a decision by the Board -

- (a) refusing an application, under subsection 38(1), for registration as an agent;
- (b) refusing an application, under subsection 51(1), for a grant of a licence to carry on business as an agent;
- (c) refusing an application for an order under subsection 54(2);
- (d) refusing to authorise the Registrar under subsection 54(8) to specify in a licence the name of a director specified in the application for the licence;
- (e) taking any action against an agent for a breach of the rules of conduct under subsection 75(1);
- (f) revoking a licence under section 80 or 81, where an agent does not show cause, or does not satisfy the Board, why his or her registration or licence should not be revoked;
- (g) suspending a travel agent's licence under section 82;
- (h) disqualifying a person under subsection 82A(2) from being registered or from holding a licence; or
- (j) disqualifying a person under subsection 82A(3) from being involved in the direction, management or conduct of an agent's business.

Subsection 98(2) provides that an application may be made to the AAT for a review of a decision of the trustees of the compensation scheme -

- (a) determining under clause 9.8 of the trust deed that an applicant is not eligible to be a contributor to the compensation fund;
- (b) determining under clause 11.5 of the trust deed that a participant in the compensation scheme is no longer eligible to be a contributor to the compensation fund; or

- (c) making a determination under clause 12.2 of the trust deed that an applicant, or a participant in the compensation scheme, is eligible to be a contributor to the compensation fund conditional on conduct referred to in paragraph (a) or (b) of that clause.

Subsection 98(3) provides that in subsection 98(2) 'applicant' means a person who applies under clause 9.1 of the trust deed for a determination that the person is eligible to be a contributor to the compensation fund.

Section 98A concerns the notification to the applicant of decisions by the Board which are reviewable by the AAT.

Subsection 98A(1) provides that where the Board makes a decision of a kind referred to in subsection 98(1) or (2) it shall, within 28 days of the date of the decision, cause written notice of the decision to be given -

- (a) to the applicant or agent concerned; and
- (b) if the decision also relates to a person other than the applicant or agent, to that person.

Subsection 98A(2) provides that a notice shall -

- (a) include a statement to the effect that subject to the Administrative Appeals Tribunal Act 1975, an application may be made to the AAT for a review of the decision to which the notice relates; and
- (b) except where subsection 28(4) of that Act applies - include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.

Subsection 98A(3) provides that the validity of a decision referred to in subsection 98(1) or (2) shall not be taken to have been affected by a failure to comply with subsection 98(2).

Section 59 substitutes new sections 99 and 100 into Part XIII of the Principal Ordinance.

Section 99 concerns the employment of disqualified persons.

Subsection 99(1) provides that except with the consent of the Board, a registered or licensed agent shall not employ a person in the agent's business knowing that -

- (a) the person is disqualified under this Ordinance or a corresponding law from being registered as an agent or from holding a licence to carry on business as an agent;
- (b) the person is disqualified under this Ordinance or a corresponding law from being involved in the direction, management or control (however expressed) of an agent's business;

- (c) an application by the person under this Ordinance or a corresponding law for registration as an agent or for a licence to carry on business as an agent has been refused on the ground (however expressed) that the person is not likely to carry on business honestly and fairly or is in any way not a fit and proper person to be registered or licensed;
- (d) an application by the person under the Principal Ordinance or a corresponding law for registration as an agent has been refused on the ground that the person is not of good fame and character; or
- (e) that the person's adverse qualities were responsible for a company being refused registration as an agent or a licence to carry on business as an agent under the Principal Ordinance or a corresponding law on a ground (however expressed) referred to in subparagraph 51(3)(f)(ii) or (iii).

Subsection 99(2) provides that a licensed agent is not guilty of a breach of the rules of conduct in relation to an employee by virtue of a failure to comply with subsection 99(1), if the agent adduces evidence, and that evidence is not rebutted, that he or she made reasonable enquiries about the employee, and that he or she did not know, and could not reasonably be expected to have known, that the employee was a person of a kind whose employment by an agent is prohibited by subsection 99(1).

Section 100 concerns offences by companies.

Subsection 100(1) provides that where, in proceedings for an offence against this Ordinance in respect of any conduct engaged in by a company, it is necessary to establish the state of mind of the company, it is sufficient to show that an officer, servant or agent of the company, being an officer, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

Subsection 100(2) provides that any conduct engaged in on behalf of a company -

- (a) by an officer, servant or agent of the company within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an officer, servant or agent of the company, where giving the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, servant or agent;

shall be deemed, for the purpose of the Principal Ordinance, to have been engaged in also by the company.

Subsection 100(3) provides that if a company does or omits to do any act or thing of which the doing or omission constitutes an offence, a person (by whatever name called and whether or not the person is an officer of the company) who is concerned in, or

takes part in, the management of the company shall be taken to have committed the offence and is punishable accordingly.

Subsection 100(4) provides that a person shall not be taken to have committed an offence pursuant to subsection 100(3) if the person adduces evidence, which is not rebutted, that he or she did not aid, abet, counsel or procure the company's act or omission and was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or a party to, the act or omission.

Subsection 100(5) provides that a reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.

Subsection 100(6) provides that for the purposes of subsection (3), an officer of a company shall be presumed to be concerned in, and to take part in, the management of the company unless the officer adduces evidence to the contrary and that evidence is not rebutted.

Section 60 amends section 101 of the Principal Ordinance, which provides for an agent not to share commission with an unlicensed agent, by -

- (a) inserting in subsection (1) "(other than a travel agent)" after "agent" (first occurring);
- (b) by omitting the penalty set out at the foot of subsection (1); and
- (c) by substituting a new subsection (2) to provide that a reference to a licensed agent in subsection (1) shall be read as including a reference to a person licensed under a corresponding law to carry on business as an agent.

Section 61 amends section 102 of the Principal Ordinance, which concerns the improper use of a licence, by omitting the penalty set out at the foot.

Section 62 amends section 103 of the Principal Ordinance, which concerns the improper use of title of real estate agent, by -

- (a) substituting a new penalty at the foot of subsection (1) which provides a fine of \$1,000 in the case of a natural person or \$5,000 in the case of a company; and
- (b) omitting from subsection (2) all the words after "referred to" and providing that a person who improperly uses the title of real estate agent in connection with any of the matters referred to in paragraph 5A(a), (b) or (c) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 in the case of a natural person or \$5,000 in the case of a company.

Section 63 amends section 104 of the Principal Ordinance, which provides that it is an offence to improperly use the title of stock and station agent, by -

- (a) substituting a new penalty at the foot of subsection (1) which provides a fine of \$1,000 in the case of a natural person or \$5,000 in the case of a company;
- (b) omitting from subsection (2) all the words after "referred to" and providing that any person who improperly uses the title of stock and station agent in connection with any of the matters referred to in paragraph 5B(a), (b), (c), (d) or (e) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 in the case of a natural person or \$5,000 in the case of a company.

Section 64 amends section 105 of the Principal Ordinance which concerns the improper use of title of business agent, by -

- (a) substituting a new penalty at the foot of subsection (1) which provides a fine of \$1,000 in the case of a natural person or \$5,000 in the case of a company;
- (b) omitting from subsection (2) all the words after "referred to" and providing that any person who improperly uses the title of business agent in connection with any of the matters referred to in section 5C is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 in the case of a natural person or \$5,000 in the case of a company.

Section 65 inserts section 105A into the Principal Ordinance. Section 105A concerns the improper use of title of travel agent.

Subsection 105A(1) provides that a person who is not a licensed travel agent shall not use, in an advertisement or otherwise, words which would reasonably lead to the belief that the person is a licensed travel agent.

Subsection 105A(2) provides that without limiting the effect or application of subsection (1), a person who is not a licensed travel agent who -

- (a) places, or suffers or permits to be placed, on a building in which the person's business is carried on; or
- (b) places on a document, as a description of his or her business;

the words "travel agent" or other words that imply that, in the course of carrying on business, the person acts or is prepared to act, as agent for principals in connection with any activity in respect of which the agent is, by virtue of section 5D, carrying on business as a travel agent, is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 in the case of a natural person or \$5,000 in the case of a company.

Section 66 amends section 106 of the Principal Ordinance, which provides that a licensed agent shall not make false or misleading advertisements, by omitting the penalty set out at the foot.

Section 67 substitutes new sections 107 and 108 into the Principal Ordinance.

Section 107 provides that a former licensed agent who fails to preserve records in accordance with paragraph 60(2)(c) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 in the case of a natural person or \$5,000 in the case of a company.

Section 108 provides that a person who, without reasonable excuse, obstructs or hinders an authorised officer in the exercise of the officer's powers or in the performance of the officer's duties under the Principal Ordinance, is guilty of an offence punishable on conviction, in the case of a natural person, by a fine not exceeding \$1,000 or by imprisonment for a period not exceeding 6 months, or both or in the case of a company by a fine not exceeding \$5,000.

Section 68 amends section 109 of the Principal Ordinance, which provides that a licensed agent shall produce his licence for inspection, by omitting the penalty set out at the foot.

Section 69 amends section 111 of the Principal Ordinance, which concerns the withholding of deposits in trust accounts, by omitting the penalty set out at the foot.

Section 70 amends section 112 of the Principal Ordinance which provides that an agent shall specify his or her business address in an advertisement, by omitting the penalty set out at the foot.

Section 71 amends section 113 of the Principal Ordinance, which concerns the misrepresentation of an authority to act as a real estate agent, by substituting a new penalty at the foot of subsection (1) which provides that the penalty for such misrepresentation is \$1,000 in the case of a natural person or \$5,000 in the case of a company.

Section 72 amends section 114 of the Principal Ordinance, which concerns the misrepresentation of an authority to act as a business agent, by substituting a new penalty at the foot of subsection (1) which provides that the penalty for such misrepresentation is \$1,000 in the case of a natural person or \$5,000 in the case of a company.

Section 73 amends section 115 of the Principal Ordinance, which provides that an agent shall display a notice on his or her registered place of business, by omitting the penalty set out at the foot.

Section 74 amends section 117 of the Principal Ordinance by omitting all the words after "offence" and providing that it is an offence punishable, on conviction, by a fine not exceeding \$2,000 in the case of a natural person or \$10,000 in the case of

a company for a person other than a licensed real estate agent to collect rents or other moneys payable in respect of the occupation of land.

Section 75 amends section 119 of the Principal Ordinance, which provides that there must be evidence of licensing, by omitting "or a business agent's licence" and substituting "a business agent's licence or a travel agent's licence".

Section 76 inserts section 120B after section 120A of the Principal Ordinance.

Section 120B provides that the Minister may

- (a) enter into an agreement with a Minister of State responsible for administering a corresponding law with respect to travel agents, being an agreement relating to the establishment, implementation, administration and maintenance of a joint scheme of regulation and compensation in relation to business carried on by travel agents; and
- (b) execute a trust deed under which are established and administered a travel compensation fund and a compensation scheme in relation to business carried on by travel agents.

Section 77 amends section 122 of the Principal Ordinance, which concerns the Minister's powers to make regulations, by increasing the fine for an offence against the regulations to \$500 in the case of a natural person or to \$2,500 in the case of a company.

Section 78 amends the Principal Ordinance by adding at the end a Schedule detailing those qualifications for travel agents which are adequate for the purposes of paragraph 47C(c).

Section 79 provides for transitional arrangements for travel agents.

Subsection 79(1) provides that if within 1 month after the commencement of this Ordinance, a person who was carrying on business as a travel agent immediately before that commencement -

- (a) applied under the Principal Ordinance for a licence to carry on that business; and
- (b) applies to the trustees of the compensation scheme under clause 9.1 of the trust deed for a determination that the person is eligible to be a contributor to the compensation fund;

the person shall be deemed to be a licensed travel agent until -

- (c) the trustees have notified the Board of their determination in relation to the person; and
- (d) the Board has determined under the Principal Ordinance whether or not to grant a licence to the person.

Subsection 79(2) provides that expressions used in subsection 79(1) that are defined in the Principal Ordinance have in that subsection the same respective meanings as in the Principal Ordinance.

Subsection 79(3) provides that references to the Principal Ordinance in subsections 79(1) and (2), shall be read as a reference to the Principal Ordinance as amended by the Ordinance.