

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

AGENTS (AMENDMENT) BILL (NO. 2) 1998

EXPLANATORY MEMORANDUM

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Outline

This is an amending Bill. It makes a number of minor technical amendments to the *Agents Act 1968*, referred to in the amending Bill as the 'Principal Act'. The amendments to the Principal Act are consequential upon amendments to the Travel Compensation Fund Trust Deed which provides for the establishment and administration of a travel compensation trust fund and a compensation scheme in relation to business carried on by travel agents. The Travel Compensation Fund Trust Deed is an integral part of the national cooperative scheme for licensing travel agents and the compensation of consumers who experience financial loss resulting from the collapse of a travel agency, and applies in the ACT by virtue of the Principal Act.

The amendments to the Principal Act are reflective of changes in the terminology and the numbering of clauses in the amended trust deed. To reduce the need for these sorts of amendments in the future, specific references to clauses of the trust deed are removed from the Principal Act.

Revenue/Cost Implications

This Bill has no revenue or cost implications.

Formal Clauses

Clauses 1, 2 and 3 are formal requirements. They refer to the short title to the Bill, commencement and definition of the Principal Act.

Interpretation

Clause 4 amends a definition, omits and substitutes a definition, omits another definition and inserts a new definition into subsection 5(1) of the Principal Act:

Subclause 4(a) amends the definition of 'trust deed' by omitting the words 'clause 30 of

Subclause 4(b) omits the definition of 'participant' and substitutes a new definition. The new definition provides that 'participant' has the same meaning as in the trust deed.

Subclause 4(c) omits the definition of 'trustees' whilst subclause 4(d) inserts a definition, 'Board of Trustees', which is reflective of the fact that it is the Board of Trustees under the amended the trust deed, rather than 'the trustees', who operate the travel compensation fund and the compensation scheme.

Unlicensed travel agents - additional penalty

Clause 5 amends subsection 19A(2) of the Principal Act by omitting the words 'trustees of the compensation scheme' and substituting 'Board of Trustees'

Eligibility - natural persons

Clause 6 makes two amendments to section 47A of the Principal Act

Subclause 6(a) omits paragraph (c), and substitutes a new paragraph reflective of the new definitions of 'Board of Trustees' and 'participant'.

Subclause 6(b) omits the words 'Part 6 of', which are unnecessary, from paragraph (d)

Eligibility - companies

Clause 7 makes two amendments to section 47B of the Principal Act.

Subclause 7(a) omits paragraph (d) and substitutes a new paragraph reflective of the new definitions of 'Board of Trustees' and 'participant'.

Subclause 7(b) omits the words 'Part 6 of', which are unnecessary, from paragraph (e).

Participation in compensation scheme

Clause 8 makes two amendments to section 71B of the Principal Act

Subclause 8(a) omits the words 'in the compensation scheme' from subsections (1), (2) and (3), whilst subclause 8(b) omits the words 'trustees of the compensation scheme' from paragraph (3)(b). These references are not required because of the new definitions of 'Board of Trustees' and 'participant'

Powers of Board of Trustees

Clause 9 amends section 71C by omitting the words 'trustees of the compensation scheme have' and substituting 'Board of Trustees has'

Legal action by Board of Trustees

Clause 10 makes three amendments to section 71D of the Act

Subclause 10(a) omits the words 'trustees of the compensation scheme' and substitutes 'Board of Trustees', whilst subclause 10(b) replaces the word 'them' (wherever occurring) with the words 'the Board'

Subclause 10(c) omits the words 'compensation scheme' (last occurring) and substitutes 'trust deed'. This reflects the fact that it would be the trust deed rather than the compensation scheme which impose conditions precedent to the bringing of action

Rights of Board of Trustees

Clause 11 makes three amendments to section 71E.

Subclause 11(a) omits the word 'claimant' (wherever occurring) from subsection (1) and substitutes the word 'person'. This brings the terminology used into line with that of the trust deed, where claims are made by 'persons' rather than 'claimants'.

Subclause 11(b) omits the words 'trustees of the compensation scheme are' from subsection (1) and substitutes the words 'Board of Trustees is'.

Subclause (c) omits the word 'trustees' from subsection (2) and substitutes the words 'Board of Trustees'.

Revocation of registration or licence

Clause 12 omits subparagraph 77(1)(d)(i) of the Principal Act and substitutes a new subparagraph which omits the former specific reference to a clause of the trust deed, replaces the words 'trustees of the compensation fund' with the words 'Board of Trustees' and, consistent with the new definition, replaces the words 'participant in the compensation scheme' with the word 'participant'.

Review of decisions

Clause 13 amends section 98 of the Principal Act by omitting subsections (2) and (3) and substituting a new subsection. New subsection (2) does not include references to specific clauses of the trust deed as formerly.

Notification of decisions

Clause 14 makes three amendments to section 98A of the Principal Act. The purpose of this amendment is to remove a wrong reference to the Agents Board of the ACT as it is the Board of Trustees which is the decision maker under subsection 98(2).

Subclause 14(a) omits 'or (2)' from subsection 98A(1)

Subclause 14(b) inserts a new subsection 98(1A) providing for written notice of a decision of a kind referred to in subsection 98(2) to be given by the Board of Trustees to the person to whom it relates.

Subclause 14(c) inserts a reference to new subsection (1A) into subsection 98A(2) to require notices under subsection (1A) to be in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*