



TRAVEL AGENTS LICENSING GUIDELINES

INTRODUCTION

All the States and the Australian Capital Territory have substantially uniform licensing laws for Travel Agents, which are individually administered by their Governments. In New South Wales, the licensing authority is NSW Fair Trading.

WHO NEEDS TO BE LICENSED?

Any individual or corporation (including general sales agents, wholesalers, consolidators, retail agents and some tour operators) who carries on business as a travel agent is required to be licensed.

You are carrying on business as a travel agent if you:

- sell tickets entitling another person to travel, or otherwise arrange for another person a right of passage on conveyances;
- sell to, or arrange or make available for, another person rights of passage to a place and accommodation at that place;
- purchase for resale the right of passage on a conveyance.

If you act as a tour operator rather than as an agent, you may need to apply to the Department of Transport to be an "Accredited Operator".

Employees of licensed agents do not have to hold a licence in their own right. Freelance travel consultants or commission consultants, who are not bona fide employees of a licensed travel agent, cannot sell tickets or otherwise arrange travel for other persons unless they themselves are the holders of a travel agents licence.

The Act provides for a penalty of \$55,000 for carrying on business as a travel agent without a licence. A licensed travel agent who knowingly assists a person who does not hold a licence to carry on business as a travel agent also commits an offence.

If you think you do not need to be licensed, you should contact NSW Fair Trading or seek your own legal advice, to be certain you do not need a licence.

EXEMPTION FROM THE NEED TO BE LICENSED

If your business is restricted to either arranging travel or arranging travel and accommodation within Australia and, at any day, the gross turnover of your business as a travel agent during that financial year (meaning the period from 1 July to 30 June), excluding the value of any business in respect of a conveyance or accommodation owned by you, has not exceeded \$50,000, you do not need a Travel Agents licence.

You do not need a Travel Agents licence to sell or arrange day trips (trips that leave from and arrive at the same place on the same day) or to sell tickets or arrange travel on a conveyance that you own.

IF YOU HOLD A LICENCE IN ANOTHER STATE OR TERRITORY

If you are the holder of a Travel Agents licence in the Australian Capital Territory, Queensland, South Australia, Tasmania, Victoria or Western Australia, you may advertise in New South Wales, so long as you state in the advertisement:

- (i) your name;
- (ii) your licence number and;
- (iii) the name of the State or Territory in which your licence was issued.

If you are the holder of a Travel Agents licence in the Australian Capital Territory, Queensland, South Australia, Tasmania, Victoria or Western Australia, you may provide information to prospective customers in connection with your business as a travel agent in the Australian Capital Territory, Queensland, South Australia, Tasmania, Victoria or Western Australia without being required to hold a licence in New South Wales.

You are not permitted to carry on business as a travel agent if you are physically present in New South Wales unless you are the holder of a Travel Agents licence issued in New South Wales.

You are not permitted to carry on business as a travel agent through another person who is physically present in New South Wales unless you are the holder of a Travel Agents licence issued in New South Wales.

APPLYING FOR A LICENCE

You must make two applications: one to NSW Fair Trading for the licence and the other to the trustees of the Travel Compensation Fund ("the TCF") to be admitted as a contributor to the Fund.

The Director General will make a number of character related checks against your application and will check the qualifications of the person (whether the licensee or someone else) who will be responsible for the day-to-day management of the business. The Trustees are concerned with establishing that your proposed business will meet their financial standards.

An application may be made by an individual or a company. It is possible to carry on business in partnership with another person or company, but each partner needs a licence.

When you apply for a licence, you pay both a processing fee and a licence fee. If your licence application is not granted, only the licence fee component is refundable.

TRAVEL COMPENSATION FUND

To be the holder of a licence under the Travel Agents Act 1986 ("the Act") you must be eligible to be a contributor to the TCF. Eligibility depends on your ability to show at any time that you are financially viable.

The main objectives of the TCF are to compensate persons who have suffered pecuniary loss where a licensed travel agent has failed to account for monies received and to ensure that all licensees have sufficient financial resources to carry on the business of a travel agent. A Travel Agents licence is subject to a condition that the licensee shall, at all times during the currency of the licence, be a participant in the TCF.

For further information about the TCF, you can contact them on telephone (02 8227 3500), by facsimile (02 8227 3535) or write to them at Level 3, 15 Castlereagh St, Sydney, NSW, 2000. The website address of the TCF is www.tcf.org.au.

ELIGIBILITY FOR A LICENCE

1. Where an application for a licence is made by an individual:

For an individual to be eligible for a licence, the Director General must be satisfied that:

- the applicant is at least 18 years old;
- the applicant is not disqualified from holding a licence;
- the applicant is not disqualified from being involved in the direction, management or conduct of a business as travel agent;
- any person proposed to be employed for the purposes of supervision of conduct of business is of good reputation or character and would be a fit and proper person to be a licensee if the person were to apply for a licence;
- the applicant is likely to carry on such a business honestly and fairly;
- the applicant is a fit and proper person to be the holder of a licence.

2. Where an application for a licence is made by a corporation:

For a corporation to be eligible for a licence, the Director General must be satisfied that:

- all persons concerned in the management of the corporation are at least 18 years old;
- the corporation is not disqualified from holding a licence;
- the corporation is not disqualified under the Act or a corresponding Act from being involved in the direction, management or control of a business as travel agent;
- any person proposed to be employed for the purposes of supervision of conduct of business is of good reputation or character and would be a fit and proper person to be a licensee if the person were to apply for a licence;
- the corporation is likely to carry on such a business honestly and fairly;
- the reputation of the corporation is such that it would be a fit and proper person to be a licensee;
- no officer of the corporation is disqualified from being involved in the direction, management or conduct of the business of a travel agent;
- all directors of and all persons concerned in the management of the corporation would be fit and proper persons to be holders of a licence if they were to apply personally;
- any other person who appears to have control, or substantial control, of the corporation is of good reputation and character and likely to exercise that control honestly and fairly.

3. In determining whether or not a person is a fit and proper person to hold a licence:

The Director General may have regard to the fact that a person or corporation:

- has been convicted of an offence against the Travel Agents Act;
- has, during the period of 10 years that last preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence involving fraud or dishonesty;
- was at the time of the application bound in relation to such an offence by a recognizance;
- had at the time of the application a charge pending in relation to such an offence;
- has been refused a licence under a corresponding Act;
- has, at any time, been convicted of an offence against the Act or any other enactment administered by the Minister or;
- has been the subject of disciplinary action under a corresponding Act.

ELIGIBILITY TO BE A MEMBER OF THE TRAVEL COMPENSATION FUND

You have to satisfy the Trustees that you are financially viable. A formula for determining this has been published, but satisfying the criteria alone does not necessarily mean you will be accepted as a contributor. The Trustees may ask for some form of guarantee until your business is established.

For further details, refer to the documentation published by the TCF.

REFUND POLICY

Sections 22 and 51 of the Licensing and Registration (Uniform Procedures) Act 2002 require that all fees (other than any processing fee) paid in connection with an application that is refused, are to be refunded to the applicant.

Where an application has been refused by NSW Fair Trading, the appropriate refund amount will be provided by sending a cheque to the applicant.

RIGHT OF APPEAL

You have a right to appeal against a decision to refuse to grant a licence or to grant a licence subject to conditions or restrictions. Where it is proposed to issue a licence subject to conditions or restrictions you will be given an opportunity to object, orally or in writing, before the licence is issued.

If your licence application is refused or is issued subject to conditions or restrictions and you wish to appeal against the decision, you can apply, within 28 days, to NSW Fair Trading for an internal review. The application must be in writing, be addressed to the Director General and specify an address in Australia to which a notice of the result may be sent.

Your request for an internal review will be determined by a senior officer. You will be notified in writing of the result of the review, together with the reasons for the decision, within 21 days. If you are dissatisfied with the result of the internal review, you may apply to the Administrative Decisions Tribunal. You have 28 days from the date of receiving the result of the internal review to apply to the Tribunal for a review of that decision.

Information on the operations of the Tribunal, including fees, should be directed to the Tribunal on telephone number (02) 9223 4677.

(Administrative Decisions Tribunal website: www.lawlink.nsw.gov.au/adt)

CAN I CARRY ON BUSINESS WHILE MY APPLICATION IS PENDING?

Generally speaking, no. You would be trading illegally as well as possibly jeopardising your chances to obtain a licence and you could face heavy penalties.

The maximum penalty for unlicensed trading is \$55,000. You would also be precluded from recovering any fee or commission.

You may however trade as a Travel Agent without a licence provided your business is restricted either to arranging travel or arranging travel and accommodation within Australia and, at any day, the gross turnover of your business as a travel agent during that financial year (meaning the period from 1 July to 30 June), excluding the value of any business in respect of a conveyance or accommodation owned by you, has not exceeded \$50,000.

NOTICE TO BE DISPLAYED BY TRAVEL AGENTS

You have to conspicuously display, at the front of each premises at which you conduct the business of a travel agent, a notice showing that the agency is licensed.

Notices for use at each business premises are supplied to new licensees by NSW Fair Trading (in the case of partnerships, only one notice is supplied per premises).

ADVERTISEMENTS

Advertisements, other than on radio or television, must specify the licence number and the name of the licensee or, where the licensee is authorised by the licence to carry on business under a business name, the licence number and the name of the licensee followed by the words "trading as" and the business name or names under which the licensee is authorised to carry on business.

Where two or more licensees carry on business in partnership, you need to show the names of all of the partners on advertisements followed, if applicable, by the words "trading as" and the business name or names under which the licensees are authorised to carry on business. The advertisement, however, only needs to specify the licence number of one of the partners.

BUSINESS DOCUMENTS

All letters, statements, invoices, cheques, receipts or other documents must show the name of the licensee, whether or not the licensee is also authorised by the licence to carry on business under a business name.

Where two or more licensees carry on business in partnership, you need to show the names of all of the partners on the business documents.

DISQUALIFIED PERSONS

You are required to make reasonable enquiries to determine whether a proposed employee has been disqualified from holding a licence or being involved in any capacity in a travel business, or had an application for a licence refused.

Only the Director General can approve the employment of such persons.

ACCOUNTS TO BE KEPT

You are required to keep such accounting and other documents that correctly record and explain the transactions and financial position of your business. The records must be kept in a manner that allows true and fair profit and loss accounts and balance sheets to be prepared and audited.

A person must not obstruct access to these records or statements or fail to provide information about the records to any authorised person.

TRUST ACCOUNTS

The legislation does not require you to keep a trust account, but this may be required by the Trustees of the TCF in certain circumstances.

The fact that no requirement for trust accounts exists does not change the nature of the money you receive in conducting your business. These funds belong to the consumer until the service (travel, accommodation, etc.) is provided or the person providing the service receives the money.

You would be expected to show on request that client funds are properly accounted for and that all payments due are made on time.

MANAGER'S QUALIFICATIONS

No particular educational qualifications are necessary to hold a licence. The main requirement is that you are a fit and proper person to hold a travel agent's licence. However, you must have a suitably qualified person in charge of each place at which business is conducted. This person may be the licensee or can be a person employed by the licensee.

Where the travel agent's business involves the sale of tickets or the arrangement of rights of passage for international travel or international travel and accommodation, the person in charge of the day-to-day business must have the prescribed qualifications and/or experience.

The prescribed qualifications for a person in charge of the day-to-day conduct of the business of a travel agent that involves the sale of tickets or the arrangement of rights of passage, for international travel or international travel and accommodation are:

- (a) successful completion of Unit of Competency THTSOP20A or SITTTSL013A provided or assessed by a registered provider within the meaning of the Vocational Education and Training Accreditation Act 2005 or;
- (b) a total of 1 years' experience **over the preceding 5 years:**
 - (i) in the selling of tickets, or the arrangement of rights of passage, for international travel or international travel and accommodation, or
 - (ii) in employment as the person in charge of the day-to-day conduct of a place of business of a travel agent licensed under the Act or a corresponding Act that involves the selling of tickets, or the arrangement of rights of passage, for international travel or international travel and accommodation.

There is no need for the person in charge of the day-to-day business to have any qualifications and/or experience if the travel agent's business only involves travel arrangements within Australia.

WORKING FROM HOME

The Act does not prevent employees of licensed travel agents working from home but where an employee is selling or arranging travel from home, their home is considered a branch of the licensee's business. The employer must therefore have the employee's home address shown on their licence as an additional place of business and the employee must have the same qualifications and/or experience as that required of a manager. The employer must also apply to the TCF for approval of the home address as a branch office.

CURRENCY OF LICENCE

Except while it is suspended, a licence continues in force until it is surrendered or cancelled. If you cease to carry on business as a travel agent you should, by notice in writing given to NSW Fair Trading and accompanied by the licence, surrender the licence.

STATUTORY REQUIREMENTS

Each year you are required to pay the Director General a fee for each place at which you conduct business and lodge a statement to update information on the register of licences. Your licence will be cancelled if you fail to pay the fee and lodge the annual statement (in the case of a partnership, only one partner is required to pay a fee).

In addition, you are required to pay an annual administration fee to the Trustees of the TCF and provide them with audited financial statements. You may also be required to make an additional contribution to the Fund. Your licence will be automatically suspended if you cease to be a participant of the TCF. If you continue to trade whilst under suspension, you can be prosecuted for unlicensed trading.

A travel agent's licence is not transferable and may not be borrowed by another party.

CHANGES OF PARTICULARS

If you change your principal place of business, open an additional location or cease business at a particular location, you must notify the Director General of the change within 14 days. This information should also be provided to the Travel Compensation Fund.

Where a new manager is appointed, you must also ensure that person has the appropriate qualifications and/or experience (refer to the item "Manager's qualifications" on page 6). Full details of the new manager's particulars, together with (unless the agency only deals in domestic travel) details of their experience and qualifications in the travel industry, including copies of certificates and references, must also be notified to the Director General within 14 days of the change.

LIABILITY IN THE EVENT OF A COLLAPSE

In the event of a collapse, or for that matter in any circumstances in which moneys are paid by the TCF for an agent's failure to account to a consumer, directors knowingly involved in events which lead to a payment by the TCF will be liable to repay the TCF for the payments that have been made.

DISCIPLINARY ACTION

The Director General has wide powers to discipline licensees.

If the Director General has reason to believe that:

- your licence was improperly obtained or when obtained there were grounds for refusing it;
- you have been convicted of an offence against the Travel Agents Act or other consumer protection legislation;
- you have failed to comply with a condition attached to the licence;
- you have been found guilty of an offence involving fraud or dishonesty;
- you do not have sufficient financial resources to continue to carry on business;
- you are carrying on business dishonestly or unfairly;
- you have ceased to carry on business for a month or more;
- you are not a fit and proper person to hold a licence;
- you may be called upon to show cause why you should not be disciplined.

This may range from a reprimand to your licence being suspended or cancelled and you and any person concerned in the management of the business being disqualified.

If this occurs, you have the right of appeal. You first ask that the Director General to review the decision. If the outcome of this review is that the original decision is to stand, you may apply to have your appeal heard by the Administrative Decisions Tribunal.

If you are the subject of proceedings for an offence under the Act, the Supreme Court may, by order, prevent you from disposing of property or specify how you may do so.

If a licensee repeatedly engages in unjust conduct (dishonesty, unfairness, breach of contract, or failure to comply with conditions) the Director General may request that they execute a formal deed giving undertakings to:

- discontinue the unjust conduct;
- undertake specific types of conduct in the future;
- rectify the consequences of the unjust conduct.

Breach of the undertakings will result in disciplinary action.

FAIR TRADING ISSUES

Full Disclosure

Consumers should be fully informed of all costs, schedules, conditions and cancellation fees.

Where special conditions apply to tickets, they should be fully explained. It is good practice to give a statement of conditions written in plain language. Consumers cannot be expected to accept a share of responsibility in any transaction if they are unaware of that responsibility. You should respond to questions about products or services with detailed information and give detailed written quotations.

You will need a high standard of product knowledge, which must be continually updated.

Fair Cancellation Fees

Common law recognises the right of traders to fair compensation when consumers cancel an arrangement. Cancellation fees should reflect true costs and not be so high as to be punitive.

Accurate Representations

Representations concerning what is offered should not be false or misleading.

Pictures in brochures or advertisements should not mislead consumers as to the standard of holiday being offered. Also, prices charged for accommodation or tours may give rise to certain expectations as to the standard offered. It is essential that all promotional conduct give an accurate overall impression.

Brochures and other promotional material normally state the dates between which they are valid. If information they contain changes during the validity period, you should ensure that the material is amended or removed from public display as soon as you are aware of the change. Failure to remove or amend the material could result in customers being misled and places you at risk of prosecution.

Adequate Notice of Variations

It is always a good practice to inform consumers of variations as soon as they become known. It is not satisfactory to wait until the consumer comes to pick up the tickets, for example, before telling them that there has been a change of flights or change of itinerary.

Good office practices

Many problems arise because agents do not keep accurate records or operate according to the standards of good practice:

- details of all transactions need to be adequately documented;
- the more important points should be explained and preferably confirmed in writing;
- the premises must be easily identified as a travel agency;
- if shared with another activity, the travel agency section of the business should be distinguishable from the other activity;
- the premises must be easily accessible during normal office hours;
- the premises must be adequately equipped for the conduct of business and security should be in place for the storage of ticket stock etc.

The Most Common Problems Experienced by Travel Consumers

Some problems are outside your control. However, most complaints can be avoided if you:

- disclose all relevant information to customers prior to taking bookings;
- ensure that your advertising, promotional material etc. conveys a truthful impression about products and services;
- adopt good business practices;
- give your customers details about costs, schedules, conditions and cancellation fees;
- explain any conditions, which apply to special offers.

You can be held liable if you give incorrect advice.

Advise customers travelling overseas, of passport and visa requirements including re-entry requirements if applicable.

FAIR TRADING ISSUES (continued)

Problems commonly reported to NSW Fair Trading include:

- incorrect flight times shown on airline tickets;
- consumers holding confirmed bookings being refused carriage by airlines;
- consumers not being advised that booking were waitlisted;
- increases in price of tours and/or air tickets in some cases after the final payment is made;
- increases due to currency fluctuations, withdrawal of special rates;
- agents quoting fares for the wrong season etc;
- vouchers not being accepted by overseas tour operators;
- tours cancelled/varied by operators with insufficient time to make alternative arrangements;
- tours at an overseas location being cancelled without notification prior to departure;
- standards of accommodation and travel services inferior to, or of shorter duration than those described in tour brochures;
- failure to notify consumers of special visa requirements;
- failure to notify consumers of special customs requirements, especially monetary controls;
- failure to notify consumers at the time of booking of cancellation charges;
- failure to notify consumers at the time of booking of special conditions applicable to tickets;
- lengthy delays in obtaining refunds of unused air tickets especially "off-shore" tickets.

ACT AND REGULATIONS

You need to be familiar with the requirements of the Travel Agents Act 1986 and the Travel Agents Regulation 2006.

Salmat PrintZoo provides a print on demand and mail order service for NSW Legislation and is located at 2 Military Road, Matraville NSW 2036.

Telephone: 1300 656 986

Fax: (02) 9311 0946

E-mail address: bookshop@salmat.com.au

You can also access the Act and Regulations on the internet at the Government of NSW Legislation home page at www.legislation.nsw.gov.au

OTHER LAWS

There are other laws you will also need to keep in mind. These include the Fair Trading Act, the Trade Practices Act and the Sale of Goods Act.

The Fair Trading Act allows NSW Fair Trading to:

- investigate and prohibit fraudulent, misleading or deceptive business practices especially those involving advertising;
- provide a means for consumers to obtain compensation from unfair traders;
- provide legal assistance to consumers in cases where the issue involved is of general concern to consumers and;
- enter business premises to obtain evidence in cases it is investigating.

The Trade Practices Act also prohibits fraudulent business practices but additionally offers protection to traders against price discrimination and abuse of market power by suppliers.

This information has been produced by NSW Fair Trading as a guide to help you understand the laws relating to fair trading practices. It is not a statement of the law.