

TCF DISCRETION TO PAY CLAIMS IN EXCESS OF \$25,000

This Guideline has been developed and published by the Board of the TCF under clause 15.3 of the TCF Trust Deed.

1. Purpose

- 1.1 The purpose of this Guideline is to indicate how the TCF Board proposes to implement the new \$25,000 discretionary limit cap on payment of claims where a licensed travel agent and TCF participant fails to account to travel clients for money entrusted for travel arrangements.
- 1.2 The claims limit came into effect on 25 March 2005 by amendment to clause 15 of the TCF Trust Deed, and applies to all failures to account to clients after that date.
- 1.3 Where travel arrangements exceed \$25,000 in value, compensation above the claims limit will be paid for the total established loss if the Board considers that the travel arrangements were of a kind which the Trust Deed was clearly intended to cover. However, where the Board is satisfied that the circumstances of a claim exceeding \$25,000.00 (**an "above-limit claim"**) were so unusual or uncommercial that it did not fall into this category, compensation may be limited to \$25,000.00.
- 1.4 In establishing whether the claims limit applies, the Board will, if appropriate, initially apply the Consequential Loss Guideline (Guideline No 1) to determine whether compensation should include any consequential loss in addition to the amount actually entrusted to the failed travel agent.
- 1.4 The Board will revise this Guideline from time to time in the light of TCF claims experience with above-limit claims.

2. Guidelines to payment of above-limit claims

- 2.1 Generally, the Board expects to pay most above-limit claims (whether personal or business arrangements). It will not do so however where the circumstances of the payment to, or the payment being retained by, the travel agent did not reflect either usual travel industry practice in dealing with client funds or normal commercial practice of by travel clients, or otherwise placed the TCF at a particular risk which ought not be carried entirely by it.
- 2.2 The following are the positive factors that the Board may look for in exercising its discretion to pay compensation for an above limit claim:

- that the travel arrangements were of a kind commonly entered into in the Australian travel industry
- the usual travel documentation was provided to the consumer
- having regard to the circumstances, funds were not left with the travel agent for an unusually long time without bookings being arranged
- there was no other relationship between the travel agent and claimant that could suggest the money handed over may not be for travel arrangements
- if the claimant, due to inexperience, language or cultural factors, or a relevant disability, could not be expected to appreciate that the transaction with the travel agent was unusual or risky;

2.3 The following are the negative factors that the Board may take into account in deciding not to pay an above-limit claim.

- the claimant failed to take reasonable steps to protect his or her own interests (for example, if the claimant entered into any unusual payment arrangements, or did not receive a receipt or other relevant documentation referring to the claimant's travel at a time when this would normally be provided);
- funds were left with the agent for an unusually long period (for example, in excess of three months) without travel arrangements being made
- the nature and appearance of documentation given to the claimant (including any letterhead or receipts, and reference to licence numbers) was obviously unusual, or whether documentation in support of a claim is brought into existence well after payment was made;
- the existence of any other relevant relationship between the claimant and travel agent (such as commercial exchange of services), whether the payment to the agent was made pursuant to some other transaction between the claimant and a third party (such as the payment of an entitlement by the claimant's employer), or whether the amount and timing of payment to the agent was made for a purpose unrelated to the travel arrangements;

2.4 The above factors in 2.2 and 2.3 are not exhaustive, and the Board will take into account all relevant circumstances in deciding whether or not to pay an above-limit claim.

4. Appeals against TCF Board decision

- 4.1 The TCF Trust Deed does not provide for an appeal against a Board decision not to pay any discretionary claim, including an above-limit claim. The Trust Deed continues to provide an appeal against a decision not to pay the first \$25,000 of a claim (but not for any other discretionary component of the claim).

(Note: This Guideline was approved by the TCF Board on 24 November 2005).