

The Senate

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Economics Legislation Committee

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Provisions of the Tourism Australia Bill 2004

May 2004

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# Senate Economics Legislation Committee

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# CHAPTER 1

## INQUIRY INTO THE PROVISIONS OF THE TOURISM AUSTRALIA BILL 2004

### Background

1.1 The Hon. Joe Hockey MP, Minister for Small Business and Tourism introduced the Tourism Australia Bill 2004 into the House of Representatives on 1 April 2004. Currently the bill is adjourned at the second reading stage in that chamber.

### Reference of the bill

1.2 On 1 April 2004, Senator O'Brien moved a notice of motion requesting that the provisions of the Tourism Australia Bill 2004 be referred to the Economics Legislation Committee for inquiry and report. The motion was put and agreed to by the Senate without debate.

### Purpose of the bill

1.3 The bill establishes a new statutory body, known as Tourism Australia, under the *Commonwealth Authorities and Companies Act 1997*. The body is an amalgamation of the Australian Tourist Commission, See Australia, the Bureau of Tourism Research and the Tourism Forecasting Council. In addition, the bill sets up a new unit within Tourism Australia known as Tourism Events Australia.

1.4 Establishing Tourism Australia was a proposal of the Tourism White Paper which presented the Government's medium to long-term strategy for tourism. The White Paper identified a need for a body that would be flexible and responsive to the changing domestic and global environment of the tourism industry. The intent is for Tourism Australia to conduct research and analysis tailored to meet government and market needs, and so identify and focus on global tourism trends.

1.5 The objects of Tourism Australia are to maximise the benefits of tourism to Australian society, the economy and environment and to maximise the Australian Government's investment in tourism marketing and promotion.<sup>1</sup>

### Submissions

1.6 The Committee advertised its inquiry in *The Australian* on 7 April 2004 and on the Parliamentary website. A number of organisations were also contacted and

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1 EM, para 10

invited to make submissions to the inquiry. A list of the submissions received appears in Appendix 1 of this report.

### **Hearing and evidence**

1.7 The Committee held one public hearing on Friday, 7 May 2004 in Sydney. A list of witnesses who appeared at that hearing is in Appendix 2.

1.8 Copies of the proof transcript are available at <http://aph.gov.au/hansard>.

### **Acknowledgment**

1.9 The Committee is grateful to, and wishes to thank, all those who assisted with this inquiry.



## CHAPTER 2

### THE BILL

#### **Provisions of the bill**

2.1 The bill establishes Tourism Australia as a statutory authority under the *Commonwealth Authorities and Companies Act 1997*. The Australian Tourist Commission, See Australia, the Bureau of Tourism Research and the Tourism Forecasting Council will merge to create the new body. In addition, the bill sets up a new unit within Tourism Australia known as Tourism Events Australia.

2.2 The bill contains seven parts, identifying the powers, objectives and procedures to be adopted by Tourism Australia. A brief summary of the bill appears below.

#### ***Part 1 – Preliminary***

2.3 This part contains a definitions section and outlines the application of the bill for Australia's external territories and Tourism Australia's overseas activities.

#### ***Part 2 – Tourism Australia***

2.4 Part 2 outlines the objects, functions and powers of Tourism Australia.

#### ***Part 3 – The Board of Directors of Tourism Australia***

2.5 Part 3 outlines the makeup, appointment process, powers, qualifications and term of appointment of the Board. It specifies the remuneration of Board members as well as other terms and conditions of their service, and sets out the Board's operating procedures.

2.6 The final Division in Part 3 provides for the establishment of advisory panels to the Board.

#### ***Part 4 – Corporate planning and accountability***

2.7 This part directs the Board to produce a corporate plan, an annual report, Tourism Australia Values and a Tourism Australia Code of Conduct.

#### ***Part 5 – Managing Director, employees and consultants***

2.8 The first division in this part creates the position of Managing Director and the duties and conditions of his or her employment. The second division allows Tourism Australia to engage employees and consultants as required.

## **Part 6 – Finance**

2.9 This part establishes the financial structure under which Tourism Australia will operate, as well as taxation arrangements and its power to hold property vested on trust.

## **Part 7 – Other matters**

2.10 Both the Board and the Managing Director may delegate all or any of their functions and powers. The Governor-General may make regulations prescribing matters required or permitted by the Tourism Australia Bill 2004.

2.11 In the next two sections, the Committee outlines in more detail the provisions relating to the establishment and powers of the Board, and the objects, functions and powers of Tourism Australia.

### **The establishment and powers of the Board**

2.12 The Board shall consist of eight members: a Chair, Deputy Chair, government member, Managing Director and four other members.<sup>1</sup> The Minister appoints all members of the board, except for the Managing Director. Appointment to the board is for up to 3 years, other than the government member who is appointed for a time that will be specified in the instrument of their appointment.<sup>2</sup>

2.13 The Board must prepare a corporate plan that covers three financial years.<sup>3</sup> The plan must state the objectives that Tourism Australia intends to pursue, the strategies the Board intends to adopt and an assessment of the tourism industry. The plan should also contain the indicators which are the basis of the assessment.<sup>4</sup>

2.14 The Managing Director is appointed by the Board and may not be an appointed member of the Board.<sup>5</sup> Under the proposed s.53, the Board may terminate in writing the Managing Director's appointment at any time.

2.15 The Board will comprise members with skills drawn from various fields.<sup>6</sup> Clause 14 identifies the skills the Minister must consider when appointing members to the Board, and these include expertise in international or domestic tourism, business, financial management or economic analysis.<sup>7</sup>

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1 Tourism Australia Bill 2004, s.12

2 *Explanatory Memorandum*, paragraphs 39 and 40.

3 Tourism Australia Bill 2004, s.33.

4 Tourism Australia Bill 2004, s. 34.

5 *Explanatory Memorandum*, paragraph 117.

6 Tourism Australia Bill 2004, s. 14.

7 Tourism Australia Bill 2004, s. 14.

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## **Tourism Australia - Objects, functions and powers**

2.16 Clauses 6, 7 and 8 of the proposed legislation outline the objects, functions and powers of Tourism Australia.

### ***Clause 6 - Objects***

2.17 Clause 6 lists the fundamental objects of Tourism Australia. These include:

- to influence people to travel to Australia, including for events;
- to influence people travelling to Australia to also travel throughout Australia;
- to influence Australians to travel throughout Australia, including for events;
- to help foster a sustainable tourism industry in Australia; and
- to help increase the economic benefits to Australia from tourism.

### ***Clause 7 - Functions***

2.18 Clause 7 outlines Tourism Australia's functions. These include:

- to increase the awareness and knowledge of potential domestic and international travellers of Australia as a destination;
- to report on trends in international and domestic travel;
- to communicate effectively with the Australian tourism industry on issues that may affect it; and
- to increase awareness throughout Australia of the contribution of tourism to Australia's economy, society and environment.

2.19 In addition, when Tourism Australia is performing these functions it must have regard to the needs of the tourism industry and the government and perform these functions in co-operation with the tourism industry and the government.

### ***Clause 8 – Powers of Tourism Australia***

2.20 Tourism Australia has the power to do all things necessary or convenient in connection with the performance of its functions. However, Tourism Australia must not undertake the activities of a travel agent, including directly selling or arranging trips for financial gain.<sup>8</sup>

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8 *Explanatory Memorandum*, paragraph 31.

2.21 Clause 28 enables the Board to establish advisory panels to assist it in performing its functions, including in international or domestic tourism, events and research.<sup>9</sup> The establishment of an advisory panel must be in writing. To ensure the Board's power and responsibility are not diluted, the Board may revoke or modify the instrument setting up the panel. The Board appoints the members of any advisory panel and is able to appoint any people it sees fit.<sup>10</sup>

***Clause 40 – Ministerial direction***

2.22 The Minister may give written direction to the Board regarding the performance of its functions. The Minister will only be able to do this after notifying the Board that he or she is considering giving a direction, and the Chair of the Board must receive adequate opportunity to discuss the issuing of a direction by the Minister. A direction must be published in the *Gazette* and complied with by the Board.

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9 *Explanatory Memorandum*, paragraph 72.

10 *Explanatory Memorandum*, paragraph 73.

## CHAPTER 3

### EVIDENCE PRESENTED TO THE INQUIRY

3.1 The Committee received ten submissions to the inquiry. All the submissions supported the establishment of Tourism Australia.

#### **Industry consultation**

3.2 TTF and the National Tourism Alliance (NTA) emphasised that the bill is the culmination of an extensive 'whole-of-industry' consultation process.<sup>1</sup> All representatives of the tourism industry who appeared at the Committee's public hearing expressed their satisfaction with this process.<sup>2</sup>

3.3 The NTA informed the Committee that it had organised a comprehensive industry analysis and response to the Green Paper on tourism, which was released in June 2003.<sup>3</sup> An industry forum identified five key priorities to be addressed by the subsequent White Paper. These were:

- marketing – funding and 'Brand Australia';
- delivery structures of Tourism Australia, Australian Tourism Research and Events Australia;
- infrastructure support – aviation and funding;
- government/industry coordination; and
- research and data collection.<sup>4</sup>

3.4 TTF Australia expressed the view that 'the Government has responded well to the priorities put forward by industry'. It noted that industry's second priority was for 'the structural changes in government institutions to improve efficiency in the context of changing domestic and global environment of the tourism industry'.<sup>5</sup>

3.5 Accordingly, it urged the Senate:

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1 Submission 4, National Tourism Alliance; Submission 1, TTF Australia Ltd.

2 The industry organisations represented at the hearing were the National Tourism Alliance, TTF Australia Ltd, the Australian Tourism Export Council and Restaurant and Catering Australia.

3 Submission 4, National Tourism Alliance, p.1.

4 Submission 1, TTF Australia, pp.1-2.

5 Submission 1, TTF Australia, p.2.

... to move the Bill forward as the structural reforms brought about by the Act will provide the necessary platform for many of the important White Paper initiatives, including better research and forecasting, more co-ordinated marketing and a national focus on business tourism and events.<sup>6</sup>

3.6 The Queensland Tourism Industry Council stated that the establishment of Tourism Australia will lead to new internal efficiencies that will build successful partnerships and meet industry expectations.<sup>7</sup> Similarly, the Australian Hotels Association pointed to the importance of recognising that many sectors of the tourism industry are interdependent and so will benefit from the restructure.<sup>8</sup>

3.7 The Committee explored several facets of the proposed legislation at its public hearing. In particular, it considered the issues of:

- possible overlap between state tourism bodies and Tourism Australia;
- conflict of interest and board membership;
- remuneration of members of advisory panels;
- indigenous tourism expertise;
- employee concerns; and
- Tourism Australia as a travel agent.

### **Overlap between state tourism bodies and Tourism Australia**

3.8 The South Australian Government's submission proposed an amendment to the bill to ensure that consideration is given to state tourism plans by Tourism Australia when preparing its corporate plan.<sup>9</sup>

3.9 The Australian Tourist Commission (ATC) acknowledged that concerns have been expressed about the potential for overlap between the proposed Tourism Events Australia in particular, and the various state tourism bodies. The ATC noted there had been consultation to determine Tourism Events Australia's role, but that 'there is general agreement that there is a value adding role for this new entity over and above what the states and territories do'.<sup>10</sup>

3.10 Ms Patricia Kelly, Deputy Secretary, Department of Industry, Tourism and Resources, told the Committee that Tourism Events Australia would aid in research, branding and facilitation and noted that:

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6 Submission 1, TTF Australia, p.2.

7 Submission 2, Queensland Tourism Industry Council, p.1.

8 Submission 3, Australian Hotels Association, p.1.

9 Submission 8, South Australian Government, p.2.

10 *Transcript of evidence*, 7 May 2004, Boundy, p.24.

Initially the states had expressed some concerns about duplication or overlap between their activities and those of Tourism Events Australia. I think those issues have largely been resolved. Certainly, the paper sets out that the key role of that body would be to promote Australia overseas as a business and events destination, whereas the key role of the states events bodies that will not be duplicated is the role of bidding or competing for specific events.<sup>11</sup>

### **Conflict of interest and board membership**

3.11 The Committee noted that the Board of Tourism Australia will be likely to consist of individuals, at least some of whom have close links to the tourism industry. This raises the issue of the possibility of conflicts of interest arising on occasion.

3.12 When questioned about this matter, however, TTF Australia emphasised the importance of having individuals with experience in the tourism industry on the Board and appointed to advisory panels.

3.13 Mr Matthew Hobbs, National Manager – Aviation & Regulation, TTF Australia, expressed the view that checks and balances to address any possible conflicts of interest could be implemented by the Board,<sup>12</sup> and noted that the Corporations Act is binding on the conduct of the directors. TTF Australia supports the development of the Board's own codes of conduct as part of its corporate governance arrangements.

3.14 Similarly, Mr Col Hughes, Chairman, National Tourism Alliance, considered that any potential for conflicts of interest to arise for Board members could be dealt with by judicious appointments by the Minister and the development of a code of conduct by the Board itself.<sup>13</sup>

### **Remuneration of members of advisory panels**

3.15 The Committee noted that individuals appointed by the Board to advisory panels will work on a volunteer basis. The Committee questioned whether this structure would be sufficient to attract the required expertise to advise the Board.

3.16 Ms Caroline Wilkie, National Media Manager, TTF Australia, argued that industry participants are pleased to have the opportunity to offer input into the Board, and so will be willing to participate without remuneration.<sup>14</sup> Similarly, Mr John Hart, Chief Executive Officer, Restaurant and Catering Australia told the Committee that:

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11 *Transcript of evidence*, 7 May 2004, Kelly, p.24.

12 *Transcript of evidence*, 7 May 2004, Hobbs, p.8.

13 *Transcript of evidence*, 7 May 2004, Hughes, pp.4-5.

14 *Transcript of evidence*, 7 May 2004, Wilkie, p.9.

On the basis of the downstream benefits of their participation, [industry participants] are prepared to take a long-term view and make that sacrifice for the benefit of the industry at large.<sup>15</sup>

3.17 TTF Australia supports reimbursement for out of pocket expenses incurred by advisory panel members.<sup>16</sup>

### **Indigenous tourism expertise**

3.18 The Committee heard evidence supporting the appointment to the Board of an individual with knowledge and expertise in indigenous tourism.

3.19 Witnesses stressed that the individual appointed would also need to possess an understanding of the tourism industry in general.<sup>17</sup> The Committee noted the role of indigenous tourism within the industry, and its potential for growth.

### **Employee concerns**

3.20 In its submission, the Community and Public Sector Union (CPSU) told of concerns held by the staff of the Bureau of Tourism Research (BTR) and the Tourism Forecasting Council (TFC) about the impact of the formation of Tourism Australia upon their conditions of employment.

3.21 Currently, this staff is employed under the *Public Service Act 1999*. Upon the creation of Tourism Australia, the staff will be employed under the proposed Tourism Australia Act.

3.22 The CPSU expressed concerns that the move would adversely affect these employees' access to job mobility and compromise their future promotion opportunities within the public service.<sup>18</sup> The CPSU also claimed that it is not clear from the bill whether accrued entitlements will be transferable back to the public service unless they are recognised by Tourism Australia's certified agreement.

3.23 The CPSU suggested that the Committee recommend that the bill be amended to allow staff to be employed by Tourism Australia under either the *Public Service Act 1999* or the Tourism Australia Act, as is the case with other statutory authorities.

3.24 The Committee asked representatives of the Department of Industry, Tourism and Resources to respond to this suggestion. Ms Kelly explained to the Committee that the Government had chosen not to employ BTR and TFC staff under the Public Service Act and the Tourism Australia legislation for two reasons:

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15 *Transcript of evidence*, 7 May 2004, Hart, p.17.

16 Additional Information, TTF Australia, 10 May 2004.

17 *Transcript of evidence*, 7 May 2004, Hughes, p.6; *Transcript of evidence*, 7 May 2004, Hobbs, p.10.

18 Submission 6, Community and Public Sector Union, p.2.



One was that it was thought undesirable administratively to saddle a new body with a cumbersome administrative structure. The second was that here – unlike the Screensound/Film Australia situation – we are creating a new body. We were very keen to see all the staff come together and be part of that new body under the same terms and conditions.<sup>19</sup>

3.25 The Committee notes that s. 72 (3) of the *Public Service Act 1999* states:

If an employee (the transferred employee) becomes an employee of a Commonwealth authority under paragraph (1)(b), the employee is entitled to remuneration and other conditions of employment that are not less favourable than the terms and conditions to which the employee was entitled as an APS employee, immediately before ceasing to be an APS employee, under:

- (a) an award, certified agreement or AWA; or
- (b) a determination under this Act.

### **Tourism Australia as a travel agent**

3.26 Clause 8(3) of the bill clearly prohibits Tourism Australia from operating as a travel agent. It was noted at the Committee's hearing, however, that the term 'travel agent' is not defined in the legislation, and that this omission may be the source of a lack of clarity in some instances.

3.27 In addressing this issue, Mr David Mazitelli, Chairman, Australian Tourism Export Council (ATEC), said that in his view the bill did not need amendment to define the term:

We have given thought to this and had some discussions about just what really the term 'travel agent' means...It is a term that needs to be considered in the broad. If it is the clear intention of the government and the parliament that it be defined in the broad then it probably does not require amendment to the bill. If it is incorporated and clarified in the debate as the intention of the parliament in terms of that consideration then that from an ATEC position would give us comfort that ... we would be able to make reference to the fact that it was the intention of the parliament that this be interpreted in the broad.<sup>20</sup>

### **Conclusion**

3.28 The Committee notes that all submissions and evidence received supported the passage of the bill.

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19 *Transcript of evidence*, 7 May 2004, Kelly, p.22.

20 *Transcript of evidence*, 7 May 2004, Mazitelli, p.12.

**Recommendation**

**The Committee recommends that the Senate pass the bill.**

Senator George Brandis  
**Chair**

## **SENATE ECONOMIC LEGISLATION COMMITTEE INQUIRY INTO THE PROVISIONS OF THE TOURISM AUSTRALIA BILL 2003**

### **LABOR SENATORS' ADDITIONAL COMMENTS**

Labor Senators support the passage of this bill based on submissions to the inquiry, evidence heard by the Committee and other industry representations. However, we have concerns that the bill is deficient in a number of areas, and for this reason Labor will, in the Senate, move a number of amendments to this bill.

#### Indigenous expertise on the Board of Tourism Australia

Section 14 stipulates that the Minister may appoint certain persons to the board provided the Minister is satisfied that the person has a high level of expertise in one or more areas. Thirteen areas of expertise are then listed in this section of the bill.

Although the Tourism White Paper acknowledges that Australia currently only meets half the market demand for indigenous tourism experiences, there is no requirement for the Minister to consider the experience of potential Board Members in the fields of Australian indigenous tourism and/or culture.

In their evidence to the Committee on 7 May 2004 both the National Tourism Alliance (NTA) and TTF Australia supported the proposition that indigenous tourism and cultural experience be represented on the Board of Tourism Australia.

Labor will therefore move an amendment to the bill in the Senate to include experience in Australian indigenous tourism and/or culture in the skill set the Minister must consider when making appointments to the Board of Tourism Australia.

#### Employment of Bureau of Tourism Research (BTR) and Tourism Forecasting Council (TFC) staff under the Public Service Act 1999

The staff of BTR and TFC are currently public servants under the Public Service Act 1999, and have serious concerns about the loss of employment rights currently afforded under that Act – particularly their status in terms of continuity of employment should they wish to re-enter the Commonwealth Public Service after working with Tourism Australia for a time.

The Community and Public Sector Union (CPSU) in their submission and evidence to the Senate Committee recommended that the Senate consider amending the Tourism

Australia Bill 2004 to allow Tourism Australia the ability to employ staff under the Public Service Act 1999 and the Tourism Australia Act 2004.

The CPSU also provided a precedent for such action, noting a similar situation which occurred when ScreenSound Australia (SSA) was amalgamated with the Australian Film Commission (AFC) in 2002.

In that case the Australian Film Commission Act 1975 was amended to allow the AFC to employ staff under the Australian Film Commission Act 1975 and the Public Service Act 1999. This allowed ScreenSound Australia employees to retain their existing rights under the Public Service Act 1999 following the merger with AFC.

Although Labor Senators note the provisions of s. 72 (3) of the Public Service Act 1999 and the comments of the Deputy Secretary of the Department of Industry, Tourism and Resources regarding the formation of a new entity and the potential for 'undesirable' administrative arrangements, Labor Senators do not think that loyal and competent staff ought be disadvantaged by the dissolution of their previous employer and the legal status of their potential new employer.

Labor Senators also fear that these staff, faced with uncertainty may not make themselves available to Tourism Australia. Such a loss of skills and experience may inhibit the delivery of a better research outcome for the tourism industry.

Therefore, in the event that Labor cannot be assured by the Department and the CPSU that suitable arrangements will be in place for BTR and TFC staff, Labor will move an amendment to the Tourism Australia Bill 2004 in the Senate to ensure that Tourism Australia is able to employ staff under the Public Service Act 1999 and the Tourism Australia Bill 2004.

#### Re-appointment of Board Members

The South Australian government in their submission raised a concern that it is not clear whether existing Board Members of Tourism Australia can be re-appointed. The attendant risk is that in the event they cannot be, valuable experience may be lost to Tourism Australia.

Labor will move an amendment to the bill to enable Board Members to be re-appointed where appropriate, unless Labor can be convinced that this is not necessary.

#### Tourism Australia to have regard for State and Territory tourism plans and activities

The South Australian government in their submission raised a concern that there is no requirement for Tourism Australia to consider State Marketing Plans in the planning and activities of Tourism Australia.

This echoes the concerns of a number of jurisdictions regarding the proposed activities of SeeAustralia as the domestic marketing vehicle of Tourism Australia, and how this division may interact to the detriment of the marketing activities of other Australian jurisdictions.

Labor will move an amendment in the Senate to the effect that when developing their corporate plan, Tourism Australian must have regard for the marketing plans and activities of other Australian jurisdictions.

Senator Kerry O'Brien

Senator Ursula Stephens  
**Deputy Chair**



# **Appendix 1**

## **SUBMISSIONS RECEIVED**

<b>Submission Number</b>	<b>Submittor</b>
1	TTF Australia Ltd
2	Queensland Tourism Industry Council
3	Australian Hotels Association
4	National Tourism Alliance
5	Restaurant & Catering Australia
6	Community and Public Sector Union
7	Australian Tourism Export Council
8	The South Australian Government
9	The Government of Western Australia
10	The Government of Tasmania





## **Appendix 2**

### **PUBLIC HEARING AND WITNESSES**

**FRIDAY, 7 MAY 2004 – SYDNEY**

BOUNDY, Mr Kenneth Arnold, Managing Director  
Australian Tourist Commission

CLOUGH, Ms Sarah, Manager, Industry Strategy Team, Tourism Division  
Department of Industry, Tourism and Resources

HART, Mr John, Chief Executive Officer  
Restaurant and Catering Australia

HOBBS, Mr Matthew Erik McIver, National Manager Aviation and Regulation  
TTF Australia

HUGHES, Mr Colin William, Chairman  
National Tourism Alliance

KELLY, Ms Patricia Margaret, Deputy Secretary  
Department of Industry, Tourism and Resources

MAZITELLI, Mr David, Chairman  
Australian Tourism Export Council

MURPHY, Ms Janet, Acting Division Head, Tourism Division  
Department of Industry, Tourism and Resources

WILKIE, Miss Caroline Ann, National Media Manager  
TTF Australia

WOOD, Mr Matthew Leonard, Organiser  
Community and Public Sector Union