



Australian Government

Department of Industry  
Tourism and Resources

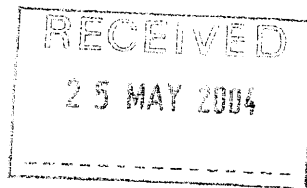
Level 1/33 Allara Street  
Canberra ACT 2601

GPO Box 9839  
Canberra ACT 2601 Australia

Phone: +61 2 6213 7040  
Facsimile: +61 2 6213 7093

Email: [Janet.Murphy@industry.gov.au](mailto:Janet.Murphy@industry.gov.au)  
Web: [www.industry.gov.au](http://www.industry.gov.au)

ABN: 51 835 430 479



Dr Sarah Bachelard  
Secretary  
Senate Economics Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Dr Bachelard

### Response to Question on Notice

I am writing to you to provide the Department of Industry, Tourism and Resource's response to a question on notice taken on Friday 7 May 2004 at hearings of the Senate Economics Legislation Committee on the Tourism Australia Bill 2004.

During discussion with officers on provisions of the Tourism Australia Bill from members of the Senate Economics Legislation Committee, the following question was taken on notice by Ms Sarah Clough, Manager, Industry Strategy Team, Tourism Division:

"If the Minister gave a direction to the board - again, I guess this is a lawyer's question which you might want to take on notice - would that be a reviewable decision under the AD(JR) Act?"

The Department's response is at Attachment A.

Yours sincerely

Janet Murphy  
Head  
Tourism Division

7 May 2004

ATTACHMENT A

EXAMINATION OF THE TOURISM AUSTRALIA BILL 2004 BY THE SENATE  
ECONOMICS LEGISLATION COMMITTEE

QUESTION TAKEN ON NOTICE BY THE DEPARTMENT OF INDUSTRY, TOURISM  
AND RESOURCES

QUESTION: "If the Minister gave a direction to the board - again, I guess this is a lawyer's question which you might want to take on notice - would that be a reviewable decision under the AD(JR) Act?"

ANSWER:

- Legal advice suggests that while the Tourism Australia Board would not have the relevant status to lodge a grievance against a decision of the Minister made under section 40 of the Tourism Australia Bill, Tourism Australia would.
- If a Ministerial direction under section 40 of the Tourism Australia Bill were deemed to be administrative rather than legislative in nature, it would be a decision to which the *Administrative Decisions (Judicial Review) (AD[JR]) Act 1977* could apply. No single factor would decide if it was administrative or legislative in nature.
- Tourism Australia itself could be characterised as a "person" who could potentially be aggrieved under section 40 and as such, could bring an application for judicial review, for instance under section 5 of the AD(JR) Act.
- It is considered unlikely, however, that, as a body corporate established for public purposes, Tourism Australia would use such a mechanism as the AD(JR) Act to "resist administrative action" by the Minister.
- There are a number of other mechanisms under which a person could seek judicial review of directions made under section 40 of the Tourism Australia Bill, namely section 39B of the *Judiciary Act 1903* and section 75(v) of the Constitution.