



Tourism Australia Amendment Bill 2007

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Tourism Australia Amendment Bill 2007

Date introduced: 14 February 2007

House: House of Representatives

Portfolio: Industry, Tourism and Resources

Commencement: The day after it receives Royal Assent

Purpose

The purpose of the Bill is to provide for amendments to the *Tourism Australia Act 2004* so as to enhance the governance arrangements for Tourism Australia, consistent with the recommendations generated by a review of corporate governance structure and practices of Tourism Australia conducted by the Minister for Small Business and Tourism. The review and proposed amendments represent part of the Government's response to Mr John Uhrig's *Review of Corporate Governance of Statutory Authorities and Office Holders* (the Uhrig Review) conducted in 2003.¹

The amendments designed to deliver these outcomes are:²

- the removal of the position of Government member from the Board
- a broadening of Ministerial power to terminate the appointment of Board members
- the replacement of the process of Ministerial approval of the corporate plan and operational plan with one of endorsement, while maintaining that the plans do not come into force until Ministerial endorsement is received
- a reduction of the threshold for Ministerial approval of contracts from \$5 million to \$3 million.

Background

The Uhrig Review

The Coalition had flagged its intention to examine statutory authorities and office holders in its 2001 election platform. On 14 November 2002, the Prime Minister, the Hon. John Howard, appointed Mr John Uhrig AC to review the governance practices of statutory authorities and office holders, particularly those agencies which impact on the business community.

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The objective of the review was to identify issues concerning existing governance arrangements and to provide policy options for Government to gain the best from statutory authorities and office holders and their accountability frameworks.³

The Prime Minister received the Uhrig Review in June 2003, and it was released by the Minister for Finance and Administration on 12 August 2004.

The Uhrig Report concluded that there was no universally agreed definition of corporate governance, but employed the following definition for the purposes of the review:

in general terms, corporate governance encompasses the arrangements by which the powers of those who implement the strategy and the direction of an organisation are delegated and limited to ensure the organisation's success, taking into account the environment in which the organisation is operating.⁴

The Report recommended that two templates should apply to ensure good governance of statutory authorities: agencies should either be managed by a Chief Executive Officer (CEO) or by a board structure. Both templates detail measures for ensuring the boundaries of responsibilities are better understood and the relationship between Australian government authorities, Ministers and portfolio departments are made clear.⁵

Uhrig recommended that the selection of the management template and financial frameworks to be applied should be based on the governance characteristics of a statutory authority.⁶

The Commonwealth financial framework

Nearly all government bodies fall under the *Financial Management and Accountability Act 1997* (the FMA Act) or the *Commonwealth Authorities and Companies Act 1997* (the CAC Act).

The FMA Act should be applied to statutory authorities where it is appropriate they be legally and financially part of the Commonwealth and do not need to own assets. The FMA Act applies to budget-funded authorities managed by a CEO. The FMA Act establishes various management and reporting responsibilities for the CEO (sections 44–46, 49 and 51), as well as allowing the Minister to give guidelines to the CEO (s. 64). Furthermore, the FMA Act provides an accountability framework for CEOs to manage agency resources.

The CAC Act should be applied to statutory authorities where it is appropriate that they be legally and financially separate from the Commonwealth. The CAC Act applies to authorities that are corporate entities managed by a board. It requires the head of the board to report to the responsible Minister (sections 15–16), and to ensure that the authority's activities comply with government policies (s. 28). A board structure is favoured if there is a strong commercial focus to the organisation, or if the agency is intergovernmental.

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As at 31 January 2007, there were 94 FMA Act agencies and 99 CAC Act agencies.⁷ The Department of Finance and Administration publication [Governance Arrangements for Australian Government Bodies](#) (August 2005) provides further explanation on the FMA Act and CAC Act and a comparison between the two pieces of legislation.

Tourism Australia and other Australian Government Agencies governed under the *Commonwealth Authorities and Companies Act 1997* have been assessed using principles outlined in the Uhrig Review. According to the Tourism Australia website,

An outcome of the review was that the Minister for Small Business and Tourism, the Hon Fran Bailey MP would provide Tourism Australia with a Statement of Expectations and that Tourism Australia would respond with a Statement of Intent in order to clarify the purpose, functions and objectives of the organisation.

The Government's expectations of Tourism Australia are conveyed in the associated [Statement of Expectations](#).

Tourism Australia's response is articulated in the [Statement of Intent](#) and [Annexure](#).

This Bill is designed to bring Tourism Australia's governance structure into line with the relevant recommendations made by the Uhrig Review. More specifically, the proposed legislative changes will aim to enhance Tourism Australia's financial accountability and provide the organisation with a much more strategic, commercial focus designed to strengthen its commercial footing.⁸ A number of similar Acts have been passed by Parliament incorporating Uhrig Review recommendations.

Tourism Australia

The *Tourism Australia Act 2004* establishes Tourism Australia⁹ which is a Commonwealth authority under the CAC Act. Tourism Australia is responsible for raising the awareness of potential domestic and international travellers of Australia as a place to travel, communicating the valuable contribution made by tourism to the Australian economy, society and environment, and conducting research into, and analysis of, international and domestic travel.¹⁰ The *Tourism Australia Act 2004* is responsible for defining the objectives, governance and management framework for the organisation.

Financial implications

The Explanatory Memorandum states that there is no financial impact.

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Main provisions

Schedule 1

Composition of Board and Councils - Removal of appointment of Government Director to each RDC

The appointment of an Australian Government Director to the Board is being discontinued, in order to remove any potential for conflict of interest for the government member, and to reduce the number of Board members to nine, which is within the optimum range identified by Uhrig. The **proposed amendments** made under the following items listed below accordingly and correspondingly delete the various references to **government member**

- Item 2 – Paragraph 12 (c)
- Item 4 – Subsection 14(1)
- Item 5 – subsections 14(2) and (3)
- Item 6 – Subsection 15(1)
- Item 7 – Subsection 15(2)
- Item 8 – Subsection 16(2)
- Item 9 – Subsection 20(1)
- Item 10 – Subsection 20(2) and (3)

Items 11 – 20A Termination of appointment to the Board

Robust accountability mechanisms are pivotal to the effective governance of an organisation. The Australian Government invests significant resources into Tourism Australia.

Over the past five years, the Howard Government has increased tourism funding by 60 per cent. The Tourism Australia Board will have to comply with increased financial accountability, which is appropriate given that 80 per cent of its funding is from Australian taxpayers.¹¹

The Board of Tourism Australia plays a key role in the organisation's success. 'Enabling the Minister to terminate the appointment of a Board member in appropriate circumstances ensures that Board members are accountable for the performance of Tourism Australia'.¹²

Section 20 of the current Act lists the grounds under which the Minister may terminate the appointment of a Board member.

The **proposed subsection 20(A)(1)** supplements the terms of those grounds by adding that the Minister may terminate the appointment of a Board member if;¹³

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- (a) the Board has agreed that the member's appointment should be terminated;
- (b) the Board has convened a special meeting to discuss the termination of the member, and has passed a resolution at this meeting that the member's appointment to the Board be terminated; and
- (c) the resolution has been passed by a minimum two-thirds of the Board members present, excluding the member whose termination of appointment is being considered.

Subsection 20A(2)

This **proposed subsection 20A(2)** gives the Minister the capacity to terminate the appointment of a Board member if the Minister is satisfied:

- (a) that it is not in the best interests of Tourism Australia that the appointed member continue in office; or
- (b) the performance of the member has been unsatisfactory for a significant period.

Minister's Response to Corporate Plan

Item 13 repeals and replaces section 35.

The Uhrig report suggested that in a number of cases statutory authorities would benefit from the Minister providing broad strategic direction and greater clarity in the definition of current objectives relevant to the authority and any expectations the Government may have on how the authority should conduct its operations. Of course such statements would need to be framed very carefully, respecting the areas of necessary independence provided for in the statutory authority's enabling legislation.¹⁴ There are various possible mechanisms for achieving this, including the development of a Statement of Expectations, and Ministerial endorsement of the corporate and annual operational plan.

The Bill therefore provides that the current **Section 35** be substituted with the following.

Proposed section 35(1): The Board is required to give the corporate plan to the Minister for endorsement.

Proposed subsection 35(2): The Minister may ask the Board, in writing, for a copy of the corporate plan, in a format and by a date specified by the Minister. The Board must comply with this request.

Proposed subsection 35(3): The Minister may ask the Board, in writing, in a format and by a date specified by the Minister for:

- (a) further information or explanation on items in the corporate plan; and
- (b) further information or explanation on items that may not be included in the plan but are relevant to the corporate plan.

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Proposed subsection 35(4): The Board;

(a) must comply with a request from the Minister for further information or explanation on the plan; and

(b) if during this process, the annual operational plan has been amended the Board may provide the Minister with a replacement corporate plan for endorsement.

Proposed subsection 35(5): When deciding whether or not to endorse the corporate plan, the Minister must consider if it is inconsistent with government policy. The Minister may write to the Board notifying them of any inconsistencies before deciding whether or not to endorse the plan.

Proposed subsection 35(6): This amendment inserts a requirement that the minister write to the Board advising them of his decision to endorse or not endorse the corporate plan.

Proposed Subsection 35(7): This amendment provides that the corporate plan comes into force on the day on which the Board receives written notification of the Minister's endorsement.

Operational Plan

Item 14 – Proposed paragraph 36(1)(b)

Section 36 of the Tourism Australia Act deals with the Operational Plan. The current section 36 provides that:

When the Board is preparing or revising a corporate plan, the Board must:

(a) prepare an annual operational plan for the first financial year to which the corporate plan or revised corporate plan will relate; and

(b) give the plan to the Minister for his or her **approval**.

The proposed amendment removes '**approval**' and replaces it with the word and requirement for '**endorsement**'.

Item 15 – Proposed subsection 36(5)

This amendment removes '**approval**' and replaces it with '**endorsement**'.

Item 16 - Proposed section 37 Minister's response to annual operational plan

In keeping with amendments under section 35, the Minister is required to **endorse** the annual operational plan rather than **approve** it. This item therefore repeals section 37 and replaces it with the following.

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Proposed subsection 37(1)

After receiving the annual operational plan, the Minister can ask the Board, in writing, in a format and by a date specified by the Minister for:

- (a) further explanation about the matters included in the annual operational plan; and
- (b) further explanation on other matters specified in the request and related to the plan.

Proposed subsection 37(2)

The Board:

- (a) must comply with a request from the Minister for further information or explanation on the corporate plan; and
- (b) if during this process, the corporate plan has been amended the Board may provide the Minister with a replacement corporate plan for endorsement.

Proposed subsection 37(3)

When deciding whether or not to endorse the annual operational plan, the Minister must consider if it is inconsistent with the corporate plan and government policy. The Minister may write to the Board advising them of any inconsistencies before deciding whether or not to endorse the plan

Proposed section 37(4)

This amendment inserts a requirement that the minister write to the Board advising them of his decision to endorse or not endorse the annual operational plan.

Proposed section 37(5)

The annual operational plan comes into force once the Board has been notified in writing of the Minister's endorsement.¹⁵

Item 18 proposed paragraph 59(1)(a) Threshold for Ministerial Approval of contracts

This item reduces the threshold for Ministerial approval of contracts from \$5 million to \$3 million. Notwithstanding the existing requirement and compliance by Tourism Australia with Australian Government Procurement Guidelines, this item further strengthens accountability corresponding with the high level of Australian Government funding of the organisation.

Transitional Items

Item 17 provides that Part 4 of the *Tourism Australia Act 2004* shall continue to apply to a corporate plan or revised corporate plan, or annual operational plan or revised operational

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plan, given to the Minister before the enactment of the Tourism Australia Amendment Bill 2007.

Item 19 - Proposed subsection 60(3) Note

This item is a minor technical amendment sub-sequential to the enactment of the *Legislative Instruments Act 2003*. The *Acts Interpretation Act 1901* (AIA) has been replaced with the *Legislative Instruments Act 2003* (LIA).

Concluding comments

As already noted, this Bill is one of series introduced by the government designed to make relevant and appropriate reforms in response to observations and conclusions made by the Uhrig Report.

Endnotes

1. J. A. Uhrig, AC, Review of Corporate Governance of Statutory Authorities and Office Holders, June 2003.
http://www.finance.gov.au/GovernanceStructures/docs/The_Uhrig_Report_July_2003.pdf.
2. Explanatory Memorandum, p. 1.
3. Sen. the Hon. N. Minchin (Minister for Finance and Administration), Australian Government Response to Uhrig Report, Media Release, 12 August 2004,
<http://www.finance.gov.au/scripts/Media.asp?Table=MFA&Id=550>.
4. *ibid.* p. 17.
5. Sen. the Hon. N. Minchin (Minister for Finance and Administration), Australian Government Response to Uhrig Report, Media Release, 12 August 2004,
<http://www.finance.gov.au/scripts/Media.asp?Table=MFA&Id=550>.
6. Uhrig, *op. cit.*, p. 12, point 6.
7. Department of Finance and Administration, *Chart of FMA Act and CAC Act agencies*, available at:
http://www.finance.gov.au/finframework/docs/FMA_CACFlipchart31January2007.pdf, accessed 6 April 2007.
8. The Hon. Fran Bailey, [Tourism Australia Legislation](#), Media Release, 15 February 2007.
9. Tourism Australia was established on 1 July 2004 as a key recommendation of the [Tourism White Paper 2003](#), it represented the pooling of skills and knowledge of four separate organisations: the Australian Tourist Commission; See Australia; the Bureau of Tourism Research and Tourism Forecasting Council.

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10. *Tourism Australia Act 2004*, s.6.
11. The Hon. Fran Bailey, [Tourism Australia Legislation](#), Media Release, 15 February 2007.
12. Explanatory Memorandum, p. 3.
13. Tourism Australia Amendment Bill, p. 3.
14. The Uhrig Report, p. 7.
15. Tourism Australia Amendment Bill 2007, p. 6.

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