



Australian Tourist Commission Act 1987

No. 136 of 1987

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Australian Tourist Commission Act 1987

No. 136 of 1987

An Act relating to the Australian Tourist Commission

[Assented to 18 December 1987]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Australian Tourist Commission Act 1987*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. In this Act, unless the contrary intention appears:

“appointed member” means a member other than the Managing Director;

“Board” means the Board of Directors of the Australian Tourist Commission;

“Chairperson” means the Chairperson of the Board;

“Commission” means the Australian Tourist Commission;

“Deputy Chairperson” means the Deputy Chairperson of the Board;

“government member” means the government member of the Board;

“Managing Director” means the Managing Director of the Commission;

“member” means a member of the Board;

“promote” includes advertise.

Application of Act

4. This Act applies both within and outside Australia.

PART II—FUNCTIONS AND POWERS OF THE COMMISSION

The Australian Tourist Commission

5. The Australian Tourist Commission established under the *Australian Tourist Commission Act 1967*, is, by this section, preserved and continued in existence.

Principal objects of Commission

6. The principal objects of the Commission are:

- (a) to increase the number of visitors to Australia from overseas;
- (b) to maximise the benefits to Australia from overseas visitors; and
- (c) to ensure that Australia is protected from adverse environmental and social impacts of international tourism.

Functions of Commission

7. The functions of the Commission are:

- (a) to promote Australia overseas as a tourist destination;
- (b) to enhance awareness overseas of Australia as a tourist destination;
- (c) to co-ordinate the overseas promotional efforts of the Australian tourism industry, in co-operation with State and Territory tourism authorities and with the Australian tourism industry;
- (d) to enhance awareness in Australia of the Australian tourism industry; and
- (e) to closely monitor and report the effects of international tourism on Australia’s natural environment and society.

Powers of Commission

8. (1) Subject to subsection (2), the Commission has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions and, in particular, may:

- (a) conduct promotional activities;
- (b) provide information and advice to assist sensitive, environmentally and socially sound development of the Australian tourism industry;
- (c) undertake research and disseminate information obtained from the research;
- (d) produce:
 - (i) magazines, pamphlets and other publications; and
 - (ii) other promotional matter;
- (e) arrange for the manufacture of, and distribute, any article or thing bearing a mark, symbol or writing associated with the Commission;
- (f) enter into contracts;
- (g) establish offices;
- (h) occupy, use and control any land or building owned, or held under lease, by the Commonwealth and made available to the Commission;
- (j) accept gifts, grants, bequests and devises made to it, and act as trustee of money and other property vested in it on trust;
- (k) enter into co-operative arrangements with other persons;
- (m) appoint agents and attorneys, and act as an agent for other persons;
- (n) obtain commercial sponsorship;
- (o) make charges for work done, services rendered, and goods and information supplied, by or on behalf of the Commission;
- (p) do such other things as it is authorised to do by or under this Act; and
- (q) do anything incidental to any of its powers.

(2) The Commission shall not carry on business as a travel agent.

Commission is body corporate etc.

9. (1) The Commission:

- (a) continues to be a body corporate;
- (b) shall have a seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(2) The seal of the Commission shall be kept in such custody as the Board directs and shall not be used except as authorised by the Board.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Commission appearing on a document and shall presume that it was duly affixed.

PART III—THE BOARD OF DIRECTORS

Establishment of Board of Directors of Commission

10. There shall be a Board of Directors of the Commission.

Role of Board

11. The role of the Board is:

- (a) to ensure the proper and efficient performance of the Commission's functions; and
- (b) to determine the Commission's policy in relation to any matter.

Constitution of Board

12. The Board consists of the following members:

- (a) the Chairperson;
- (b) the Deputy Chairperson;
- (c) the government member;
- (d) the Managing Director;
- (e) 5 other members.

Appointment of members

13. (1) The members of the Board (other than the Managing Director) shall be appointed by the Minister.

(2) The Minister may appoint a person as a member other than the government member only if the Minister is satisfied that the person has expertise relevant to the Australian tourism industry.

(3) At least one of the persons appointed as a member by the Minister shall be a person who has environmental or sociological expertise relevant to the tourism industry.

(4) The government member shall be an officer of the Australian Public Service.

(5) The Minister may appoint a person as government member only if the Minister is satisfied that the person has expertise in:

- (a) the formulation of government policy; and
- (b) public administration.

(6) Of the members appointed pursuant to paragraph 12 (e), at least 2 members shall be drawn from representative national tourism organisations.

(7) A person who has attained 65 years of age shall not be appointed as a member.

(8) The appointment of a person as a member is not invalid because of a defect or irregularity in connection with the appointment.

Term of appointment

14. (1) An appointed member:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office, subject to this Act:
 - (i) in the case of a member other than the government member—
for such term (not exceeding 3 years) as is specified in the instrument of appointment; and
 - (ii) in the case of the government member—during the Minister's pleasure.

(2) If an appointed member (other than the government member) ceases to hold office before the end of the term of appointment, another person may be appointed in the member's place until the end of the term, provided that if the member was drawn from a representative national tourism organisation, the person appointed in that member's place by the Minister shall be drawn from a representative national tourism organisation.

(3) An appointed member ceases to hold office on attaining 65 years of age.

Basis of holding office

15. (1) The Chairperson may be appointed on a part time or full time basis.

(2) An appointed member (other than the Chairperson) holds office on a part time basis.

Full time Chairperson not to engage in other paid employment

16. If the Chairperson is appointed on a full time basis, the Chairperson shall not engage in paid employment outside the duties of the office except with the written approval of the Minister.

Remuneration and allowances

17. (1) An appointed member shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) An appointed member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Leave of absence

18. (1) The Minister may grant leave of absence to the Chairperson on such terms and conditions as the Minister considers appropriate.

(2) The Chairperson may grant leave of absence to another appointed member on such terms and conditions as the Chairperson considers appropriate.

Resignation

19. An appointed member may resign the office by writing signed and delivered to the Minister.

Disclosure of interests

20. (1) A member who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board (whether at a meeting or otherwise) shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Board and, unless the Minister or the Board otherwise determines, the member shall not:

- (a)** be present during any deliberation of the Board in relation to the matter; or
- (b)** take part in any decision of the Board in relation to the matter.

(3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:

- (a)** be present during any deliberation of the Board for the purpose of making the determination; or
- (b)** take part in the making by the Board of the determination.

(4) If the Chairperson is appointed on a full time basis, the Chairperson shall give written notice to the Minister of all direct or indirect pecuniary interests that the Chairperson has or acquires in any business or in any body corporate carrying on any business.

Termination of appointment

21. (1) The Minister may terminate an appointed member's appointment for misbehaviour or physical or mental incapacity.

(2) The Minister shall terminate an appointed member's appointment if the member:

- (a)** becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b)** without reasonable excuse, contravenes section 20;
- (c)** in the case of the Chairperson if the Chairperson is appointed on a part time basis—is absent, except with the leave of the Minister, from 3 consecutive meetings of the Board;
- (d)** in the case of the Chairperson if the Chairperson is appointed on a full time basis—is absent from duty, except with the leave of the Minister, for 14 consecutive days or 28 days in any 12 months; or

- (e) in the case of an appointed member other than the Chairperson—is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Board.

Terms and conditions of appointment not provided for by Act

22. An appointed member holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

Meetings

23. (1) The Board shall hold such meetings as are necessary for the effective performance of its role.

(2) Subject to subsections (3) and (4), meetings of the Board shall be held at such times and places as the Board determines.

(3) The Chairperson:

- (a) may convene a meeting of the Board at any time; and
- (b) shall convene a meeting of the Board on receipt of a written request signed by not less than 3 other members.

(4) The Minister may convene a meeting of the Board at any time.

(5) The Chairperson shall preside at all meetings of the Board at which he or she is present.

(6) Where the Chairperson is not present at a meeting of the Board, the Deputy Chairperson shall preside and, if the Deputy Chairperson is also not present, the members present shall appoint one of their number (other than the Managing Director or the government member) to preside.

(7) At a meeting of the Board:

- (a) subject to subsection (8), 5 members constitute a quorum;
- (b) a question shall be decided by a majority of the votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, if there is an equality of votes, also has a casting vote.

(8) Where, by reason of subsection 20 (2), a member is not present at a meeting of the Board during a deliberation of the Board in relation to a matter, but there would be a quorum if the member were present, the remaining members present constitute a quorum for the purpose of any deliberation or decision of the Board at the meeting in relation to the matter.

(9) The Board shall keep minutes of its proceedings.

Acting appointments

24. (1) During any period when:

- (a) the office of Chairperson is vacant (whether or not an appointment has previously been made to the office); or

(b) the Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;
the Deputy Chairperson shall act as Chairperson.

(2) The Minister may appoint an appointed member (other than the government member) to act as Deputy Chairperson:

- (a) during a vacancy in the office of Deputy Chairperson (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Deputy Chairperson is acting as Chairperson or is unable, for any reason, to attend meetings of the Board.

(3) The Minister may appoint a person to act as an appointed member:

- (a) during a vacancy in the office of the appointed member (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the appointed member is acting as Deputy Chairperson or is unable, for any reason, to attend meetings of the Board.

(4) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

(5) Nothing in this section excludes the application of section 33A of the *Acts Interpretation Act 1901* in relation to appointments made under this section.

PART IV—CORPORATE PLANNING AND ACCOUNTABILITY

Division 1—Corporate plan and annual operational plans

Corporate plan

25. (1) The Board shall, as soon as practicable after the commencement of this Act, prepare a corporate plan for the Commission.

(2) The Board shall, in each financial year to which the corporate plan relates and not later than 1 April, review and revise the plan.

(3) The Board:

- (a) may, at any other time, revise the corporate plan; and
- (b) shall revise the corporate plan if the Minister requests it, in writing, to do so and gives reasons for the request.

(4) The corporate plan as prepared under subsection (1) shall include a statement of the objectives of the Commission, and an assessment of the outlook for overseas tourism to Australia for:

- (a) if the plan is prepared in the first 9 months of a financial year, the financial year in which the plan is prepared and the 4 subsequent financial years; or
- (b) if the plan is prepared in the last 3 months of a financial year, the next financial year and the 4 subsequent financial years.

(5) The corporate plan as revised under subsection (2) shall include a statement of the objectives of the Commission, and an assessment of the outlook for overseas tourism to Australia for the financial year immediately following the financial year in which the corporate plan is revised and the 4 subsequent financial years.

(6) The corporate plan shall also outline the strategies and policies that the Board intends to adopt in order to achieve the Commission's objectives, including strategies and policies to determine and manage the environmental and social impacts upon Australia of international tourism.

(7) The corporate plan, and a revision of the corporate plan:

- (a) shall be submitted to the Minister as soon as practicable after it is prepared; and
- (b) has no effect until it is approved, in writing, by the Minister.

(8) Before preparing or revising the corporate plan, the Board shall consult with:

- (a) State and Territory tourism authorities; and
- (b) such other bodies concerned with tourism as the Board considers appropriate.

Annual operational plans

26. (1) When the Board is preparing the corporate plan under subsection 25 (1) or revising the corporate plan under subsection 25 (2), it shall prepare an annual operational plan for the earliest financial year to which the corporate plan or the corporate plan as so revised, as the case may be, will relate.

(2) The annual operational plan for a financial year shall:

- (a) contain an estimate of the Commission's receipts and expenditure for the financial year; and
- (b) specify:
 - (i) the programs that the Board proposes the Commission to carry out; and
 - (ii) the resources that the Board proposes to allocate to each such program;

in giving effect to the corporate plan during the financial year.

(3) If the Minister is of the opinion that the annual operational plan is inconsistent with the corporate plan, the Minister may, in writing, request the Board to revise the annual operational plan.

(4) The Board may, at any time, revise the annual operational plan, and shall revise the plan if the Minister requests it under subsection (3) to do so and gives written reasons for the request.

(5) An annual operational plan, and a revision of an annual operational plan:

- (a) shall be submitted to the Minister as soon as practicable after it is prepared; and
- (b) has no effect until it is approved, in writing, by the Minister.

(6) The Minister shall approve an annual operational plan, or a revision of an annual operational plan, unless the Minister is of the opinion that the plan, or the plan as proposed to be revised, as the case may be, is inconsistent with the corporate plan.

Board to comply with corporate and annual operational plans

27. To the extent that it is practicable to do so, the Board shall ensure that the performance of the Commission's functions, and the exercise of the Commission's powers, is consistent with, and designed to give effect to, the corporate plan and the applicable annual operational plan.

Division 2—Accountability

Annual report

28. Without limiting the matters that may be included in the Commission's annual report for a period, the report shall include:

- (a) an assessment of the extent to which the Commission's operations during the period have:
 - (i) achieved its objectives as stated in the corporate plan; and
 - (ii) implemented each annual operational plan applicable to the period; and
- (b) particulars of:
 - (i) significant capital works programs (if any) undertaken by the Commission during the period;
 - (ii) significant acquisitions and dispositions of real property by the Commission during the period; and
 - (iii) variations to the corporate plan, and to the applicable annual operational plan, agreed to by the Minister during the period.

Minister may give directions in exceptional circumstances

29. (1) Subject to subsection (2), the Minister may give written directions to the Board in relation to the performance of the functions, and the exercise of the powers, of the Commission, and the Board shall comply with the directions.

(2) The Minister shall not give a direction to the Board under subsection (1) unless the Minister:

- (a) has informed the Board, in writing, that the Minister is considering giving the direction;
 - (b) has given the Chairperson an opportunity to discuss the need for the proposed direction with the Minister; and
 - (c) is satisfied that, because of the existence of exceptional circumstances, it is necessary to give the direction to the Board in order to ensure that the performance of the functions, or the exercise of the powers, of the Commission does not conflict with major government policies.
- (3) Where the Minister gives a direction to the Board under subsection (1):
- (a) the Minister shall cause a copy of the direction:
 - (i) to be published in the *Gazette* as soon as practicable after giving the direction; and
 - (ii) to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction; and
 - (b) the annual reports of the Commission applicable to periods in which the direction has effect shall include:
 - (i) particulars of the direction; and
 - (ii) an assessment of the impact that the direction has had on the operations of the Commission during the period.

PART V—MANAGING DIRECTOR AND STAFF

Division 1—Managing Director

Managing Director

30. There shall be a Managing Director of the Commission.

Duties

31. (1) The Managing Director shall conduct the affairs of the Commission.

(2) The Managing Director shall act in accordance with any policies determined by, and any directions given by, the Board.

(3) All acts and things done in the name of, or on behalf of, the Commission by the Managing Director shall be deemed to have been done by the Commission.

Appointment

32. (1) The Managing Director shall be appointed by the Board.

(2) The Board shall not appoint an appointed member as Managing Director.

(3) The Board shall not appoint a person who has attained 65 years of age as Managing Director.

(4) The appointment of a person as Managing Director is not invalid because of a defect or irregularity in connection with the person's appointment.

Term of appointment etc.

33. (1) The Managing Director:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office, subject to this Act, during the Board's pleasure.

(2) The Managing Director ceases to hold office on attaining 65 years of age.

Remuneration and allowances

34. (1) The Managing Director shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) The Managing Director shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Managing Director not to engage in other paid employment

35. The Managing Director shall not engage in paid employment outside the duties of the office except with the approval of the Board.

Leave of absence

36. The Chairperson may grant leave of absence to the Managing Director on such terms and conditions (whether as to remuneration or otherwise) as are determined by the Board with the written approval of the Minister.

Resignation

37. The Managing Director may resign the office by writing signed and delivered to the Chairperson.

Disclosure of interests

38. The Managing Director shall give written notice to the Chairperson of all direct or indirect pecuniary interests that the Managing Director has or acquires in any business or in any body corporate carrying on any business.

Terms and conditions of appointment not provided for by Act

39. The Managing Director holds office on such terms and conditions in relation to matters not provided for by this Act as are determined by the Board with the written approval of the Minister.

Acting Managing Director

40. (1) The Board may appoint a person (other than a member) to act as Managing Director:

- (a) during a vacancy in the office of Managing Director (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act as Managing Director is not invalid because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act as Managing Director had not arisen or had ceased.

(3) Nothing in this section excludes the application of section 33A of the *Acts Interpretation Act 1901* in relation to appointments made under this section.

Exclusion of Managing Director etc. from certain deliberations

41. (1) The Managing Director shall not be present during any deliberation of the Board, or take part in any decision of the Board, in relation to:

- (a) the appointment of a person as Managing Director;
- (b) the determination or application of any terms and conditions on which a person appointed as Managing Director holds office or may be granted leave;
- (c) the termination of the appointment of the Managing Director; or
- (d) the giving or refusing of approval for the Managing Director to engage in paid employment outside the duties of the office.

(2) A person appointed to act as Managing Director shall not be present during any deliberation of the Board, or take part in any decision of the Board, in relation to:

- (a) the appointment of a person as Managing Director or to act as Managing Director;
- (b) the determination or application of any terms and conditions on which the Managing Director, or a person appointed to act as Managing Director, holds office or may be granted leave;
- (c) the termination of the appointment of the person or the Managing Director; or
- (d) the giving or refusing of approval for the Managing Director, or a person acting as Managing Director, to engage in paid employment outside the duties of the office.

Division 2—Employees and consultants

Employees

42. (1) The Board may engage such employees as it considers necessary for the performance of the functions, and the exercise of the powers, of the Commission.

(2) The terms and conditions of employment shall be determined by the Board.

(3) A person shall not be employed by the Board on terms and conditions more favourable than those applying to the Managing Director.

Consultants

43. (1) The Board may engage persons having suitable qualifications and experience as consultants to the Commission.

(2) The terms and conditions of engagement shall be determined by the Board.

PART VI—FINANCE

Money payable to Commission

44. (1) There is payable to the Commission such money as is appropriated by the Parliament for the purposes of the Commission.

(2) The Minister for Finance may give written directions as to the amounts in which, and the times at which, money is to be paid to the Commission.

Application of money

45. The money of the Commission shall be applied only:

- (a) in payment or discharge of expenses and liabilities incurred by the Commission; and
- (b) in payment of remuneration and allowances payable under this Act.

Contracts and leases

46. The Board shall not, except with the written approval of the Minister:

- (a) enter into a contract involving the payment or receipt by the Commission of an amount exceeding \$500,000 or, if a higher amount is prescribed, the higher amount; or
- (b) enter into a lease of land for a period of 10 years or more.

Application of Division 2 of Part XI of Audit Act

47. It is hereby declared that the Commission is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

Liability to taxation

48. (1) The Commission is subject to taxation (other than income tax or sales tax) under the laws of the Commonwealth.

(2) Subject to subsection (3), the Commission is not subject to taxation under a law of a State or Territory.

(3) The regulations may provide that subsection (2) does not apply in relation to:

- (a) a specified law of a State or Territory; or
- (b) laws in a specified class of laws of a State or Territory.

PART VII—MISCELLANEOUS

Delegation by Board

49. (1) The Board may, by resolution, delegate all or any of the powers of the Board under this Act to:

- (a) a member of the Board; or
- (b) a member of the staff of the Commission.

(2) The delegate is, in the exercise of a power so delegated, subject to the directions of the Board.

(3) A delegation of a power under this section:

- (a) may be revoked by resolution of the Board (whether or not constituted by the persons constituting the Board at the time the power was delegated); and
- (b) continues in force even though there has been a change in the membership of the Board.

(4) A certificate signed by the Chairperson stating any matter in relation to a delegation of a power under this section is *prima facie* evidence of the matter.

(5) A document purporting to be a certificate under subsection (4) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

Delegation by Managing Director

50. (1) The Managing Director may, by writing, delegate to a member of the staff of the Commission all or any of his or her powers under this Act.

(2) The delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Managing Director.

Regulations

51. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
Senate on 8 October 1987
House of Representatives on 7 December 1987]*