

4 April 2014

Public Infrastructure Inquiry  
Productivity Commission  
Locked Bag 2, Collins Street East  
MELBOURNE VIC 8003

Dear Sir/Madam,

We write in response to the Productivity Commission (PC)'s Draft Report on Public Infrastructure which we refer to as the Draft Report.

**Executive Summary:**

Business SA commends the PC for the quality of its Draft Report and the depth and breadth of its analysis but it is concerned that the report overlooks the value of maintaining law and order on construction sites and the costs associated with Greenfield Agreements and their associated restrictions on employers. We are also concerned that the PC is advocating for increased debt and/or tax funding of public infrastructure when there are such serious issues constraining existing Government spending at both a State and Federal level. Although we agree that Australian needs to consider more innovative means of funding public infrastructure, we are also reticent on encouraging the Government to focus too intently on ways in which to abrogate their existing responsibility to maintain road infrastructure through the general budget.

The PC should also be giving more consideration to how industry participation plans can actually work to increase competition for Government infrastructure project tenders by making tenders more available to smaller businesses. Competition in the major infrastructure delivery market is clearly a significant issue for Australia and breaking open the market will only come as more businesses find it accessible.

**Background:**

Following on from our original submission to the Issues Paper, we make the following comments in relation to how the Draft Report treats the concerns we have regarding infrastructure provision in South Australia:

1. Business SA was the key driver behind the recent formation of South Australia's Industry Participation Advocate (IPA) in order to open up opportunities for local small businesses to participate in the almost \$4 billion worth of State Government tenders let annually.

Although only formed in 2013, the IPA has already had significant success with its 'Meet the Buyer' events, bringing hundreds of local businesses and government procurers together to discuss opportunities for Government tenders. Not only do these forums help smaller businesses better understand how to participate in the tender process, but they showcase local business capabilities and emerging technologies to inform Government procurers about innovative possibilities to address their purchasing and contracting needs.

The IPA has also been successful in achieving practical change to open up tender opportunities to small businesses by reducing the following red tape through:

- Setting limits of liability for low-risk contracts valued up to \$1 million at 5 times contract value;
- Removing prequalification fees from 1 July 2014;
- Streamlining prequalification to ensure that a business who prequalifies for one agency is to be prequalified across other agencies in key categories of supply – to commence 1 July 2014.

We acknowledge the PC's concerns about industry participation plans adding to bid costs and we have been quite clear in directing South Australia's IPA not to place onerous requirements on tenderers to prove the extent to which local businesses are involved in their bid.

However, the whole premise of industry participation plans across the nation is to actually get more businesses competing for Government tenders to help break down the oligopoly nature of markets for Government projects which the PC has clearly identified through its analysis of the major infrastructure construction market dominated by Leighton Holdings and Lend Lease.

Business SA suggests that the PC examines South Australia's Industry Participation Advocate Office more closely to understand how it is working to equally accommodate businesses of all sizes in the market for Government tenders on the premise of boosting competition.

2. We support the PC's call for nationwide adoption of the Victorian Guidelines for Building Codes which disqualify contractors from tendering for public infrastructure projects if they have engaged in prior unlawful conduct, mismanaged industrial relations arrangements or have reached sweetheart deals with unions that precluded competition from subbies with lower wage costs.
3. Notwithstanding our support for the reintroduction of the Australian Building and Construction Commission (ABCC), the Government should raise the ceiling for penalties relating to unlawful conduct to be more commensurate with the economic damage caused by industrial unrest. Outlawing illegal behaviour is very important to act as a disincentive to unions for acting illegally and whether or not the PC views the ABCC as having had a material impact on labour productivity, it maintained a degree of law and order in the construction industry which built confidence in the ability of companies to deliver major construction projects.

Only in the last month, a significant decision was handed down by the Federal Court in Melbourne against the Construction, Forestry, Mining and Energy Union (CFMEU) for unlawful conduct. The CFMEU organised a four-day protest during 2012 in defiance of a court order at the Grocon Emporium site in Melbourne's CBD. The protests sparked clashes with mounted police who were called in to escort non-union workers into the site. The CFMEU was fined \$1 million for contempt of court over the Emporium blockade and \$250,000 for protests at two other Grocon sites.

Furthermore, the CFMEU has been involved in several recent high profile cases in Perth relating to unlawful conduct, some still ongoing, and all involving union official Joe McDonald. Of interest is that Mr McDonald has been charged with contempt of court several times since the abolition of the ABCC.

4. Consistent occupational licensing laws across jurisdictions has been on the Council of Australian Government (COAG)'s agenda for many years with agreement reached in 2008 to develop a national trade licensing system. We support the PC's call to implement these reforms to improve geographic labour mobility and help ease skills shortages. Australia must have harmonised occupational licensing laws and we have already waited too long for this to eventuate.

Although we acknowledge the National Occupational Licensing Authority (NOLA) may not have being the appropriate vehicle in which to achieve such changes, reforms should still be pursued through an alternative regulatory framework.

5. We acknowledge the PC's recommendation that the Federal Government should encourage State and Territory Governments to undertake pilot studies on how vehicle telematics can be used for distance and location charging of cars and light vehicles.

While we support the concept that Governments need to investigate user charging options for future infrastructure requirements, there are complex considerations for extending this mandate to existing road infrastructure, particularly given the diversity of Australia's road network and population densities. Furthermore, in New Zealand where a similar system is already in place, there is an exemption for cars and vehicles less than 3.5 tonnes.

Australia is already working towards a more direct user charging system for heavy vehicles through the Heavy Vehicle Charging and Investment (HVIC) reforms underway and this is where the Government's focus should remain.

We are concerned that if Governments are too focused on innovative ways to fund their existing road commitments, they are abrogating their responsibilities to reign in budget deficits and net debt. Governments will be in a much better position to fund road expenditure with efficient public spending in other areas and a manageable level of debt.

We are also concerned that the PC is proposing a regulatory asset approach for a 'road fund' whereby road funding would not come out of the general budget. While in theory this may have some merit, again it is potentially abrogating the responsibility of Government to maintain roads. We are also mindful that such a fund would be set up on the basis that it could be independently or theoretically privately operated. We are not convinced that road funding should ever reside outside the general budget, particularly given the recent mismanagement of public finances at both a State and Federal level which has led to a situation where basic Government functions are no longer affordable.

6. We do not agree that the current review of the Australian Government Building and Construction OHS Accreditation Scheme should examine options to more easily accommodate international companies such as 'recognition' and 'provisional accreditation', even for those companies with good safety records.

Local businesses should be on an equal footing with international companies and notwithstanding there is a need to reduce red tape for all businesses, regulation should not be structured such that it advantages businesses who can essentially pre-qualify in an international jurisdiction. Australia should be focused on having OHS legislation which is world class in terms of outcomes for employees and employers and any move to allow for accommodation of international firms on the basis of their compliance with international laws only serves to abrogate the responsibility of Australian Governments to ensure their legislation is as efficient as possible.

We are particularly concerned with the PC's option of provisional accreditation which would effectively allow international companies to be accredited by the Federal Safety Commission (FSC) subject to an on-site audit. This begs the question, what happens if the company fails their on-site audit? Would the site be shut down in the interim? Moreover, what if a workplace accident occurs before such an audit takes place?

International firms operating in Australia have to comply with a myriad of local laws, including taxation law, and we see no difference in applying the same OHS standards to any business operating locally, regardless of where it is domiciled.

7. Given the current fiscal climate at both a State and Federal level, we are very concerned about the PC's recommendations to both Federal and State/Territory Governments about having additional capacity to finance public infrastructure from their own balance sheets through the issue of sovereign debt and/or through taxation.

While we understand the principles behind debt financing for economically productive infrastructure, there are serious issues with fiscal management in South Australia and federally which must be resolved before Governments embark on additional borrowing to fund infrastructure. Furthermore, to suggest tax rises for infrastructure which could conceivably be levied on businesses is completely at odds with creating an environment both in South Australia and federally which is conducive to doing business and growing the economy.

South Australian business has already recognised and acknowledged that user charges may be required for some new economic infrastructure on the basis that businesses can appreciate the savings they will make despite some upfront costs. However, using an instrument as blunt as a tax rise to fund new economic infrastructure is economically inefficient as it does not discriminate between businesses which will or will not benefit from such infrastructure.

Whether or not there is additional capacity for Governments to raise debt can only be determined when the PC is satisfied that both the South Australian and Federal Governments are able to maintain an efficient level of spending.

Furthermore, we have significant reservations in comparing South Australia or Australia's debt levels to those existing in either the OECD or United States. Australia positioned itself to manage the economic fallout from the Global Financial Crisis (GFC) and subsequent economic depression by ensuring it had minimal Government debt which provided fiscal capacity to respond to events outside the Government's control. To now postulate that the fact that our level of State and Federal debt is somehow less of a concern on the basis that it compares well internationally does nothing to recognise the



poor fiscal management abroad compared with Australia. Furthermore, the PC does not recognise the long term ramifications of trying to expand high Government debt laden economies, the classic example of which has occurred in Japan over the past two decades.

8. We support land corridor and site preservation strategies for strategic infrastructure provision, particularly on the basis that they can provide a low cost alternative to funding infrastructure that is either not affordable in the current fiscal climate or not supported by sufficient demand at present.

Business SA was pleased that the recently released South Australian Integrated Transport and Land Use Plan makes provisions for future rail corridors in areas where Adelaide is likely to experience population growth. This is an important step given the issues experienced in Mt Barker where development has been severely compromised due to a lack of consideration into required infrastructure when the State Government approved the town expansion via a Ministerial Development Plan Amendment.

Preserving land for future infrastructure also sends a clear message to the community, including developers, about the Government's long term intentions and ensures that any development on adjoining land is appropriate to adjoin such infrastructure in the future.

9. We support the PC's recommendation that Federal Government funding for State and Local Government should be subject to cost/benefit analysis, evidence of net public benefit and evidence that opportunities for user charging have been explored. We also agree that obligations placed on Local Government should be proportionate to the funds provided and the capacity of individual Local Governments to comply. This is particularly important for South Australia's regions which make such a significant contribution to our State's economy.

However, we remind the PC that the ability of many South Australian Councils to manage funding proposals would be significantly enhanced through additional resources attained by a rationalisation of Local Government.

With 68 metropolitan and regional councils for a population of 1.6 million, the South Australian Local Government sector is ripe for reform. Queensland, with almost triple our population has 73 councils while Victoria, with approximately three and half times our population, has only 79 councils. In Business SA's pre-State election survey, 68% of respondents agreed that the number of councils should be reduced through amalgamation.

More than 35% of the Local Government areas in South Australia have a population of less than 5,000 people and more than 50% have a population of less than 10,000. Smaller councils do not often have the financial capacity to undertake necessary infrastructure investments and to provide the range of services of larger councils.

In Metropolitan Adelaide which only has a population of approximately 1.1 million people and an area of 1,596 square kilometres, there are 18 local councils. This can be contrasted with Brisbane which has a single council, Brisbane City Council, responsible for the provision of services across a similar population and area to Metropolitan Adelaide.

10. Although we recognise that a detailed benchmarking framework for major infrastructure projects may appear useful to Governments and is well intended to allow for the efficient provision of infrastructure funding, we question the comparability of many infrastructure projects and the statistical significance of such comparisons. For example, what sort of useful comparisons can be gleaned from comparing the Adelaide Oval redevelopment to the new Royal Adelaide Hospital?

Furthermore, any recommendations to boost statistical gathering of major infrastructure project data should not result in additional requirements on project tenderers or developers to provide information which is otherwise not required. If data provision can be streamlined to enable better statistically gathering, this is a useful by product but any considerations of benchmarking data should not take precedence over reducing red-tape and its associated cost in major infrastructure project delivery.

11. We support the PC recommendation that Government clients alter timing of information provision in the tendering process for infrastructure projects so that non-essential non-design management plans are only required of the preferred tenderer i.e. to exclude having to provide information such as community engagement plans and traffic management plans at the initial tendering stage.

However, we are strongly opposed to including industry participation plans in the list of non-essential non-design management plans. There is no rationale in a Government client awarding a tender and then asking how the successful tenderer will engage local business when the ability of that tenderer to engage local businesses should have being a deciding factor in their success or otherwise. Industry participation plans are not simply an appendage which can be treated in the same vein as traffic management plans and the PC's recommendation should be amended accordingly.

12. We disagree with the PC's recommendation that 'early contractor involvement mode' should be trialled to test the costs and benefits of applying post contract performance by tenderers as a means of contractor selection, consistent with the practices of some private sector clients.

Notwithstanding we agree that Governments can become more efficient through adopting private sector practices, we must also recognise that Government clients are ultimately responsible to the public at large and that their decisions are made with public and not private money.

We are mindful of ensuring Governments provide full contestability for all tenders which may be compromised if previous contractors are advantaged in future work. The public has a fundamental right to value for money and any amendments to the Government tendering process should not be at the expense of ensuring all businesses have an equal opportunity to compete for every Government contract.

In a recent example in South Australia, the State Government overturned advice from its own land development body, Renewal SA, and sold a significant parcel of industrial land at Gillman in Adelaide's inner north west without going to public tender. While the Government may well have received value for money, the fact that the successful buyer was not subject to market competition sets a dangerous precedent for Government tendering and as a consequence, we are apprehensive about Governments being too close to commercial counterparties.

13. We note the PC is seemingly unconvinced of the need to reform or abolish Greenfield Agreements which is of real concern to Business SA. Greenfield Agreements by their very nature have diminished the right of employers to manage their own projects. An example of this being provisions in Greenfield Agreements whereby employers must pay contractors a rate commensurate to employees. These types of arrangements completely obstruct the rights of employers to derive economic efficiencies from the way in which they structure their contracting arrangements. How can Australia expect to realise efficiencies in the delivery of public infrastructure when the very foundations on which projects are delivered is subject to market manipulation?
14. We disagree that payments or incentives to businesses to employ apprentices only have a marginal impact on hiring decisions.

The payroll tax exemption for apprentices and trainees was originally introduced in the 2010/11 South Australian State Budget to replace the payroll tax trainee rebate scheme. It was subsequently abolished in the 2012/13 Budget and in a survey of its members, Business SA found that, had the payroll tax exemption for apprentices and trainees remained in place:

- three quarters of respondents would have employed more apprentices; and
- almost two thirds of respondents would have employed more trainees.

Although we acknowledge that these types of incentives may not necessarily influence large employers, they have proven very effective in encouraging small businesses to take on additional apprentices.

15. We agree that if the Federal Government is to retain the FSC in any re-established ABCC, there should be a review of its net benefit, not just compliance costs.

### **Who We Are**

As South Australia's peak Chamber of Commerce and Industry, Business SA is South Australia's leading business membership organisation. We represent thousands of businesses through direct membership and affiliated industry associations. These businesses come from all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.

Should you require any further information or have any questions, please contact Rick Cairney, Director of Policy, Business SA

Yours sincerely

/ **Rick Cairney**

**Director of Policy**