

Submission to the Productivity Commission Review of Regulatory Burdens on Business and Consumer Services

The Department of Resources, Energy and Tourism welcomes the opportunity to make a submission to the Productivity Commission's review (the review) of the regulatory burdens on business that apply to the business and consumer services sector.

Tourism related industries comprise a large proportion of the business and consumer services being examined by the review. These sectors are subject to range of complex and in some cases overlapping Commonwealth, state and local government regulations. Regulations impose costs that impact not only on individual firms but on the structural competitiveness of the Australian tourism industry.

The Australian tourism industry is diverse, ranging from firms providing transport and travel services, accommodation and hospitality services and leisure related services. Unlike other sectors of the economy, the industry is highly decentralised, with operations spread relatively evenly throughout all regions of Australia. The sector's lack of homogeneity means that the regulatory barriers that affect the sector are less obvious than those that impact on more homogenous sectors of the economy.

Given the diversity of the industry, its wide geographic coverage and the dominance of small and medium enterprises, the costs from undue regulatory burdens on the industry are likely to have a widespread impact in the community. The industry's presence in many sectors of the economy means that there is a plethora of regulatory regimes that affect tourism businesses. Accordingly the summation of costs of regulation on the industry is likely to be difficult to measure. However, the same factors mean that alleviating regulatory barriers is likely to have a widespread impact for regional communities where tourism can act to diversify the economic base.

The current regulatory framework around the Australian tourism and tourism related industries is characterised by multiple decision makers in a number of jurisdictions that creates uncertainty and imposes opportunity costs from delays in the decision making process. While these characteristics are shared by many other sectors of the economy, some individual sectors of the tourism industry are subject to particular regulatory constraints on foreign investment and competition that are not present in other sectors of the economy.

These constraints have negative flow on effects to other sectors of the tourism industry and prevent industry from fully leveraging the commercial return from individual and Government supported marketing campaigns. One effect of these constraints is partially demonstrated by data from the Australian Bureau of Statistics (ABS) that show that the profit margin of firms in tourism and tourism related industries is around half of the average profit margin of firms across the Australian economy.¹ These constraints are one of a number of factors that explain the sector's lower than average profit margins.

¹ As the definition of the tourism industry covers a number of sectors that correspond to Australia New Zealand Standard Industry Classification codes at the three digit level, published data does not allow a direct calculation of an aggregate profit margin for tourism firms. However, published ABS data covers the accommodation and food services sector, which is part of the tourism industry and within the scope

This submission will identify a number of regulatory areas that have the potential to impact negatively on the tourism industry that are worthy of further examination by the Productivity Commission. Many of these regulations are applied by state and territory governments. The Productivity Commission may consider these issues to be outside the scope of this inquiry. Nevertheless these areas have been included to provide a holistic overview of the impact of regulation on the competitiveness of the Australian tourism industry.

The National Long Term Tourism Strategy (the Strategy)

The Minister for Resources, Energy and Tourism, the Hon Martin Ferguson AM MP, launched the Strategy on 15 December 2009. One of the key themes of the Strategy is facilitating investment and regulatory reform to ensure the Australian tourism product remains competitive in a global marketplace.²

The Strategy is designed to increase the industry's resilience and productive capacity. It represents a shift in government policy to better balance policy attention between supply and demand side factors. The Strategy reflects a Government assessment that attention to the drivers of productivity growth will improve the industry's international competitiveness. The Strategy is consistent with Government's broader economic agenda and places the tourism industry at the forefront of the Government's productivity agenda.

As part of the implementation of the Strategy a cross-jurisdictional government-industry working group has been established to remove barriers to investment in the tourism industry. One of the tasks that the working group will be completing is a review of the regulatory impediments to investment in the tourism industry. This work will include the identification of a range of both sector specific and more generic businesses regulations that impose costs on firms in the tourism industry. The outcome of this work could assist the Productivity Commission in its assessment of the regulatory burdens on business and consumer services and in identifying possible recommendations to remove costly and unnecessary regulation.

Economic importance of the tourism industry and its significance to this review

The Australian tourism industry is economically significant. In 2007-08, it contributed over \$40 billion to Australia's Gross Domestic Product and directly employed around half a million people. With export earnings exceeding \$23 billion, tourism is Australia's largest services export. In 2007-08, the Australian tourism industry accounted for 3.6 per cent of Australia's gross domestic product, 4.7 per cent of total employment and 10.1 per cent of total exports.³

of the review. This data shows that profit margin for firms in this sector was 6.8 per cent in 2007-08 and that the economy wide average was 12.5 per cent. See ABS, Australian Industry, 8115.0, 2007-08, pp27-31

² See Martin Ferguson Media Release "Minister Unveils New Strategy for Tourism Resilience and Announces New Strategy for Grants," 15 December 2009

³ Department of Resources, Energy and Tourism, Tourism Industry Facts and Figures at a Glance October 2009, p.26

Table 1 illustrates the tourism and tourism related sectors covered by the review. Thirteen of the 49 industries covered by this review – more than a quarter – are tourism or tourism related industries.

The substantial contribution of the Australian tourism industry to the Australian economy is mirrored by the tourism sectors covered by this review. Data from the ABS suggests that the tourism and tourism related sectors covered by this review contribute \$17.9 billion to Gross Domestic Product and employ around a quarter of a million people.⁴

Table 1 – Tourism and tourism related sectors covered by the review

Industry	ANZSIC Code
Accommodation	440
Cafes, restaurants and takeaway food services	451
Pubs, taverns and bars	452
Clubs	453
Motor vehicle and transport equipment rental and hiring	661
Travel agency and tour arrangement services	722
Museum operation	891
Parks and gardens operations	892
Creative and performing arts activities	900
Sports and physical recreation activities	911
Horse and dog racing activities	912
Amusement and other recreation activities	913
Gambling activities	920

Given the economic significance of the tourism and tourism related sectors covered by the review, any reforms that can remove regulations causing any investment distortions that impede the flow of capital to the industry and reduce its international competitiveness, are worth exploring.

Impact of regulation on the Australian tourism and tourism related sectors

Estimates of the total cost of unnecessary and burdensome regulation to the broader economy vary. The 2006 report of the Regulatory Review Taskforce estimated that the total cost of unnecessary regulation could be as high as \$3 billion per annum.⁵ However, a 2005 study by the Australian Chamber of Commerce and Industry suggested the cost to be as high as \$86 billion per annum.⁶

⁴ RET estimates based on data sourced from ABS, *Tourism Satellite Account, 5249.0, 2007-08*. As the ABS data does not drill down manufacturing employment to a sufficient level to determine how many manufacturing jobs are supported by manufacturing of products directly used by the sectors covered in this review (eg food and beverage manufacturing products used by cafes, restaurants and takeaway food services, pubs, taverns and bars and clubs; and transport equipment manufacturing products used by the motor vehicle and transport equipment rental and hiring sector), the estimate of employment is likely to be an underestimate.

⁵ Regulatory Review Taskforce, *Rethinking Regulation*, 2006, p.13

⁶ Australian Chamber of Commerce and Industry, *Holding Back the Red Tape Avalanche: A Regulatory Reform Agenda for Australia*, 2005, p.7

These estimates suggest that the annual cost of regulation to the tourism industry could range from \$108 million to \$3.096 billion. The costs to the tourism and tourism related sectors covered by this review could range from \$47.5 million to \$1.362 billion a year. This suggests that regulation may add a significant cost impost to individual tourism firms and diminish the business case for investing in Australian tourism products relative to tourism products in other locations.

This cost is amplified if the net effect of government trade and assistance measures to tourism and tourism related sectors is considered. Direct government assistance to a particular industry is subsidised by other industries through higher taxes. Industries that purchase products which are subject to import duties face higher cost inputs and do not reap the benefits of competition that would otherwise result from the absence of protective measures. Thus sectoral assistance packages and protective trade measures often lead to costs to other sectors of the economy.

The Productivity Commission estimated that in 2007-08, the net impact of Australian Government trade and assistance measures on the accommodation, café and restaurant sectors was a net cost of \$362.4 million. The cumulative net cost to this sector over the seven year period from 2001-02 to 2007-08 was \$2.312 billion.⁷

While the impact of trade and assistance measures on business and consumer services is outside the scope of this review, the existence of these costs are relevant to the calculation of the impact of generic costs to industry of regulation. Industries like the accommodation, cafes and restaurant sector have less capacity to absorb the costs of regulation because they are effectively spending \$362 million a year, or 7.7 per cent of total profit,⁸ subsidising other sectors of the economy as a result of government trade and industry assistance policies.

The Regulatory Review Taskforce found that “the costs of regulation to business involve not just extra time, paperwork and outlays but also deflect management from the core activities of the business.” Furthermore, “the impact is even greater for small businesses, which generally do not have the in-house capability to deal with and keep abreast of the regulatory morass.”⁹ This is especially true for the Australian tourism industry, of which 93 per cent is comprised of small businesses.

Research that led to the development of the National Long-Term Tourism Strategy found that regulatory requirements applying to tourism vary from jurisdiction to jurisdiction, involve all levels of government and cut across environmental, planning, infrastructure, foreign investment, local development and indigenous issues.

The research, which was conducted by an independent steering committee chaired by Ms Margaret Jackson AC, found that “multiple and often overlapping planning and approval requirements and a lack of certainty in some planning environments such as built heritage, environment and indigenous land-use can cause delays that negatively affect return on investment.”¹⁰ The Jackson Report also concluded that “complex and lengthy approvals processes add to costs and increase the uncertainty associated with

⁷ Productivity Commission, *Trade and Assistance Review 2007-08*, 2009, p.144

⁸ ABS, *Australian Industry 8155.0*, 2007-08 p.8

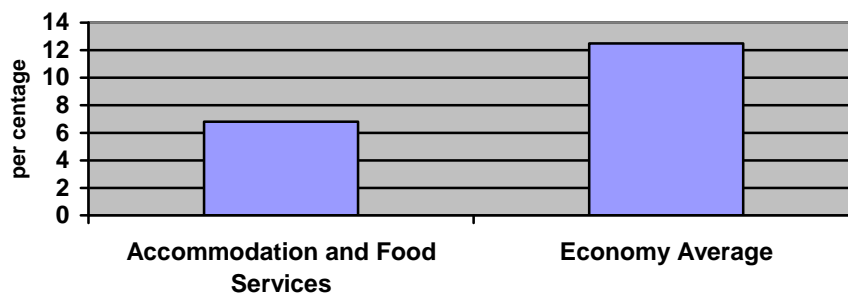
⁹ Regulatory Review Taskforce, *Op Cit.*, p.ii

¹⁰ The Jackson Report, *Informing the National Long Term Tourism Strategy*, 2009, p.26

a tourism project.” Development uncertainty “is a particular issue for developments that seek to utilise Australia’s unique natural and cultural assets, which often have a high tourism value.”¹¹

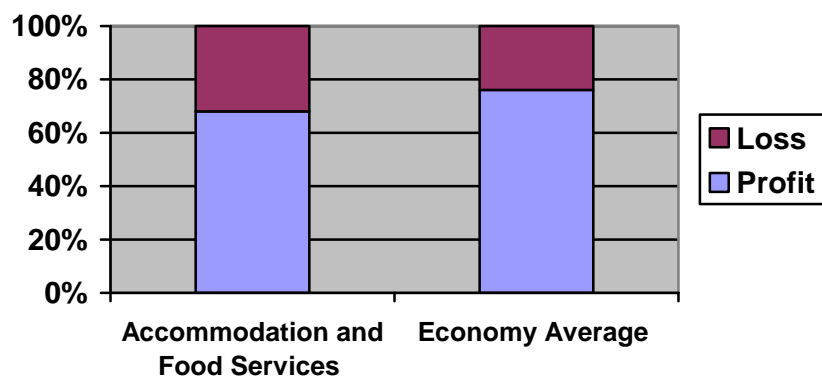
Figures 1 and 2 demonstrate some of the financial consequences of these characteristics of the regulatory system. While statistical constraints make it difficult to derive a profit margin figure for the tourism industry, figure 1 shows that data for firms in the accommodation and food services sector (which is a sector directly covered by this review) show that profit margins are almost half the economy average.¹² This suggests that firms in this sector are more susceptible to the costs of regulation, since they do not have the same capacity to absorb the higher costs that unnecessary regulations bring.

Figure 1 Industry Profit Margins



Similarly, figure 2 illustrates that the firms in this sector of the economy are more likely to record a loss than the average firm.¹³

Figure 2 Industry Profit and Loss



The cumulative result of the quantitative and qualitative cost to industry of regulation has been a significant deterioration in the competitiveness of the Australian tourism industry. The Jackson Report found that regulatory barriers were a significant factor

¹¹ Jackson, *Op. Cit.*, p.29

¹² ABS, *Australian Industry 8155.0*, 2007-08, p.27

¹³ *Ibid*, p.31

in the 14 per cent decline of Australia's share of the international tourism market since 1995 to 2008.¹⁴

Specific regulations with the potential to impact on the tourism and tourism related sectors

There are a range of regulations that impact on the tourism and tourism related sectors of interest to this review. The broad areas of regulation include:

1. foreign investment regulations;
2. land use regulations;
3. environmental and heritage management regulation;
4. regulation of business services; and
5. regulation of transport.

While the Productivity Commission may consider that some of these regulations are outside the scope of this review, the Department of Resources, Energy and Tourism contends they are relevant to gaining a holistic understanding of the impact of regulation on the tourism and tourism related sectors relevant to this inquiry.

The Department of Resources, Energy and Tourism does not consider that regulations in these areas are unwarranted, but that aspects of the regulatory framework impose unnecessary costs on business and can be delivered more efficiently.

Foreign investment regulations

Significant foreign investment proposals are subject to scrutiny by the Foreign Investment Review Board (FIRB) in accordance with the *Foreign Acquisitions and Takeover Act*. Foreign firms or individuals who purchase an interest in an Australian business or Australian real estate above a defined monetary value are required to notify the FIRB. The Treasurer may prohibit the transaction, should the Treasurer deem that it is not in the national interest for it to proceed.

The Treasurer has 30 days to review investments, a further ten day notice period and can also issue a 90 day extension order, giving the Treasurer 130 days to prohibit a transaction or to impose conditions on a transaction.

In 2007-08, 38 tourism related investments, with an investment value of \$3.2 billion were notified to the FIRB.¹⁵ The FIRB does not provide data that allows an estimation of the number of investments in the tourism and tourism related sectors that are subject to this review, and hence the broader tourism number is used as a proxy.

While data on total investment in the tourism sector is difficult to source, anecdotal evidence suggests that foreign investment as a proportion of total industry investment is significant. Foreign capital played a critical role in financing the development of tourism infrastructure, including in the accommodation and restaurant sector in Queensland throughout the 1980s and 1990s. Foreign capital was equally important in financing the surge of investment in the late 1990s in preparation of the Sydney

¹⁴ The Jackson report identified seven supply side issues that were impeding industry growth and had accounted for the industry's poor performance. Two of these were regulation and investment which is heavily influenced by the regulatory framework.

¹⁵ Foreign Investment Review Board, Annual Report 2007-08, p.30

Olympic Games and continues to play a substantial role in financing the high end accommodation sector throughout Australia.

Thus any unnecessary costs or burdens arising from the regulation of foreign investment have a particular impact on the accommodation sector and the tourism industry more broadly.

Global competition for capital and investment is fierce. Investment capital is not limitless and is aggressively pursued by a number of countries who have liberalised their foreign investment regimes. Many of these jurisdictions have also targeted tourism investment as a means of diversifying their economic base, which has made tourism investments in other locations more attractive. In a global context of increasingly sophisticated competition for capital, any costs imposed by unnecessarily burdensome aspects of the Australian foreign investment regime are amplified and diminishes Australia's competitiveness as a location for tourism investment. A 2007 OECD study into restrictiveness of foreign investment regimes in 43 economies found that only four economies (China, Russia, India and Iceland) operated a system that was more restrictive than Australia.¹⁶

This has significant implications for investment in the accommodation sector. Research indicates that yields (or profit margins) in the accommodation sector are broadly comparable throughout the Americas, Europe and the Asia-Pacific.¹⁷ Any costs arising from unreasonable and burdensome aspects of the Australian foreign investment regime are likely to weaken the business case for investing here since average yields alone are not a compelling factor in selecting to invest in an Australian accommodation facility over an accommodation facility in another location.

A 2008 study by ITS Global estimated that the delays taken to make a decision in relation to foreign investment imposed significant opportunity costs throughout the economy by creating artificial delays on returns to investment, which ITS Global argues "represent a permanent and ongoing cost to the [Australian] domestic economy."¹⁸ ITS Global also estimated that a number of foreign investment proposals are withdrawn because of the uncertainties associated with the foreign investment regime administered by the FIRB.

ITS Global estimated that the total cost to the economy from unnecessary aspects of the foreign investment regime could be as high as \$7 billion a year.¹⁹ This estimate suggests that the costs to the tourism industry could be as high as \$140 million a year.²⁰

The Department of Resources, Energy and Tourism is not in a position to validate the accuracy or otherwise of ITS Global's estimate, but suggests that the cost of the

¹⁶ OECD, International Investment Perspectives: Freedom of Investment in a Changing World, 2007

¹⁷ AEC Group Limited, National Tourism Investment Strategy Research Report, 2006, p.67

¹⁸ ITS Global, Foreign Direct Investment in Australia – the Increasing Cost of Regulation, 2008, p.20

¹⁹ ITS estimated opportunity cost arising from delays in decision making was worth \$5.5 billion a year and the cost of withdrawn applications or applications not made as a result of the regulatory stems could be as much as \$1.5 billion a year. See ITS *Op. Cit.*, p.3 and p.21

²⁰ RET estimate based on tourism related projects accounting for around 2 per cent of the value of total foreign investment related projects a year. This ratio is consistent with investment trends over the last decade as reported by the FIRB in its annual reports.

foreign investment regime on business and consumer services should be closely examined by the Productivity Commission in the course of its review.

The Department of Resources, Energy and Tourism does not oppose regulations on foreign investment, but considers that these regulations should be applied in a way that do not unnecessarily burden business and prevent unreasonable barriers to productive foreign investment.

Recommendation 1: That the Productivity Commission examine the cost of the foreign investment regime on business and consumer services as part of the review and determine if there are aspects of the regime that could be streamlined.

Since the publication of the ITS Global report the Treasurer has announced changes to liberalise the foreign investment regime that will result in around 20 per cent of all business applications no longer being screened by the FIRB.²¹ While these changes are welcome and will remove many of the costs from the current regulatory regime, they do not eliminate the case for the Productivity Commission to examine ways to increase the efficiency of the foreign investment regulatory framework.

For example, under the revised system an acquisition of a heritage listed non-residential real estate worth \$5 million or more by a foreign investor is subject to FIRB scrutiny. However non-heritage listed, non-residential real estate under \$50 million is not subject to FIRB scrutiny. This has the potential to impose additional costs on foreign investors of heritage listed accommodation facilities, restaurants, museums, art galleries and other cultural institutions.

It is not obvious how these additional costs are offset by any community benefit that would justify the existence of this regulatory feature. The heritage value of heritage listed properties is already safeguarded through existing heritage protection legislation which applies regardless of the nationality of the owner of the property.

This regulatory feature has the potential to impose costs on investors which diminish the business case for investing in Australia. The Department of Resources, Energy and Tourism is not in a position to quantify the cost of this feature, but recommends that it (and its rationale) be examined by the Productivity Commission.

Recommendation 2: That the Productivity Commission examine the cost and the rationale of the differential treatment of foreign investment in heritage buildings.

Land use and zoning regulations

Each tier of Government in Australia imposes regulations on the use of land through planning laws. Planning laws govern the intended use of land and the development or subdivision of land and provide an opportunity for parties to be consulted on developments that affect their property and amenity.

Planning laws can have a significant impact on the operation of tourism and tourism related services covered by the review. For example, land zoning regulations, permits to operate in public places, liquor licensing regulations, street seating and loading

²¹ Wayne Swan, Media Release, “Reforming Australia’s Investment Framework,” 4 August 2009

zones and parking restrictions can have a material impact on the operations of firms in the accommodation sector, cafes, restaurants and takeaway food services, pubs, taverns and bars and clubs as well as creative and performing arts activities.

The majority of planning laws are applied at state and local government level and many differ from jurisdiction to jurisdiction. This imposes additional compliance costs on industry that operate within different jurisdictions and further diminish the business case for investing in Australia compared to other jurisdictions that have more harmonised planning systems.

The Jackson Report found that “state and local statutory zoning practices which restrict land use to residential or agricultural purposes can also hinder tourism development.” The Jackson Report also noted that “Government incentives, in the form of land tax exemptions, for primary production and owner occupier residential accommodation also disadvantage tourism in competition for land use.”²²

A 2009 Access Economics study found that “tourism capital is heavily invested in land buildings, with over two thirds of tourism net capital stock invested in non-dwelling construction.”²³ This high level of exposure to building activity demonstrates the disproportionate sensitivity that firms in the tourism sector have to the planning system and any delays in decision making that might result from overlapping jurisdictional regulations or decision making process that are not transparent and well understood.

Research into housing affordability suggests that the opportunity costs imposed by the uncertainties of the planning approval process can be significant. Some estimate that approval times can take between one and two years and that planning compliance costs amount to between 6 and 10 per cent of total construction costs.²⁴ Anecdotal evidence from the commercial accommodation sector suggests that the opportunity costs may well be similar.

Firms in the tourism industry, particularly those in the accommodation sector have asserted that the operation of the planning system creates barriers for tourism developments. This assertion is echoed by town planning firm Tract Consultants, who note that there are fewer barriers to high density residential development than a hotel, with this imbalance greatest in inner city municipalities. Despite the two being treated similarly in legislation, it is in the application of this legislation that such an imbalance emerges.²⁵ Industry argues that that this imbalance tilts the investment fulcrum away from investing in tourism infrastructure such as hotels and towards other forms of commercial and residential investment. Industry has attributed this characteristic of the market as a key reason behind the lack of new investment in tourism infrastructure like hotels.

²² Jackson, *Op. Cit.*, p.29

²³ Access Economics, National Long Term Tourism Strategy Economic Modelling Consultancy: Phase I Report, 2009, p.ii

²⁴ Nicole Gurrin, Kristian Ruming, Bill Randolph and Dana Quintal, Planning Government Charges and the Costs of Land and Housing, Australian Housing and Urban Research Institute, 2008, p.6

²⁵ See Access Economics, National Long Term Tourism Strategy Economic Modelling Consultancy Phase II Report, 2009, p.19

The Department of Resources, Energy and Tourism does not have detailed evidence to support the views of Tract Consultants or those in the tourism industry that the application of planning systems are creating specific issues for tourism developments, but suggests that this could be looked at by the Productivity Commission in the course of the review.

Recommendation 3: The Productivity Commission should test the validity or otherwise of the claim that the application of planning codes negatively impacts on the tourism industry.

The Department of Resources, Energy and Tourism suggests that the Productivity Commission should consider the opportunity and compliance costs arising from the state and local government planning approval process as part of the review and determine the extent to which they can be harmonised or streamlined.

These processes can be extensive and cover not only land use and zoning but regulations around liquor licensing and street seating and can vary significantly from state to state and even from municipality to municipality. It may be more appropriate for these actions to be considered as part of the Council of Australian Governments' Business Regulation and Competition Working Group.

An indicative, but by no means comprehensive, list of the nature and range of planning regulations imposed by state governments is at Attachment A.

Recommendation 4: The Productivity Commission should consider the opportunity and compliance costs arising from state and local government planning approval process and determine the extent to which they should be streamlined or consider referring the issue to the Council of Australian Governments' Business Regulation and Competition Working Group.

While most planning laws are applied by state and local governments, the Commonwealth Government also applies planning laws that impose regulatory costs on business and consumer services operating in Australian territories.

Under the *Australian Capital Territory (Planning and Land Management) Act (PALM)*, the Commonwealth Government has the power to regulate certain planning matters in the Australian Capital Territory (ACT). This power extends beyond developments within the Commonwealth Parliamentary Triangle to developments in the rest of the ACT to ensure that Canberra and the ACT are planned and developed in accordance with their national significance. This power exists alongside the planning powers of the ACT Government. However in practice the ACT Government is required to seek the approval of the Commonwealth Government where works occur on ACT land in designated areas.

A recent Commonwealth Parliamentary inquiry into the Commonwealth's management of certain aspects of planning in the ACT found that the PALM Act "provides for two plans and two planning bodies," creating confusion about how the

planning framework operates.²⁶ The inquiry found that the interaction between ACT planning regulations and the PALM “can result in confusion and administrative red tape.”²⁷

The implications of this regulatory disconnect impose unnecessary costs on a range of businesses in the ACT, including those in the business and consumer services sector and those seeking to provide tourism infrastructure.

The Productivity Commission should examine the interaction of the PALM Act with the ACT planning system and investigate if there are any possible solutions that could reduce the cost of the unnecessary regulatory burden whilst appropriately preserving areas of the capital that have genuine national significance.

Recommendation 5: The Productivity Commission should examine the interaction of the PALM Act and the ACT planning system to explore how the unnecessary regulatory burdens that arise from these instrumentalities can be minimised.

The *Northern Territory Land Rights Act* granted unalienable freehold title to indigenous communities of around 47 per cent of the land area of the Northern Territory. As a result of this legislation this land cannot be sold (but can be leased for up to 99 years) and access by non-land owners is limited by permits granted by Indigenous land councils on behalf of the Indigenous community.

An unintended consequence of this legislation is that unlike other Australian citizens with freehold title, traditional landowners cannot use their equity in land they own to fund commercial enterprises. This is because financial institutions are reluctant to lend money to individuals without collateral (eg land) that can be repossessed in the event of commercial failure since property rights are retained by the community.

Similarly, the *Northern Territory Land Rights Act* granted ownership of the land to indigenous communities and not the individuals of which they were comprised. This means that traditional landowners are legally prevented from leveraging their individual ‘share’ of the land to pursue entrepreneurial commercial activities. This has presented legal and financial barriers to the development of more tourism infrastructure throughout regional Northern Territory.

This has implications for the economic and social advancement of traditional landowners who are limited from reaping the full economic potential that traditional land ownership presents. This feature prevents traditional landowners from accessing a potentially important source of non-Government income from which to pursue economic independence.

The implications of this feature of the Northern Territory land rights system on Indigenous tourism sector are particularly acute. It denies traditional landowners the financial capacity to develop, maintain and expand tourism product offerings for which there is a strong demand, particularly amongst international tourists. It creates a

²⁶ Parliament of Australia, Joint Standing Committee on the National Capital and External Territories, *The Way Forward: Inquiry into the Role of the National Capital Authority*, 2008, p.127

²⁷ Ibid, p.132

barrier to critical tourism infrastructure like accommodation being built in remote Australia that would allow tourists to access other aspects of Indigenous tourism. Similarly, the operation of the native title prevents Australia's Indigenous tourism sector from fully exploiting its potential. A recent House of Representatives inquiry found that "potential opportunities for cultural tourism are not able to be fully captured under native title arrangements and Indigenous land use arrangements."²⁸

These regulatory features have implications for the competitiveness of Australia's tourism industry. Australia's unique Indigenous cultures are an important point of marketing differentiation in a fiercely competitive global tourism marketing environment. Regulatory features that make it harder for international tourists to access these products (and for tourism marketing organisations to promote these products to international audiences) weaken Australia's global attractiveness.

The Department of Resources, Energy and Tourism does not oppose Indigenous land rights but considers there are aspects of the current regime that prevent the emergence of more economically independent indigenous communities.

The issues around Indigenous land rights are complex and difficult to resolve. The Productivity Commission may consider that these issues are outside the scope of this review. Nevertheless the regulatory features of Australia's Indigenous land rights system has unintended consequences that impact negatively on the emergence of the Indigenous tourism sector (and the capacity of traditional landowners to reap the economic benefits from their unique cultural heritage) and should be further explored.

Recommendation 6: The Productivity Commission should examine the impact of Indigenous land rights system on the indigenous tourism sector, amongst others, and determine if this is impacting negatively on the economic development of Australia's Indigenous communities.

Environmental and heritage management regulations

A strong and effective regulatory environment that appropriately protects sites of genuine environmental and heritage significance benefits the tourism and tourism related sectors of the economy. The preservation of significant sites can bolster Australia's ecotourism and cultural tourism appeal and provide significant flow through benefits to regional areas through increased demand for the services of accommodation, restaurants and clubs.

However, industry has asserted that aspects of the current regulatory system impose barriers to investment in tourism infrastructure through imposing costs and uncertainties via a costly and convoluted assessment process. Others have claimed that the current regime inhibits investment in tourism infrastructure that enables consumers to experience sites of environmental significance.

For example, some states prohibit the development of tourism accommodation in national parks. This limits the range of the ecotourism product offering as many

²⁸ Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Open for Business: Developing Indigenous Enterprises in Australia, 2008, p.27

national parks are located in remote areas that are not well serviced by accommodation options, particularly high end accommodation options. Whereas other states have recognised the opportunity this presents and released land for low impact, ecologically sustainable accommodation within national parks.²⁹

This existence of such regulations in some jurisdictions is clearly imposing costs on business by preventing the emergence of environmentally responsible enterprises to service an emerging commercial demand. The costs and rationale of regulations preventing the development of tourism infrastructure in areas of environmental and heritage significance such as national parks, should be considered by the Productivity Commission as part of the review.

Recommendation 7: The Productivity Commission should examine the impact of regulations that prevent the development of ecologically sensitive tourism infrastructure in areas of environmental and heritage significance and whether the current restrictions in some jurisdictions continue to be justified.

The extent of regulatory costs imposed by environmental regulations has been acknowledged by the independent review of the Commonwealth Government's *Environment Protection and Biodiversity Conservation (EPBC) Act*, which found that "the Act is currently too repetitive, unnecessarily complex and in some areas, overly prescriptive. It needs restructuring to make it more accessible, easier to navigate and reduce the regulatory burden of those impacted by the Act."³⁰

However, the costs of 'green tape' extend beyond compliance with the EPBC Act to a raft of other pieces of Commonwealth legislation, such as the

- *Aboriginal and Torres Strait Islander Heritage Protection Act*,
- *Environment Protection Alligator River Region Act*,
- *Environment Protection Sea Dumping Act*,
- *Historic Shipwrecks Act*, and
- *Protection of Moveable Cultural Heritage Act*.

The review of the EPBC Act found that "there is a certain degree of regulatory overlap between the processes undertaken under these acts and the assessment and approvals regime under the EPBC Act."³¹ The review recommended that the heritage protection and biodiversity conservation functions of these acts be amalgamated under the EPBC act to create a one stop shop. If supported by the Government, this recommendation would significantly reduce the cost to industry and remove some of the barriers to the development of better quality tourism infrastructure.

The Department of Resources, Energy and Tourism acknowledges that the review into the EPBC Act has been comprehensive and will receive a response from the Government before the conclusion of the Productivity Commission's review. Nevertheless, the review has highlighted the costs associated with the proliferation of

²⁹ "New Program to Offer National Park Experiences," in *9AM – General Manager Daily News Report*, 13 October 2009, p.2

³⁰ Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999, 2009, p.ii

³¹ *Ibid*, p.293

environmental protection legislation but did not canvass the costs arising from, or possible solutions to, overlapping environmental legislation at the state level. This is something that should be considered by the Productivity Commission, or referred to the Council of Australian Governments as part of this review.

Recommendation 8: *The Productivity Commission should consider the opportunity and compliance costs arising from state and local government environmental approval process and determine the extent to which they should be streamlined or consider referring the issue to the Council of Australian Governments' Business Regulation and Competition Working Group.*

Previous studies of heritage regulations have suggested that the current system of heritage regulation imposes unnecessarily burdensome costs on the private sector. This is relevant to the tourism and tourism related sectors covered by this review. Areas of heritage significance contribute to regional amenity and are amongst the most tangible and recognisable features of the cultural tourism market. Any unnecessary costs associated with complying with cultural legislation can diminish the business case for investing in and maintaining heritage listed properties, which can weaken Australia's capacity to engage in this aspect of tourism market.

A 2006 study by the costs on private sector owners of heritage listed properties by the Productivity Commission found that the existing arrangements were "unfair" to privately owned properties. The Productivity Commission concluded that the existing system has resulted in "insufficient account being taken of the costs of conserving heritage places when selecting places for listing." The Productivity Commission also concluded that for some owners the existing system has resulted in "significant costs that would not otherwise be incurred, especially for the conservation of redundant structures and where there would otherwise be valuable development options."³²

These findings have implications for investment in heritage places, and their ongoing preservation, which can impact on the broader tourism appeal of particular destinations. The Department of Resources, Energy and Tourism recommends that the Productivity Commission re-evaluate some of the findings of its 2006 study to determine if the costs associated with heritage regulations continue to impose unnecessarily burdensome costs on some aspects of industry and whether these regulations are justified.

Recommendation 9: *The Productivity Commission should revisit the key findings of its 2006 study into heritage places to determine if heritage regulations continue to pose unnecessarily high regulatory costs on the private sector.*

Regulation of business services

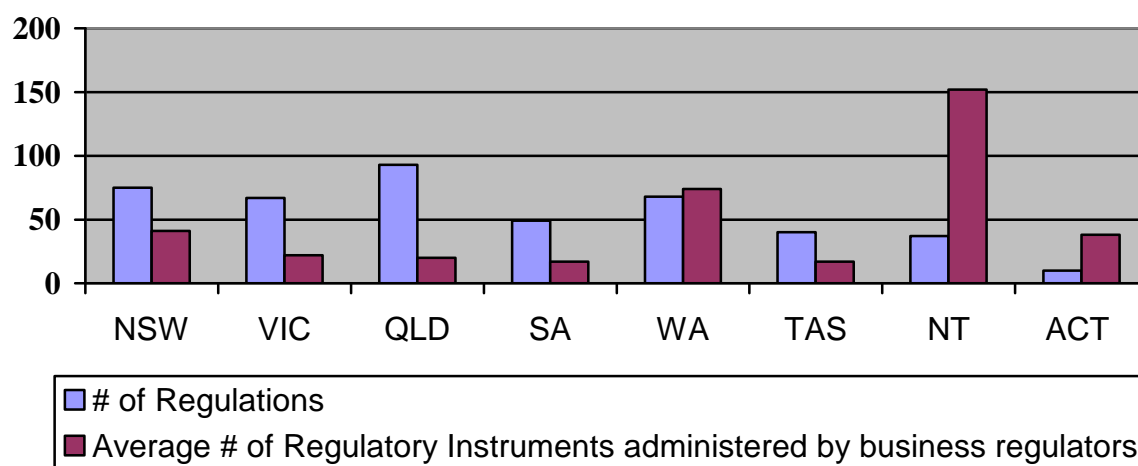
A number of generic regulations are applied to a range of business activities that span business registration to licensing and regulations of specific activities that are essential to operating businesses in particular sectors. Firms in the tourism and tourism related industries have often claimed that the costs of these regulations are high.

³² Productivity Commission, Conservation of Australia's Historic Heritage Places, 2006, p.xviii

Previous research into the costs of these regulations was conducted by the Productivity Commission in 2008. The Productivity Commission looked at a range of industries including cafes with outdoor dining. This was the only tourism and tourism related sector examined by the Productivity Commission.

The Productivity Commission found that the average number of business regulations and regulatory instruments administered by business legislation is extensive (see figures 3)³³, but that the costs of these requirements are not high. The Productivity Commission found that “the total cost of complying with registration requirements is generally low. This is the case for generic business registrations and for the industry specific regulations [subject to the review – ie cafes with outdoor dining areas].”³⁴

Figure 3 Business Regulations Across States



This research suggests that the costs of business regulation on the café sector are not unreasonable. However, the Department of Resources, Energy and Tourism notes that the breadth of tourism and tourism related industries is such that the Productivity Commission’s findings in relation to the cafe sector cannot be taken as a proxy for the rest of the sector.

There are a range of sector specific regulations that impose costs on particular aspects of the tourism and tourism related sector that flow on to other aspects of the sector. Most of these are in specific areas of transport regulations such as taxi, cruise shipping and aviation that stifle competition, retard investment and weaken Australia’s tourism sector.

³³ Sourced from Productivity Commission, Performance Benchmarking of Australian Business Regulation: Cost of Business Regulation, 2008, p.59 and p.63

³⁴ Productivity Commission, *Op. Cit.*, p.xvii

Transport regulations

An efficient transport sector characterised by open competition and a transparent regulatory regime is critical to the development of a more productive Australian tourism industry. Tourism depends on the efficient and cost effective movement of people and the provision of high quality transport infrastructure that enables tourists to access tourism attractions. Any unnecessary regulation of the transport sector that creates inefficiencies will indirectly decrease the competitiveness of the tourism and tourism related sectors covered by this review. Regulations that prevent competition in the transport sector artificially reduce demand for accommodation, cafes, restaurants and pubs and other tourism service providers.

The taxi industry is highly regulated by state governments, where the quantity and quality of services, as well as the price by which these services are delivered to consumers is regulated. This has resulted in state governments limiting the number of taxi licenses and creating uniform pricing structures that severely restricts competition within the industry. It is claimed that these arrangements protect the viability of the industry and ensure that operators have sufficient funds to invest in vehicle safety and maintenance (this is similar to the argument used by proponents of the former system of entry restrictions on intrastate aviation routes³⁵). However, this view has not been shared by a number of independent reviews into the current regulator arrangements.

A number of reviews have been conducted into the restrictive nature of entry to the taxi market and concluded the public benefits from their retention are weak. The Productivity Commission was “unable to identify benefits to the community that justify restrictions on taxi numbers.” In 1999 the Productivity Commission also found that in Sydney alone the costs to taxi users through higher process and lower levels of service was in the order of \$75 million a year, which is borne most heavily by low income households.³⁶ Similar findings were reported by reviews commissioned by the New South Wales and Victorian Governments.³⁷

Anecdotal evidence from industry is that the current restrictions on entry requirements have resulted in a shortage of taxis that are dampening domestic demand for a range of services in the hospitality sector.³⁸

Business tourists have a high exposure to the taxi market and contend that the level of service offered by Australian taxis is unsatisfactory and are letting Australian cities down.³⁹ This feature of the current regulatory system is likely to be adding unnecessary cost impost to doing business in Australia that may not be present in competitor economies.

Limiting the number of taxis is likely to result in higher prices, longer waiting times and lower levels of customer services. These outcomes are more acutely felt by the tourism and tourism related sectors because of the disproportionate reliance that

³⁵ The analogy is made in Productivity Commission, Regulation of the Taxi Industry, 1999, p.11

³⁶ Productivity Commission, Regulation of the Taxi Industry, 1999, p.ix

³⁷ See Independent Pricing and Regulation Tribunal, Review of Taxi Car and Hire Car Industries, 1999, and KPMG Consulting, National Competition Policy Review: Taxi Car and Small Commercial Passenger Vehicle Legislation, 1999

³⁸ “300 More Cabs Needed for Festive Weeks: AHA” in *West Australian*, 27 November 2009, p.9

³⁹ See Tourism and Transport Forum, Taxi Standards in Australian Cities, December 2009

tourists have on the taxi industry to service their transport needs. Tourists who spend more of their discretionary income on transport have less money to spend on accommodation, food and drink and visiting tourist attractions such as museums, cultural institutions and sporting events.

Restricting entry to the market not only reduces opportunities for new players to enter the market but artificially inflates the value of existing taxi licenses. This increases the cost of investing in the taxi industry and makes it harder for new players to buy taxi licenses from existing licensees.

The Department of Resources, Energy and Tourism considers that the allocation of taxi licenses should be market based and be cognisant of the potential cost and benefits, not only to the tourism industry, but to the broader economy.

Growth in the number of international tourists forecast by the Tourism Forecasting Committee⁴⁰ and the likely change in the composition of tourist as demographic change drives travel by older age groups, is likely to have a large impact on the demand for taxi services. These services are at the front line of Australia's perception of itself as a competitive destination for international travel. While only one component of the overall destination experience, taxi services can nonetheless impact on the perception of Australia, particularly in the minds of higher yield, short stay visitors.

The Department of Resources, Energy and Tourism acknowledges that deregulation of the taxi industry is not a simple issue. Any moves to liberalise market entry requirements will raise issues of compensation for existing license holders. Nevertheless, the potential benefits are significant and deserved to be explored as part of this review.

Recommendation 10: The Productivity Commission consider options to reform the regulations around the taxi industry to introduce competition and deliver a net public benefit.

Arguably the regulations with the greatest impact on the tourism industry are those that determine tourist access to Australia, namely the regulations around aviation and cruise shipping. Both these sectors are governed by complex multilateral agreements that set the parameters within which national governments can act.

International aviation access is set out in the 1944 Convention on International Civil Aviation. Specific international aviation arrangements are governed by over 3,500 bilateral treaties that regulate where flights can land, how many flights a week can operate and whether flights from an airline in a particular country can fly to a third country via a specified market.⁴¹ Compared to other areas of international trade, international aviation is characterised by extensive levels of regulation and government control.

⁴⁰ See Tourism Forecasting Committee, *Forecast 2009: Issues 2* Tourism Research Australia, 2009

⁴¹ For further information see Australian Government, *National Aviation Policy White Paper: Flight Path to the Future*, 2009, pp.40-49

These arrangements have the potential to impose costs on consumers by limiting the number of services and increasing prices that could otherwise result from a more competitive regulatory framework. For example, a recent study commissioned by the International Air Transport Association (IATA) found that “restrictive bilateral air services agreements between countries stifle air travel, tourism and business, and consequently economic growth and job creation.”⁴²

These findings echo previous Productivity Commission research, which suggested that “the bilateral system of restrictions on the number of flights between countries and the conditions under which they operate collectively increase airfares by between three and 22 per cent.”⁴³

The IATA commissioned study attempted to quantify the benefits that would arise from liberalisation and suggested that the global benefits could be as high as average traffic growth of 63 per cent, 24.1 million jobs and increased of Gross Domestic Product (GDP) by as much as US\$490 billion.⁴⁴

Australia’s share of these benefits would be small, but by way of comparison the same study estimated that the deregulation of the trans-tasman aviation market boosted traffic by 56 per cent, increased employment by over 20,000 and boosted GDP by US\$726 million.⁴⁵

Most of the direct and indirect costs of the current regulatory system for international aviation are being borne by the tourism and tourism related sectors. Higher airfares reduce tourist discretionary spending levels and make Australia an unaffordable destination for other consumers. This reduces demand for accommodation, restaurants, cafes and clubs and other tourist attractions and restricts the economic contribution of these sectors. This regulatory feature also reduces the attractiveness of firms in these sectors of the economy for scarce capital from which to fund new investment and product development.

The cumulative effect of these outcomes is a reduction in the competitiveness of Australia’s tourism industry by decreasing the value for money of the experience offered to tourists and reducing sources of industry income from which to fund reinvestment activity that increases the cost of developing new product.

Under current regulations, foreign airlines are prohibited from providing domestic flights or cabotage services. While research on the impact of this policy is scarce, the impact of greater competition in other sectors of the economy could suggest that current arrangements may result in higher prices and fewer services than what would otherwise occur under a more deregulated model.

The Aviation White Paper acknowledges that “travellers and Australia’s tourism and trade sectors will continue to benefit from the opening up of Australia’s international

⁴² InterVistas – GA *The Economic Study of Air Service Liberalisation*, 2009, p.2

⁴³ Productivity Commission, *Price Effects of Regulation: International Air Passenger Transport, Telecommunications and Electricity Supply*, 2001, p.xii

⁴⁴ InterVistas – GA *Op. Cit.* p.2

⁴⁵ *Ibid*, p.20

markets to more competition.”⁴⁶ The White Paper also commits the Government to pursue more liberalised air service agreements with like minded partners, where it is in the national interest to do so.

The Department of Resources, Energy and Tourism notes the benefits that could flow from increased competition in the international aviation market. However, increased competition should only be pursued as part of a broader multilateral trade negotiation where the outcomes are in Australia’s national interest.

Recommendation 11: The Productivity Commission should consider the manner and circumstances in which increased competition could be introduced to the international aviation market through multilateral fora in a manner that is in Australia’s national interest.

The Australian cruise shipping market is regulated by the *Navigation Act (1912)*. Companies that engage in coastal shipping are required to be licensed or to hold a permit.

Licences are issued on the condition that:

- seafarers employed on the ship are paid at least Australian wage rates;
- labour standards and conditions comply with the *Fair Work Act (2009)*;
- the ship is not receiving, nor has been receiving during the past 12 months, nor is to receive a subsidy or bonus from a foreign government; and
- if applicable, the crew has access to the passengers' library.

The licensing system is designed to ensure that Australian labour laws apply to seafarers operating in Australian coastal waters.

Shipping operators that do not adhere to Australian labour laws can operate coastal shipping routes under a permit. Permits are issued on the condition that:

- no licensed ship is available for the service; or
- the service, as carried out by the licensed ships, is inadequate and the Minister is satisfied that it is in the public interest to do so.

This policy restricts shipping operators that do not comply with all Australian labour laws and standards to operating coastal shipping routes only where a comparable service is not being provided by an operator that is complying with Australian labour laws. This policy acknowledges that the Australian coastal shipping industry is not large enough to meet the increasing commercial demand for coastal shipping services. Many of the alternative coastal shipping service providers will operate in a number of markets throughout the year for which it may not be commercially viable to adhere to Australian labour regulations.

This is particularly so for the cruise shipping market. Demand for cruise shipping has increased markedly over the last decade as both domestic and international tourists have shown an increasing desire to explore Australia’s unique cultural and

⁴⁶ National Aviation White Paper, *Op. Cit.*, p.7

environmental attractions by sea. However the Australian coastal shipping industry has not been able to adequately respond to increased demand. This has necessitated the involvement of foreign flagged and crewed vessels to develop cruise tourism products and provide increased tourism access to coastal Australia, especially in regional areas.

The increased presence of foreign owned and crewed vessels has provided consumers with a greater range of choice and made the cruise market a more affordable activity. This has been recognised by a recent parliamentary inquiry, which found that “a more liberal administration of the permit system has also meant that Australian shippers have had access to lower cost shipping services because foreign flagged vessels have cheaper operating costs.”⁴⁷

However the application of the Ministerial Guidelines under which permits are issued has the potential to undermine the emergence of a more competitive coastal shipping industry that would facilitate a stronger Australian cruise market that could attract more domestic and international tourists.

Section 286(6) of the Navigation Act allows the responsible minister to issue a shipping permit if the Minister is satisfied that not doing so would injure or retard tourist traffic.⁴⁸ However, the Ministerial Guidelines do not stipulate that the impact of tourist traffic is a factor to be taken into account in the consideration of public interest by the Minister’s delegate.⁴⁹

There is a risk that the Ministerial Guidelines do not allow a sufficient consideration of the tourism impact when considering permit applications. This has potentially significant consequences for the Australian cruise industry which is large and growing. The most recent estimates of the sector suggested that it was worth \$746 million and supported 3,751 full time equivalent positions.⁵⁰

Any feature of the regulatory system which may result in less competition and capacity constraints on cruise routes will have negative flow on effects for the tourism and tourism related sectors covered by this inquiry.

The Department of Resources, Energy and Tourism suggests there is scope to more effectively synthesise the growth of tourism cruise shipping market with the Government’s broader coastal shipping and workplaces relations objectives and that

⁴⁷ Parliament of Australia, House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government, Rebuilding Australia’s Coastal Shipping Industry: Inquiry into Coastal Shipping Policy and Regulation, 2008, p.31

⁴⁸ The relevant legislation states that “Where it is shown to the satisfaction of the Minister that the tourist traffic between any ports in the Commonwealth or in the Territories is being injured or retarded, and the Minister is satisfied that it is desirable that unlicensed ships be allowed to engage in the trade, the Minister may, by notice published in the Gazette, grant permission to unlicensed ships of such size and speed as are specified in the notice to engage in the carriage of passengers between those ports subject to such conditions (if any) and for such period as are set out in the notice.”

⁴⁹ Anthony Albanese, Ministerial Guidelines for Granting Licenses and Permits to Engage in Australia’s Domestic Shipping, issued 21 December 2009

⁵⁰ AEC Group, Economic Impact Assessment of the Cruise Shipping Industry in Australia, 2008-09, 2009, p.iv

this should be considered as part of this review because of the implications on the sectors covered by the review.

Recommendation 12: The Productivity Commission consider how the development of the tourism cruise shipping industry can be reconciled with the Government's broader coastal shipping policy and whether this is adequately reflected in the Ministerial Guidelines.

Regulatory approvals applying across Federal, State and Territory Jurisdictions for Tourism Developments

Western Australia

Planning and Development Act 2005

An Act to provide for the system of land use planning and development in the State

- Provides for an efficient and effective land use planning system; and
- Promotes the sustainable use and development of land in the state.

Environmental Protection Act 1986

- An Act to provide for an Environmental Protection Authority, for the protection, control and abatement of pollution and environmental harm, for the conservation, preservation, protection, enhancement and management of the environment and for matters incidental to or connected with the foregoing.

The Conservation and Land Management (CALM) Act 1984

- The Act deals with the management of national parks, state forests and the conservation estate generally.

Land Administration Act 1997

- An Act to consolidate and reform law about Crown land and the compulsory acquisition of land.

Northern Territory

The Northern Territory Planning System

The Department of Planning and Infrastructure manages the planning and development framework incorporating the *Planning Act (1999)*, and provides professional and technical support to the Development Consent Authority.

- The purpose of the *Planning Act (1999)* is to provide for appropriate and orderly planning and control of the use and development of land.

The Act establishes the NT Planning Scheme and provides for a development approval process that:

- Provides for interim development control;
- Provides for an appeals regime and enforcement; and
- Establishes the Development Consent Authority.

Northern Territory Planning Scheme

The Northern Territory *Planning Act (1999)* provides for a single integrated NT Planning Scheme. The Minister is responsible for management of the Planning Scheme.

Other Related Acts:

Building Act (2007)

Queensland

Tourism development in Qld is regulated by a number of planning instruments:

- the *Integrated Planning Act 1997* and Integrated Development Assessment System; and
- Environmental Protection legislation.

The Intergrated Planning Act 1997

Where land is concerned, the *Integrated Planning Act 1997* (IPA) seeks to achieve ecological sustainability by:

- Coordinating and integrating planning at the local, regional and state levels;
- Managing the process by which development occurs; and
- Managing the effects of development on the environment.

Local governments are required to have planning schemes consistent with the IPA to manage growth and change in their local government area by:

- Allocating land for different uses i.e. residential growth areas;
- Indicating the location of existing and proposed community infrastructure;
- Identifying areas that constrain the use of land due to their environmental value, resource value or their adverse effects on development;
- Identifying developments that require approval (assessable development) or that require certain requirements to be met (self-assessable development); and
- Specifying the development standards or criteria for assessing the suitability of a development proposal.

The Environmental Protection Act 1994

The object of the *Environmental Protection Act 1994* is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

The Act is administered by the Environmental Protection Agency and has a broad scope that includes the following subordinate legislation:

- **Environmental Protection Regulation 1998**
- **Environmental Protection (Waste Management) Regulation 2000**
- **Environmental Protection (Interim Waste) Regulation 1996**
- **Environmental Protection (Air) Policy 1997**

- **Environmental Protection (Water) Policy 1997**
- **Environmental Protection (Noise) Policy 1997**
- **Environmental Protection (Waste Management) Policy 2000**

Tasmania

Tasmania's Resource Management and Planning System (RMPS) was established in 1994 with the aim of achieving sustainable outcomes from the use and development of Tasmania's natural and physical resources.

The concept of sustainable development provides overall direction for the RMPS. Several pieces of legislation embody the aims of the RMPS, the *Land Use Planning and Approvals Act 1993* (LUPAA) being the central legislation underpinning the RMPS.

Broadly LUPAA provides for:

- the making and amendment of planning schemes;
- the assessment of planning directives;
- development control and enforcement and agreements between planning authorities and landowners; and
- a tribunal to hear appeals into specific development control matters.

Under LUPAA, local councils are designated as planning authorities. Their role is:

- the preparation and administration of planning schemes;
- the certification of amendments to planning schemes;
- the assessment and approval of applications for planning permits for the use and development of land; and
- the enforcement of planning scheme provisions and permit conditions.

South Australia

The two documents which provide the legislative framework establishing the planning and development system and informing its detailed operation are the *Development Act 1993* and the associated *Development Regulations 1993*.

Development Approval allows development to be legally undertaken, specifies the design and other documents that the development must follow and will also specify the timeframe that the development should occur within.

All council areas have a Development Plan that relates specifically to that area. Each Development Plan separates council land into a number of different zones (eg Residential, Industrial) and outlines what sort of land uses are and are not envisaged for that zone.

Other legislation relevant to the development assessment process includes:

- **Environment Protection Act 1993**
- **Natural Resources Management Act 2004**
- **Heritage Act 1993**
- **Native Title (South Australian) Act 1994**
- **Native Vegetation Act 1991**
- **Upper South East Dryland Salinity and Flood Management Act 2002**

- **River Murray Act 2003**

Councils are required to send certain applications for referral to Government Agencies. Examples of organisations and the issues they consider are:

- Coast Protection Board for coastal land issues;
- Commissioner of Highways (Transport SA) for development on main roads;
- Environmental Protection Agency for consideration of environmental impacts;
- Country Fire Service for development in bushfire prone areas;
- Liquor & Gambling Commissioner for development that involves a gaming area.

The *Major Development* provisions in the South Australian Act enable proposals to be assessed outside of the normal planning system if they are considered to be 'of major environmental, social or economic importance', and can also apply to smaller scale proposals that involve complex or sensitive environmental issues.

Australian Capital Territory

The National Capital Authority (NCA) is responsible for developments that take place in certain areas of Canberra. These powers are facilitated through the National Capital Plan. The National Capital Plan sets out special requirements for developments in the interests of the national capital.

Tourism developments that take place in areas outside NCA designated areas, must be referred to the ACT Planning and Land Authority.

New South Wales

Environmental Planning and Assessment Act 1979

- Governs the NSW land use planning and development system, setting processes and key considerations for the development of environmental planning instruments (state environmental planning policies, regional and local environmental plans) and for the assessment of individual development applications.

Heritage Act 1977

- Covers matters pertaining to listing on the State Heritage Register and the management of listed sites, including minimum requirements for the upkeep of items. Under the Act, the NSW Government (through the Heritage Council of NSW) administers a Heritage Incentive Fund, which can be used to facilitate the restoration or upkeep of items listed on the State Heritage Inventory.

Regional Development Act 2004

- Establishes a process by which the Minister responsible for State and Regional Development, upon application to the Minister, may grant financial assistance to a person conducting or proposing to establish an industry or other business in a region. Also to a person or a group of persons for the purposes of carrying out an undertaking that is likely to assist the economic development of a region.

Protection of the Environment Operations (POEO) Act 1997

- Aims to protect the human and natural environments through the establishment of parameters for noise, water, air pollution (which is further detailed in the various POEO regulations) to which all commercial and tourist development must abide and the issuing of licences upon individual business operations that prescribe allowable limits.

National Parks and Wildlife Act 1974

- Provides for the establishment, preservation and management of national parks, historic sites and certain other areas and the protection of certain fauna, native plants and Aboriginal objects.
- Many local government authorities enforce planning controls that require consultation with the National Parks Authority where development is proposed in close proximity to any lands administered under this Act, which include national parks and historic sites, state conservation areas, regional parks, nature reserves, karst conservation reserves, Aboriginal areas and wildlife refuges

Marine Parks Act 1997

- Establishes requirements for the conservation and management of declared Marine Parks in NSW. The accompanying regulations put in place zoning plans that provide the range of allowable tourist and commercial activities within each of the zones, including sanctuary, habitat protection, general use, and special purpose zones.

Victoria

Legislation and Public Land Regulatory Approvals

The Department of Sustainability and Environment (DSE) is responsible for the following legislation.

Crown Land (/Reserves) Act 1978

- Provides for the reservation of Crown Land.

Coastal Management Act 1995

- Plans for and manage the sustainable use of Victoria's coastal resources

National Parks Act 1975

- Preserves and protects National and State Parks.

Alpine Resorts Act 1983

- Provides for the reservation of Alpine Resorts.

Alpine Resorts (Management) Act 1997

- Provides for the establishment and functions of Alpine Resort Management Boards.

Forests Act 1958

- Protects and manage State forests

Planning and Development legislation

Planning and Environment Act, 1987

- Legislative framework controlling planning approvals and scheme amendments.

Local Government Act, 1989

- Controls local government functions and responsibilities.

Environmental Effects Act, 1978

An Act that requires the Environmental Effects of certain Works to be assessed. This Act provides for the environmental assessment of development that has the potential to impact on the environment.