South Australian Government Submission to the Productivity Commission Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services

Introduction

The Productivity Commission has invited submissions from interested parties on areas of Australian Government regulation that should be included in the 2009 Review of Regulatory Burdens on Business which focuses on Social and Economic Infrastructure Services (the Review).

The Review forms part of five-year program of annual reviews of the regulatory burdens on business. The program is undertaken by the Productivity Commission as a component of the broader COAG and Australian Government agenda to reduce the regulatory burden on business.

The South Australian Government has identified a range of Australian Government regulations that impose unnecessary burdens on businesses engaged in social and economic infrastructure services, and recommends that the Commission include these in the Review.

The submission discusses regulatory burdens common to many social and economic infrastructure services, as well as those specific to the Gas, Construction, Information Media and Telecommunications, Transport and Education and Training sectors.

General

Land Access Negotiations

Negotiations with the Australian Government to access the vast areas of South Australia owned and/or regulated by the Australian Government for defence purposes[1] can be a major source of delay and uncertainty in the development of economic infrastructure.

The economic infrastructure traversing these defence areas is of national and state significance, including National AusLink rail and road corridors, Moomba-Whyalla gas pipeline, major intrastate freight transport networks and energy, transport and telecommunications infrastructure supporting mines of state and/or national significance (i.e. Prominent Hill, Olympic Dam).

Parties, including the South Australian Government, seeking to develop economic infrastructure or undertake energy and mineral exploration in these areas must seek Australian Government approval. These negotiations are undertaken on a case by case basis and tend to be protracted and unpredictable.

[1] Designated under Defence Forces Act (1903) and Regulations, including Woomera Prohibited Area

To provide for higher levels of efficiency, greater certainty, and well-balanced outcomes for all parties, the Australian Government should develop principles to guide land access negotiations.

Broadly, land access negotiations should (at least):

- Be undertaken in good faith.
- Be undertaken within reasonable timeframes
- Provide for upfront articulation of objective-based criteria that specific types of economic infrastructure (i.e. road, electricity network) must meet to be compatible with Australian Government land uses or require a specific access management strategy to address risks.

Such principles would facilitate a shift away from resource intensive negotiations by enabling quicker approvals for activities posing little risk to ongoing defence uses.

Duplication of Indigenous heritage approvals

The recent *Review of the Regulatory Burdens on the Upstream Petroleum Sector* found:

> Duplication of [Commonwealth and State] Indigenous heritage approvals appears to be a source of delays and uncertainty. In some cases proponents who have obtained heritage approvals after lengthy processes under State and Territory Indigenous heritage legislation, are faced with further delays when there are applications for a heritage protection 'declaration' under the *Commonwealth's Aboriginal and Torres Strait Islander Heritage Protection Act 1984* [2].

The South Australian Government recommends that the review investigate the degree to which the duplication of Indigenous heritage approvals impacts on economic infrastructure, and identify measures to streamline approval processes while ensuring that Indigenous heritage is not compromised.

Coincidentally, the South Australian *Aboriginal Heritage Act 1988* is currently being reviewed, and this review will seek to achieve greater consistency with the *Native Title Act 1993 (Cwth)* so that the processes for consultation and negotiation with Aboriginal people in the two Acts do not require separate compliance, as is currently the case. The South Australian Government recommends that a similar objective underpin the Productivity Commission's examination of any impacts of Commonwealth Indigenous heritage regulations on the economic infrastructure sector.

Environment Protection and Biodiversity Conservation (EPBC) Act 1999

The South Australian Government has made a submission to the *Senate Standing Committee on Environment, Communications and the Arts' Inquiry into the operation of the EPBC Act* and to the *Independent review of the EPBC Act.*

[2] Productivity Commission (2008), Draft Finding 6.5, p142

The South Australian Government is also providing input to the *Council for the Australian Federation investigation into Commonwealth/State Planning and Major Project Interactions*, which has a particular focus on interactions with the *EPBC Act*.

The South Australian Government is concerned at the unnecessary delays and uncertainty for major infrastructure proponents in their dealings with implementation of the *EPBC Act*, and recommends the following:

- Protected species listed under South Australian legislation and those listed under the *EPBC Act* need to be consistent and established on the same scientific basis. Inconsistent listings have resulted in unnecessary delays in obtaining approvals and the need for proponents to undertake additional studies late in the planning process (e.g. Sturt Highway Duplication).
- The application of 'Significant Impact Guidelines' needs to be consistent to avoid unnecessary uncertainty for proponents and delays in progressing projects. For example, in the case of the Victor Harbor Road, Mount Compass Overtaking Lane, the proponent applied the self-assessed "Protected Matters Tool" to the proposed project and found there to be no impact on matters of National Environmental Significance. This assessment was confirmed by DEWHA. However, at commencement of construction DEWHA subsequently requested a referral under the *EPBC Act*.
- Timelines and processes need to be more flexible where projects have been deemed to have only a minor impact. Currently all projects, regardless of the level of impact, require the same level of documentation and legislated timelines which imposes an unnecessary burden on proponents.
- The *EPBC Act* should recognise the capacity for environmental 'offsets' to reduce or ameliorate any potential impact of a project, as is the case under South Australia's *Native Vegetation Act*. (refer attached Attachment A Case Study: Sturt Highway Duplication).
- Conditions of approvals should be objective-based, rather than the current approach whereby approval conditions prescribe how a specific project must be delivered. An objective based approach would enable greater flexibility in achieving the objectives of the *EPBC Act*, including through the use of emerging technologies.

Division D - Electricity, Gas, Water and Waste services

Refer South Australian Government submission/s to *Productivity Commission Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector.*

Division E – Construction

Occupational Health and Safety Requirements

As a component of the South Australian Government's own red tape reduction initiative, in 2008 the South Australian Competitiveness Council conducted a review of the Building Construction Industry. A key issue raised by businesses consulted in the review was their objection to the fact that contractors must comply with State and Commonwealth occupational health, safety and welfare (OHS&W) requirements, particularly on larger construction sites.

This duplication of requirements is primarily due to the Commonwealth Government's introduction over the last five years of what is, in effect, an additional OHS&W system within Australia.

To bid for work on projects fully funded by the Australian Government, and some projects part funded by the Australian Government[3], contractors must comply with the requirements of the *National Code of Practice for the Construction Industry and Implementation Guidelines* (website http://www.abcc.gov.au - interest is primarily employment and industrial relations) and be accredited with the Office of the Federal Safety Commission (website http://www.fsc.gov.au). This Office employs safety officers to audit and enforce compliance with its accreditation scheme. SafeWork SA still has the role of ensuring compliance with State OHS&W laws on these construction sites and is also responsible for ensuring that cooperative arrangements are in place to reduce the potential for duplication of Federal and State inspections.

The Commonwealth Government recently opened up access to national self insurance for workers compensation through its Comcare scheme. Construction businesses opting to self insure under this scheme move from operating under State legislation to operating under Federal legislation, overseen by Comcare. As the number of constructors taking up this option increases, the result is a significant increase in the number of construction sites on which both State and Federal safety legislation applies.

The South Australian Government supports the uptake of nationally uniform, outcome-focused OHS&W standards as agreed to by COAG. The Productivity Commission review of regulatory burdens should also investigate options to harmonise and rationalise State and Federal OHS&W requirements and how best to enforce them in workplaces. This could include the elimination of any duplication of OHS&W administration required under Commonwealth regulations.

Division I - Transport, Postal and Warehousing

COAG national transport reform agenda

The South Australian Government is contributing to the COAG national transport reform agenda and implementation of the Competition and Infrastructure Reform Agreement (CIRA). It is recommended that this review of regulatory burdens on the transport sector take into account government and industry submissions provided to these reform initiatives.

Air Transport

The Australian Government is presently drafting a National Aviation Policy Statement (White Paper) to guide the aviation industry's growth over the next decade and beyond (http://www.infrastructure.gov.au/aviation/nap/index.aspx).

[3] Building and construction work where the Australian Government contributes a) at least $5 million, and the funding represents at least 50 per cent of the total construction project value or b) $10 million or more, irrespective of the proportion the Australian Government funding represents of the total construction project value.

The South Australian Government has been involved in the development of the White Paper, having provided its initial views to the Commonwealth in 2008. The South Australian Government's comments on the Commonwealth's initial position as described in the Green Paper in December 2008 are attached for consideration by the Commission (Attachment B).

In particular, the South Australian Government supports the proposal to examine options to reduce regulatory costs on the regional and general aviation sectors, and to improve liaison with state and local governments over development of Australian Government leased airports regulated under the *Airports Act*.

Transport Security

The South Australian Government supports the introduction of tighter security controls over Australia's transport and logistics sectors in light of the rise of terrorist attacks globally. However, there appears to be duplication in regards to security clearances required to access maritime and aviation security zones unescorted.

Workers accessing a maritime security zone unescorted require a Maritime Security Identification Card (MSIC). Similarly, access to airport security zones requires an Aviation Security Identification Card (ASIC).

Both cards require an extensive series of background checks and involve an extended timeframe from application to receiving the Card. In addition, where an operator may require access to both air and sea terminals, both security clearances are required including duplication of the background check.

The South Australian Government recommends the review examine the merits of introducing a single transport security identification card in place of the separate MSIC and ASIC. The review should also identify any other facilities commonly accessed by transport operators and requiring similar security clearances (for example Defence facilities) that could also be incorporated into a single transport security identification card.

Passenger Transport Accessibility: Disability Standards for Accessible Public Transport 2002

The South Australian Government, through the Department for Transport, Energy and Infrastructure (DTEI), has been actively involved in the development and implementation of the Disability Transport Standards for Accessible Public Transport 2002 since 1995. While the South Australian Government supports the intention of the standards, it is concerned about important implementation issues:

- what constitutes compliance with the Transport Standards;
- monitoring and reporting against compliance;
- lack of process for making required changes to the Standards;
- ambiguity and general confusion within the Standards;
- difficulties with interpretation of the Federal legislation;
- the exemption process and associated issues;
- the 5 Year Review process; and

- the legal relationship between the DDA and the Transport Standards.

The Standards states that the *Disability Discrimination Act 1992* (DDA) seeks to eliminate discrimination 'as far as possible' against people with disabilities. However, the Standards eventually require 100% compliance across all public transport modes, which is in stark contrast to the "as far as possible" clause.

This requirement for 100% compliance under the Transport Standards is unlikely to be achievable within the time frames specified in the Standards. The current compliance timeframe of the Transport Standards fails to recognise the time and cost limitations associated with upgrading networks that have evolved over time. For example, a lighting upgrade is not just about bigger globes, it often requires a different light fitting to handle the increased heat of globes, more poles to give greater light coverage, replacement of transformers to provide more power due to increased demand and rewiring to cope with increased power drain, which means more greenhouse gases as well as increased operating costs every year.

The requirement to use Standards that were developed for application in residential and institutional facilities, such as AS1428.2, does not assist with reducing regulatory burden related to compliance. For example, the high level of indoor lighting now required across all ***external*** public transport infrastructure is leading to a considerable increase in operating costs.

Problems with interpretation of the Transport Standards abound within the transport sector and subsequent outcomes which have arisen as a result of defending perceived-non compliance complaints resulting in additional costs that are being borne by industry.

The requirements in the Transport Standards for meeting compliance percentages by specific dates, fail to recognise the financial commitment required by operators and the relative cost inequities associated with trying to implement the Standards on this basis.

Taxis

Under Schedule 1, Part 1.1 and 1.2 of the Transport Standards a traditional Central Booking Service (CBS) must deliver response times for accessible vehicles that are the same as other taxis.

The number of people with a disability who must have a fully accessible taxi are relatively small and proposing requirements that can only be achieved by all taxis being fully accessible is clearly an over reaction with the potential for significant cost across all sectors of the community.

Arguing that equivalent response times for all taxis requires all taxis to be fully accessible, fails to recognise that:

- to require all taxis to be fully accessible would require development or importing of a new vehicle resulting in considerable cost;

- fully accessible vehicles are not common in the general taxi industry because they cost more to purchase and more to operate. Operators are therefore making individual economic decisions about what they will put into service;
- the number of people who require the provision of a fully accessible vehicle is relatively small in comparison to the number of passengers carried and their costs would need to be higher;
- the requirement for equivalent response times provision was never accepted or flagged as a requirement that all taxis should become fully accessible.

Clearly, the implementation of the Transport Standards is resulting in significantly more costs than were identified by the original Regulation Impact Statement (RIS).

The Regulation Impact Statement undertaken prior to formal introduction of the Transport Standards put the cost for the introduction and eventual compliance at around $3.7 billion. Current indications are that this figure is significantly underestimated.

Increased costs for meeting compliance requirements within the Transport Standards have major implications across the whole of South Australia. Increased cost means less progress for the money spent. As the costs of implementing the Transport Standards rise, the cost benefit reduces relative to competing social demands. Ambiguity and confusion related to what constitutes compliance have slowed progress and with delays come increased costs.

DTEI proposes that changes be made to the DDA to facilitate the development of co-regulatory models which would facilitate the objectives of the DDA.

The Disability Standards for Accessible Public Transport tried to create certainty for both providers and people who use public transport. Six years on, there are many lessons that have been learnt and improvements that need to be made to the DDA in order for the Transport Standards to be effectively applied and administered.

While the Transport Standards were intended to clarify people's rights and responsibilities without having to resort to complaints and litigation, neither the Federal Attorney General's Office nor Human Rights and Equal Opportunity Commission (HREOC) is able to advise what constitutes compliance with the Standards.

Requiring recourse to the legal system to define what constitutes compliance is clearly inefficient and potentially ineffective and needs to be addressed in any proposed changes to the DDA.

While it is recognised that there may be a range of questions in relation to co-regulatory models, changes are required in order for the transport industry to improve administration and implementation of Standards under the DDA.

Information available to DTEI is that there is considerable support from industry stakeholders for development of a co-regulatory/code of practice approach to ensure that the aims and objectives of the DDA are achieved efficiently and effectively across the transport sector.

The development of the co-regulatory model under the DDA would need to ensure that formal processes are in place that would give legislative force to formally developed codes of

practice developed in conjunction with industry, the disability sector and HREOC. A major concern with the Transport Standards is that the guidelines underpinning the Standards are at times ambiguous.

A co-regulatory/code of practice approach for transport is not an area in which self-enforcement would be expected to work. However, co-regulatory schemes and or codes of practice do not need to rely exclusively on self-enforcement. Provided the appropriate legislative changes are in place the co-regulatory/code of practice approach could significantly improve current and future compliance with the Transport Standards.

The concept of industry-based mechanisms in monitoring implementation, and addressing complaints has much to offer all parties.

Public transport industry bodies and some jurisdictions accept that a co-regulatory approach would provide a means of addressing mode specific issues more effectively through a series of mode specific guidelines.

Consideration could be given to co-regulatory models which are developed between industry representatives and jurisdictions facilitated by the Accessible Passenger Transport National Advisory Committee.

The Federal Government's response to the Productivity Commission review of the *Disability Discrimination Act 1992* in January 2005 was that it was satisfied with many of the recommendations. Yet it has not adopted a range of recommendations put forward by the Productivity Commission which could have addressed many of the concerns being expressed by the transport sector in relation to the DDA and the Transport Standards.

The Productivity Commission Review stated in recommendation 14.4 that - where possible, monitoring and enforcement of disability standards should be incorporated into existing regulatory processes. It is suggested that this recommendation needs to be given greater consideration to ensure that Standards under the DDA are effectively addressed.

The Productivity Commission Review stated in recommendation 14.5 - Australian Government should legislate to allow the Human Rights and Equal Opportunity Commission to certify formal co-regulatory arrangements with organisations to whom the Act applies. The Federal Government accepted the recommendation at the time and stated that it was supportive of flexible approaches which encourage industry and service providers to take proactive steps to eliminate disability discrimination.

It is suggested that this recommendation needs to be given greater consideration to ensure that Standards under the DDA are effectively addressed.

Division J – Information Media and Telecommunications

55 Motion Picture and Sound Recording Activities

Federal Producer Offset

Film producers have to lodge a return in order to receive the Federal Producer Offset. Given that returns can only be lodged once a year, producers have to wait to lodge a return before

they can start their next project. The waiting time is proving to be an issue, and the ability to lodge only one return per annum has the potential to impact on the ability of a producer to undertake more than one big project in any one reporting period.

58 Telecommunications Services

Enforcing Road Maintenance Standards

The South Australian Government recommends the Commonwealth improve practical enforcement of the requirements under the *Telecommunications Act 1997* for carriers to take all reasonable steps to ensure land disturbed during the installation or maintenance of telecommunications services is restored to a condition that is similar to its original condition.

In particular, lack of enforcement of this requirement imposes significant burden on owners and operators of road infrastructure. Where pavement is not restored by telecommunications carriers to national pavement standards, which are necessary to meet road safety and performance outcomes, State and Territory transport authorities and/or local government have to allocate additional resources to subsequently upgrade the restorations to the required standard.

59 Internet Service Providers, Web Search Portals and Data Processing Services

The South Australian Government supports the use of filtering and blocking of internet sites in schools to ensure children are not exposed to inappropriate content, however it has concerns about potential regulatory burdens associated with the proposal by the Australian Government to filter and block internet sites at a global level.

Currently in South Australia, the Department for Education and Children's Services (DECS) filters and blocks internet sites on behalf of all South Australian schools. However, individual schools still have the power to individually unblock sites they see fit and useful. DECS has developed comprehensive policies and guidelines to support schools in undertaking this role.

DECS considers it necessary for individual schools to retain the ability to unblock sites as there are limitations in a global approach to blocking websites based on broad categories. For example, restricting access to the 'social networking' category of websites to prevent children accessing chat rooms can result in the Wikipedia site being blocked. Wikipedia is a site that contains useful educational material and is not considered inappropriate content for children.

Further, South Australia's approach of enabling individual schools to readily remove restrictions to sites that are found to not contain inappropriate content provides for local flexibility, streamlined administration and greater accountability of individual schools in meeting their duty of care to students.

This issue will be discussed at the next meeting of the Australian ICT in Education Committee in March, 2009.

60 Library and Other Information Services

Classification of films, videos, and DVDs

The National Classification Scheme requires all films (including videos and DVDs) to be classified before they can be sold, hired or shown publicly in Australia. This scheme is administrated by the federal Attorney General's Department.

The cost of requesting classification of books, magazines, newspapers and audio-visual material is high (ranging from $510 to $3,160 per title). This makes it financially unviable for importers to classify foreign language materials that are imported in small quantities. For example - importing 10 copies of a film of 125 minutes would require a classification fee of $840 – or an additional $84 per DVD. The application process is also quite onerous, and is not streamlined for importers of very small quantities of a title.

The consequence of these regulatory burdens is that South Australia's Public Library Services is unable to purchase a wider selection of foreign titles for the state's public library network, which significantly impacts on migrant and bilingual clients.

The South Australian Government recommends that the review investigate options to address this issue.

Division P – Education and Training

802 School Education - (8023 Combined Primary and Secondary Education)

Education Services for Overseas Students (ESOS) Act 2000

Significant resources are required to comply with the *Education Services for Overseas Students Act 2000 (Cwth)* and regulatory framework.

The integrity of the regulation system and Australia's international reputation may be undermined by the recent proliferation of smaller private registered training organisations which are delivering education and services to international students well over their approved capacity in terms of facilities, resources, equipment, materials and inappropriate staff to student ratios.

Over enrolment by a small number of problematic providers undermines compliant providers, damages the reputation of the industry and may lead to a substantial increase in fees to cover future claims.

Possible solutions:

- Develop a national "fit and proper test" as part of provider application for registration.
- Increase the powers of regulatory enforcement to better manage non-compliance, including over capacity of enrolments.
- Improve coordination between regulators to ensure efficient and effective administrative interactions.
- Ensure providers undertake appropriate actions to monitor student capacity and issue further Confirmation of Enrolment certificates.
- Enhance Information Technology systems to inform "over capacity" providers and stop the issuing of Confirmation of Enrolment certificates.
- Revise the fee structure of the Annual Registration Charge to reward lower risk providers.
- Undertake financial and risk assessment modelling to identify risk levels for all providers.

The South Australian Government supports an Education Services for Overseas Students (ESOS) regulatory practice which is viewed along a continuum, with mandatory enforceable regulation at one end and self-regulation at the other.

In the case of DECS, with its own quality management systems in place, the Department of Education, Employment and Workforce Relations (DEEWR) regulators should regard DECS as a lower level risk category and allow greater self-regulation and a reduction in the Annual Registration Charge.

GST

DECS is concerned about inconsistencies with which training providers in individual states apply GST across similar products (e.g. Study Tours). There may be a need for the Australian Tax Office to provide greater guidance with respect to their classification of specific products.

Competition Policy

The South Australian Government is concerned about the additional burden associated with applying cost reflective pricing, as required under the National Competition Policy and the Competition Principles Agreement (1995), to the sale of places for full fee paying international students in South Australian Government schools.

The application of cost reflective pricing requires the apportioning of costs of individual products within an integrated system. A possible solution is to exclude standard infrastructure costs and only include relevant variable costs.

The South Australian Government recommends that the Commission review the costs to education service providers of meeting these requirements of National Competition Policy.

86 Residential Care Services

The South Australian Government recommends the Commission examine the considerable administrative requirements imposed on direct residential care service providers funded through the Home and Community Care (HACC) Program, including potential duplication between State and Commonwealth requirements.

The HACC program is jointly funded and administered by the State and Commonwealth Governments and requires service providers to meet comprehensive reporting and data collection requirements.

87 Social Assistance Services - (8710 Child Care Services)

The South Australian Government is concerned about unnecessary burdens associated with an overlap between the Commonwealth child care accreditation standards and State child care regulations. Both focus on the same matters, however the State and Commonwealth interpret the same standards differently.

The duplication of regulation means that potential child care providers must obtain both Commonwealth and State accreditation/registration under two separate processes, using two different assessment standards.

The South Australian Government recommends the Commission's review assess the burden associated with duplication of accreditation and regulatory processes associated with child care services.

South Australia, Victoria, DEEWR, the Commonwealth Child Care Benefit Compliance Unit and the National Child Care Accreditation Council are currently developing a pilot to explore ways of reducing duplication and overlap between state regulation and Commonwealth accreditation.

Attachment A : *EPBC Act* Case Study – Sturt Highway Duplication

Environmental Protection and Biodiversity Conservation Act, 1999 (EPBC Act), and Department of the Environment, Water, Heritage and the Arts Administrative Processes

Any projects that could impact "Matters of National Environmental Significance" must be submitted to the (Federal) Department of the Environment, Water, Heritage and the Arts (DEWHA) in accordance with the EPBC Act. Stage 4 of the Sturt Highway Upgrade project, project managed by the Department for Transport, Energy and Infrastructure (DTEI), impacted a small area of Eucalyptus Odorata Woodland requiring an application under the EPBC Act.

Figure A attached was included in the "Review of Matters of National Environmental Significance" report of 15 December 2008 and shows the relationship between the area of woodland impacted (in yellow) and the area that will be revegetated to offset the loss (in red). The total impacted area is only 0.043Ha, whereas the offset area is 5.7Ha; more than 130 times the impact area.

Following is a chronological list of activities associated with this application.

26 August 2008	Draft application under EPBC Act sent to Department for Environment and Heritage (DEH) (SA) for necessary comment from State Government agencies.
19 Sept. 2008	Response received from DEH (SA) – project supported, some clarification requested from one agency.
23 Sept. 2008	DTEI response to DEH (SA) sent
24 Sept. 2008	DTEI application sent to DEWHA: • All documentation sent electronically (no confirmation received) • Clock Start for 20 business days for determination. Expected decision date 24 Oct 2008
26 Sept. 2008	Telephone call from DEWHA regarding incorrect signatures on submission form. Acting Project Manager had signed the referral declaration form, as the Project Manager was on annual leave overseas at the time. Signature must be the proponent and not a delegate. Clock stopped.
2 October 2008	Project Manager returned from annual leave. Resigned copy of referral declaration faxed to DEWHA. No confirmation fax received – clock presumed to have restarted.
8 October 2008	Confirmation of receipt of submission advising decision will be made on or before 5 November 2008.
20 October 2008	Phone call from DEWHA questioning why earlier sections of Sturt Hwy Upgrade were not submitted under EPBC Act.
23 October 2008	Letter from DTEI to DEWHA explaining that earlier sections of Sturt Hwy Upgrade did not require an application under EPBC Act as Euclyptus Odorata was not a protected species under the Act at that time.
5 November 2008	Email from DEWHA advising that the application has been declared a "Controlled Action", without any discussion or opportunity to negotiate.
17 November 2008	Request for further information on Flinders Ranges Worm Lizard, Osbourne's Eyebright and Eucylyptus Odorata. All three species were

	discussed at length in DTEI's original submission. The Flinders Ranges Worm Lizard is endemic to South Australia and, according to DEH (SA) is not endangered; however it is a protected species under the EPBC Act.
2 December 2008	Phone discussion DTEI & DEWHA. DEWHA verbally advised that the controlled action decision cannot consider positive mitigation efforts, despite requirement to submit this information in the application.
12 December 2008	Meeting on site: DTEI and DEWHA. Draft copy of "Review of Matters of National Environmental Significance" report supplied to DEWHA.
15 December 2008	Email from DTEI to DEWHA attaching final copy of report and Appendix 1. Request for "Direction to Publish" by 17 Dec to enable media deadlines to be met before Christmas.
16 December 2008	Email from DEWHA to DTEI outlining legislated timeframes and advising that a response by 17 Dec is not possible. 10 business days allowed from receipt of all information. Response from DTEI advising that the remaining appendices shouldn't be critical to the decision. Again, request for expedited response.
16 December 2008	Email from DTEI to DEWHA attaching remaining appendices. All documents sent to DEWHA via overnight courier.
17 December 2008	Email from DEWHA confirming receipt of all information.
18 December 2008	First advice from DEWHA that associated advertisements and public consultation must be submitted to DEWHA "to ensure they are satisfied that all necessary criteria are met". Normal practice is to attach their guideline to the "Direction to Publish" notification – DTEI believes this could have been advised earlier.
18 December 2008	Email from DTEI to DEWHA requesting that the minimum legislated timeframe (10 business days) be applied to the consultation period once "Direction to Publish" is received due to minor nature of the impact.
23 December 2008	"Direction to Publish" received, with 20 business day consultation period specified.
5 January 2009	Email from DEWHA requiring the dates for consultation to be revised, as the period commences once the advertisement is published in the newspaper and not the date of the materials were made available to the public.

Given the significant overall benefit of the project on "Matters of National Environmental Significance", the declaration that the project is a "Controlled Action" was very disappointing, and has had the following consequences:

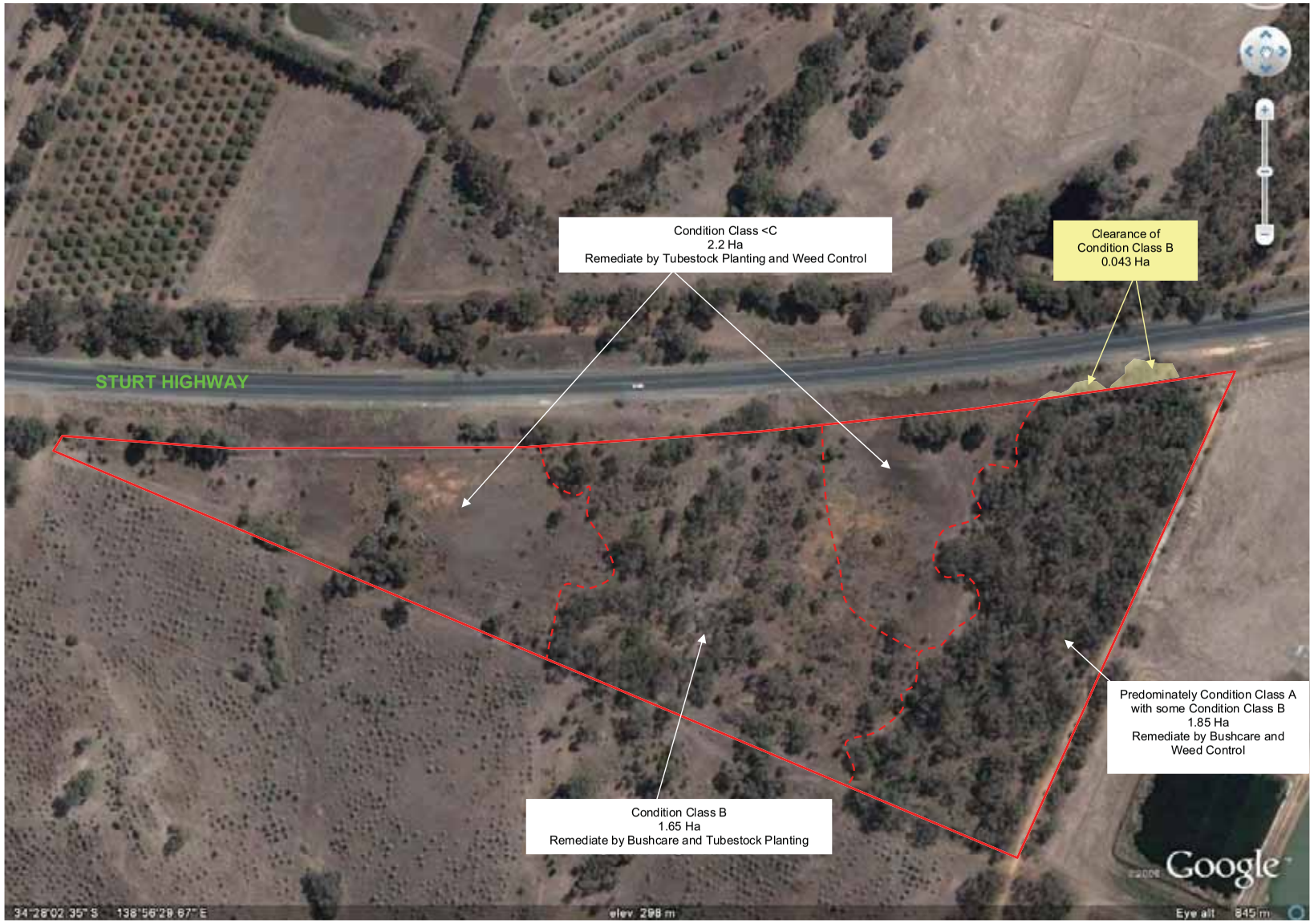
- Delayed the calling of tenders, which will therefore delay the construction.
- Caused the loss of the prime construction season; earthworks will now be performed in winter.
- Caused the loss of the prime season to minimise the environmental impacts of construction; water may be flowing through Greenock Creek, weed growth could be accelerated and erosion risks will be higher.
- Lost the opportunity for cost savings available through the continuity of work for key established plant. It is now likely that the asphalt plant established on-site for previous sections of the Sturt Highway upgrade will be relocated before Stage 4 work, and project tenderers will have minimal competition in the market for asphalt supply.

Summary of Key Issues

- The entire EPBC process relies on specifically legislated processes and timelines which also appear to be administered with little flexibility or common sense. No opportunity was presented to discuss, negotiate or seek advice to ensure a more sensible outcome, given the minor nature of the impact and the significant overall environmental benefit of the proposal.
- There is inconsistency between State and Federal lists of protected species. The Flinders Ranges Worm Lizard is only found in SA and is not considered to be endangered by DEH (SA).
- If a "Controlled Action" decision cannot consider positive mitigation efforts, there is little incentive for proponents to provide mitigation measures that will improve the environmental community unless DEWHA first make a "Controlled Action" declaration. This is a "big stick" rather than a "carrot" approach.

Figure A

Peppermint Box (*Eucalyptus odorata*) Grassy Woodland – Proposed Clearance and Remediation Areas



Attachment B : South Australian Government Response to National Aviation Policy Green Paper (February 2009)

1 Introduction

1.1 The Minister for Infrastructure, Transport, Regional Development and Local Government, Hon Anthony Albanese MP, has invited interested parties to consider and make comment on the National Aviation Policy Green Paper. The Green Paper proposes various Australian Government initiatives that will form the framework of a National Aviation Policy White paper to be released in the second half of 2009.

1.2 Most of the issues raised and initiatives proposed were flagged in the Australian Government's Issues Paper *Towards a National Aviation Policy Statement* released in April 2008. The South Australian Government considered the Issues Paper and the Minister for Transport, Energy and Infrastructure, Hon Patrick Conlon MP, provided comments on 24 June 2008.

1.3 The Department for Transport, Energy and Infrastructure has considered the Green Paper in consultation with other agencies with interests in the issues in the light of the South Australian Government's previous comments. The following further comments do not raise new policy issues but can be regarded as confirmation of the South Australian Government's views, listed according to the sections of the Green Paper.

2 Chapter 1 - Aviation Safety, Safety Regulation and Airspace Management

2.1 The South Australian Government supports the priority placed on safety management and regulation, and the governance changes to the Civil Aviation Safety Authority (CASA) and the Australian Transport Safety Bureau (ATSB) that are in progress.

2.2 The South Australian Government supports the commitment to accelerating the pace of the regulatory reform program so as to complete it in 2010/11.

2.3 The South Australian Government expressed concern in its previous comments about the impacts on regional aviation of the under-resourcing of CASA's routine certification processes and their cost recovery. It welcomes the intentions to ensure that Australia's safety agencies are appropriately funded to enable them to perform their functions, and to consider options for limiting CASA's regulatory service fees to the regional and general aviation sectors.

2.4 The South Australian Government supports the intention to maintain Airservices Australia as a fully government-owned statutory authority, required to focus on delivering core air traffic and aviation rescue and fire fighting services. This policy should include a commitment to consider ways to redress the competitive disadvantage of high unit charges for terminal navigation and rescue and fire fighting services at secondary gateways and towered metropolitan general aviation airports.

3 Chapter 2 - Aviation Security

3.1 The South Australian Government strongly believes that required security measures should be based on the proper and comprehensive assessment of risk. This applies to changes to current security settings or the removal of anomalies inherent in the underlying policy settings. The South Australian Government does not support the proposal to broaden the application of security measures on the non-risk basis of competitive neutrality.

3.2 The assessment of risk remains the primary responsibility of the appropriate Commonwealth agencies.

3.3 The South Australian Government is satisfied with the present risk assessment process and the level of consultation with state police forces and other relevant agencies that it incorporates.

3.4 The South Australian Government, however, remains concerned about the effectiveness of some of the security measures resulting from the process that are currently in place at regional airports. In particular, the experience of the South Australian Police (SAPOL) gained through the Securing our Regional Skies (SORS) program has highlighted inadequate or outdated surveillance systems and a lack of adequate measures to control access to airside operations, equipment and aircraft at some airports.

3.5 The South Australian Government commented previously that the provision of regional airport security measures at regional airports should continue to be at Commonwealth cost, and it supports the commitment that full cost impacts on remote and regional destinations will be part of the consideration of security requirements. This consideration must include the recurrent costs of required programs as well as their capital cost.

3.6 The SORS program was supported by the AFP Regional Rapid Deployment Team. The team, which is based in Melbourne, is of limited benefit to South Australia because of the delay in response inherent in its distance from South Australian airports. The Unified Airport Policing Model is restricted to Adelaide Airport and SAPOL remains the first and primary responder to all security matters that are beyond the capability of local staff at regional regulated airports to control. This lack of dedicated resources outside Adelaide must receive due weighting when regional airport security risk analyses are produced.

3.7 SAPOL recommends that the ‘Known Traveller’ program must be approached with a high degree of caution as many matters require clarification. They include the basis of exemption(s) (ie intelligence and/or criminal conviction basis), release and control of information provided, ownership of intellectual property and issues of administration, privacy, appeal provisions and cost recovery. This proposition is not supported in the absence of such detail.

3.8 The South Australian Government, through SAPOL, looks forward to further input on these matters through liaison with relevant Commonwealth agencies.

4 Chapter 3 - International Aviation

4.1 The South Australian Government supports the intention to pursue an active strategy to further liberalise the aviation sector and to continue to offer foreign airlines unlimited access to secondary gateways. It supports the application of national benefits tests to the negotiation of bilateral treaties and the changes proposed to better equip Qantas to compete in foreign capital markets.

4.2 The South Australian Government maintains the view expressed in its previous comments that parallel proactive policies are necessary to increase the effectiveness of the regional package. The previous comments suggested some policies that could be applied. Since the Australian Government has stated an intention in the Green Paper to take foreign airlines' preparedness to invest in Australia into account in assessing the national interest in bilateral negotiations, investment in regional services should be considered as part of this.

4.3 The Green Paper appears to confuse the need to encourage foreign airlines to utilise secondary gateways with the issue of international access to regional airports. It should be noted that "smaller airports" that are secondary gateways generally do not have lower landing and airport charges as suggested, because of higher unit charges resulting from their low traffic volumes. The South Australian Government has already noted the effect of cost recovery of terminal navigation and rescue and fire fighting services in exacerbating the cost differential between secondary and major gateways.

5 Chapter 4 - Domestic and Regional Aviation

5.1 The South Australian Government, in its previous comments, supported current policy settings relating to the deregulation of domestic services.

5.2 The South Australian Government strongly supports the intention to consider options to work with the States on models for assistance for regional aerodromes and services. It has already demonstrated a willingness to participate in the Australian Government's existing Remote Air Services Subsidy Scheme and the Remote Aerodrome Safety Program and, while it cannot make commitments to funding outside the Budget process, it is keen to consider joint policy options to broaden these programs.

5.3 The South Australian Government, other than through its participation in the Remote Air Services Subsidy Scheme, has not introduced subsidies for commercially operated regional air services, as have some other States. It has legislated to declare and license intrastate routes when that is in the public interest, and the issue of licences on the Coober Pedy and Port Augusta routes was material in the retention and replacement of services on them. Neither required subsidisation. The Coober Pedy licence has now lapsed and the route is open to competition. The Port Augusta licence was offered competitively for a limited term and the South Australian Government rejects the Green Paper's contention that a subsidy – unnecessary in this case – would have been a more appropriate intervention.

5.4 The previous paragraph suggests that the differing circumstances prevailing in the various states and territories will make a nationally uniform approach to intrastate aviation unlikely to succeed. The South Australian Government suggests that the way forward is the joint development of nationally uniform programs in which the parties can elect to participate or not according to their circumstances.

5.5 The South Australian Government supports the intention to consider options to reduce the burden of aviation regulatory charges, including charges on the regional airline sector, and believes that this should extend to consideration of continuing the Enroute Charges Scheme beyond its currently planned termination date of June 2012.

6 Chapter 5 - General Aviation

6.1 The South Australian Government generally supports the broad way forward for General Aviation described in the Green Paper.

6.2 General Aviation in Australia requires a model of cooperation between CASA and Industry to address the issues relating to the regulatory environment. Specifically, this involves an appropriate balance of safety and training regulation to ensure the ongoing viability and general growth of the general aviation sector. The South Australian Government supports regulatory reform (through CASA) to remove unnecessary regulatory impediments that are a barrier to the ongoing growth of the general aviation sector.

6.3 Airport users require certainty on the future aeronautical uses of airports and the proposed improved planning arrangements at Australia's leased airports are supported.

6.4 The South Australian Government supports measures to address barriers to the development of aircraft manufacturing and assembly, parts and maintenance capability.

7 Chapter 6 - Industry Skills and Productivity

7.1 The South Australian Government believes the Industry Skills and Productivity component of the Green Paper is a good summary of the workforce issues that are being reported in South Australia with regard to pilots and related aviation and aircraft maintenance. The expansion of the mining and resources sector is placing significant pressure on the demand for pilots to support fly in-fly out workforce arrangements. The South Australian TAFE system has had difficulty in maintaining training facilities for the relatively small numbers of maintenance apprentices that are employed by local companies and the relatively high infrastructure costs associated with that training.

7.2 Industry engagement with workforce planning is an important element of any forward planning to meet skills in demand. It is difficult, however, for industry to articulate its needs beyond the immediate because of the close industry linkage with economic cycles.

7.3 The Australian Government's responses are consistent with its policy and program initiatives, including the establishment of the Skills Australia, the funding of the Productivity Places Program, and the establishment of Trade Training Centres, skilled migration programs etc. Training is not the only solution to skills shortages and it is welcome that the proposed way forward includes a commitment by the Australian Government to reinforce with industry its responsibilities for improved workforce planning and the adoption of workforce conditions and arrangements that attract and retain workers, including strategies to better market job and career opportunities in the sector.

7.4 The South Australian Government welcomes the recognition of skills related matters in the National Aviation Policy Green Paper, including:

- The recognition of the value of training at times of economic downturn;
- The move towards improving consistency and mobility between civil and military aviation sectors and particularly improvements to skills transferability as a result of the development of the Aviation Training Package 2008;
- The role of Industry Skills Councils in providing advice to government and other key stakeholders in relation to the aviation industry skill needs. The South Australian Government has State based industry skills board structures for the industry to identify skill needs to state and territory governments. In South Australia the relevant boards are Transport and Distribution Training (SA) and the Manufacturing Industry Skills Advisory Council;
- Industry commitment to skills development through subsidised training; and
- The need for long-term training and planning for the Australian aviation industry and the importance of the industry remaining internationally competitive in retaining key staff and in attracting new entrants to the workforce.

8 Chapter 7 - Consumer Protection

Consumer standards

8.1 This chapter highlights the emergence of low-cost carriers that strictly enforce terms and conditions that many consumers do not read or fully comprehend when purchasing travel. The South Australian Government's Office of Consumer and Business Affairs suggests that airlines should be required to provide a plain English summary of key terms and conditions of travel, including a clear explanation of what happens in the event a flight is cancelled.

Compensation Arrangements

8.2 The South Australian Government notes the intention to release a discussion paper as the first step in a comprehensive review of Australia's carriers' liability framework. This will include the relationship between State and Commonwealth legislation and the South Australian Government will necessarily participate in that review.

Disability Access

8.3 The South Australian Government has participated in the review of the *Disability Standards for Accessible Public Transport* and has included comment on inconsistencies evident in the Standards as they apply to air services and infrastructure in its submission to the draft report of the review. We look forward to the Australian Government's response to the final report of the review.

8.4 The South Australian Government understands that the establishment of the Aviation Disability Access Working Group proposed in the Green Paper has already taken place.

8.5 The South Australian Government supports the formation of the Group but has a number of concerns that it believes should have been resolved through consultation with existing consultative bodies prior to its formation. For instance, neither the relationship between the Group's objectives and the outcomes of the yet to be released five year review of the Disability Standards, nor its interaction with the Accessible Passenger Transport National Advisory Council, are clear.

8.6 The South Australian Government recognises that the aviation sector has unique access issues and regulatory conflicts that must be resolved, and that a modal Group is a sensible way to do so. It is concerned, however, that the Group may establish precedents that may or may not be beneficial to other modes. This aspect of the Group should be expressly addressed to ensure that all transport sectors are aware of the Group's capacity to shape outcomes.

8.7 The South Australian Government suggests also that the establishment of the Group may be an opportunity to pursue development of the co-regulation model for administering the Standards. These issues should be clarified and resolved early in the life of the Group.

9 Chapter 8 - Aviation Infrastructure

Planning at federal leased airports – on airport

9.1 The South Australian Government has accepted that the Commonwealth Minister will retain final decision-making authority for land use planning and development on the leased airports. We have previously commented that we generally regard the planning and development mechanisms under the Airports Act 1996 and our level of consultation with Adelaide Airport Ltd as acceptable. We do not regard the current assessment processes as being a deterrent to investment.

9.2 There have, nevertheless, been occasions when the South Australian Government has not supported developments proposed by Adelaide Airport Ltd. The South Australian Government therefore strongly supports the development of cooperative arrangements with the states and territories to better integrate the respective planning processes, and the establishment of Airport Planning Advisory Panels to reduce the likelihood of disagreements occurring in the future.

9.3 The South Australian Government recommends that the Airport Advisory Panels be established along similar lines to the State's Development Assessment Commission: an independent statutory body whose seven members are selected from various fields of expertise. The Presiding and Deputy Members must have qualifications and experience in urban planning, building, environmental management or related disciplines. Members are appointed for a term of two years while the Presiding Member may serve up to five years. Airport Advisory Panels would of course also require members with appropriate aviation expertise.

9.4 While it is understood that the Panels would report to the Commonwealth Minister, state and territory Planning and/or Infrastructure Ministers should be invited to recommend nominees to him.

9.5 The South Australian Government notes the proposal that the Minister be empowered to require airport lessees to establish independently chaired community consultation groups. Such groups, called the Adelaide and Parafield Airport Consultative Committees, have long existed in South Australia. While they provide an effective consultation mechanism on local issues, it should be noted that their existence does not absolve the lessee or airport users and service providers from consulting more widely on specific issues. Recent proposals for new flight paths affecting constituents not represented on the Adelaide Airport Consultative Committee are an example.

9.6 The South Australian Government supports the proposed refinement of approval processes, including a review of major development plan triggers and Ministerial call-in powers to obtain additional details about non-aeronautical development precincts and sensitive proposals. The South Australian Government will continue to expect that the approval of non-aeronautical developments on airports should be conditional on the cost of transport and community infrastructure they require being met by airport operators/developers.

9.7 The South Australian Government strongly supports the commitment to prohibiting the development of non-aeronautical facilities or uses that are likely to be incompatible with the realisation of the full potential of the sites for aeronautical uses. The appointment of members to the Assessment Panels with appropriate qualifications to assess that will be essential.

9.8 The South Australian Government also supports the objective of achieving greater transparency and certainty about future land uses at airports through the master planning process. We believe developments that require a major development plan or minor variation to the master plan, or have been deemed "merit" under their master plans by airport operators, should be subject to review by the proposed Airport Planning Advisory Panels. Our previous comments have already stated the view that major development plans should include detailed plans of the proposals and generally a higher level of detail than presently provided.

9.9 The South Australian Government previously commented that Parafield Airport is constrained by airspace limitations resulting from the proximity of Adelaide and Edinburgh Airports and increasing residential encroachment. These circumstances are shared by other leased metropolitan general aviation airports and the South Australian Government recommends that the National Aviation Policy should

include a commitment at some stage in the future to undertake a review of each site's continued suitability as an airport, and an examination of options for their relocation.

9.10 Given the larger strategic issues that may necessitate such reviews, it is hoped that this option is not closed off. If, however, the Australian Government is committed, as the Green Paper suggests, to the continued development of these sites to their full potential as airports for the entire duration of their leases, then an unequivocal statement to that effect is necessary to eliminate uncertainty as to their future.

Planning at federal leased airports – Protection of airports

9.11 The South Australian *Planning Strategy for Metropolitan Adelaide* includes polices to protect Adelaide and Parafield Airports from inappropriate surrounding development. It is clear, however, that these policies are not given sufficient effect in some surrounding councils' development plans.

9.12 The South Australian Government will consider options to improve the necessary safeguards and supports the commitment to development of a national risk-based framework for this. It should be noted, however, that is unlikely that national consistency can be achieved given the different circumstances of the various airports and the extent of existing urban residential development in their vicinity. This is discussed further in our comments on Chapter 10 – Noise Impacts.

9.13 The South Australian Government jointly developed with the former Federal Airports Corporation changes to relevant councils' development plans to include maximum building heights maps. Proposals for buildings that exceed the heights depicted must be referred to DOTARS (the present federal Department's predecessor) according to a Schedule of the State's Development Regulations. This applies to the councils surrounding Adelaide and Parafield Airports but also captures regional airports where the surrounding council has included a building heights map in its development plan.

9.14 These processes are not entirely consistent with the referral procedures of the *Airports (Protection of Airspace) Regulations* for the leased airports, or Part 139.E of the *Civil Aviation Safety Regulations 1998* for other airports. The South Australian Government is investigating options to change its Development Regulations. This refers not only to the need for a consistent referral authority, but also to procedures to ensure that appropriate protections are included in the development plans of all councils where building height and other planning restrictions to protect the viability of airports are necessary. The South Australian Government therefore welcomes the commitment to work with the states and territories to improve national arrangements.

Economic regulation

9.15 The South Australian Government supports the proposals to continue price monitoring, including car parking fees, at the major airports until at least 2012; and the implementation of a 'show cause' process to respond to serious pricing misbehaviour. It will comment further as necessary when consultation papers on quality of service monitoring and 'show cause' guidelines are released.

Regional airports

9.16 This section commits to continue working with state and territory governments through the Remote Aerodrome Safety Program to fund essential aerodrome upgrades in remote aerodromes; and to continue with financial support for local governments through untied Financial Assistance Grants. The South Australian Government is concerned that it omits the commitment made in Chapter 4 to consider options to work cooperatively with the States on models for assistance to regional aerodromes.

Use of Defence airports for civil aviation

9.17 The South Australian Government is concerned that this section commits to an examination of increasing civil use of Defence airports that already cater to civil services, while omitting any statement of the Government's position on opening additional Defence facilities to civil use.

9.18 Since one of the aims of the White Paper is to provide greater planning and investment certainty for the industry, it should be explicit in stating whether or not consideration of civil use of other defence airports, including Edinburgh Airport in South Australia, will be made.

10 Chapter 9 - Aviation Emissions and Climate Change

10.1 The South Australian Government reiterates its previous comments and supports the way forward proposed.

10.2 In particular, it supports a comprehensive carbon pollution scheme that includes domestic aviation but believes that international aviation should be excluded at this stage.

10.3 It supports other measures to reduce aviation emissions that are based on strong complementarity principles such as the fuel saving measures proposed in the Green Paper, and the investigation of fuel efficiency standards for aircraft.

10.4 The South Australian Government remains concerned about the impact of higher fuel costs on 'public good' aviation services such as the Royal Flying Doctor Service and other remote services, and supports mitigation of such impacts.

11 Chapter 10 - Noise Impacts

11.1 The South Australian Government recognises that the amenity of residents surrounding airports must be protected, and that Adelaide Airport's inner urban location requires the provision of a jet curfew.

11.2 The South Australian Government notes that the *Guidelines for Dispensations for Aircraft to Operate at Adelaide Airport during Curfew Hours* sensibly provide for reasonable flexibility in the granting of dispensations during irregular operations and special circumstances. While it has no objection to the proposal to publish curfew dispensations approved for Adelaide Airport, it would be concerned if that led to a lessening of the existing flexibility.

11.3 The South Australian Government, in its *Planning Strategy for Metropolitan Adelaide*, details a policy to "Protect and manage airports to give priority to freight and passenger movements and ensure adjacent land uses are compatible with airport activities".

11.4 The Strategy is prepared in accordance with Section 22 of the *Development Act 1993*, and provides direction and a resource for metropolitan councils undertaking strategic and planning processes, including land use zoning, in their development plans.

11.5 The South Australian Government is also preparing a *30 Year Plan for Greater Adelaide*, which will become a volume of the State Government's Planning Strategy (pursuant to section 22 of the *Development Act*), giving it statutory effect in guiding development. It will be the principal document to set policy and principles that guide the preparation and updating of local government strategic plans, Section 30 reviews and development plans.

11.6 This process began in November 2008 with a series of workshops between State and Local Government, and will include community consultation during 2009.

11.7 It will be important to ensure that this process is coordinated with the proposal to "work through the Council of Australian Governments and other appropriate forums to ensure a national land-use planning regime is put in place near airports and under flight paths to avoid noise-sensitive developments being located in these areas and to protect communities from excessive levels of aircraft noise."

11.8 The COAG process will need to recognise that while land-use planning principles should be nationally consistent, they will necessarily vary according to the circumstances of the various airports. For instance, the *30 Year Plan for Greater Adelaide* will examine bases on which residential development exclusion zones around Adelaide and Parafield Airports should be implemented. These zones should recognise *Australian Noise Exposure Forecast* contours as the only existing statutory land use planning tool but may vary from established *Australian Standard 2021* in its entirety, given the existing urban encroachment of the airports and competing priorities of urban regeneration and airport protections.

11.9 The process of ensuring that council development plans contain adequate airport protections should not be confused with the need for better public information about the location, intensity and duration of aircraft noise. The South Australian Government supports the proposal to continue development of a new noise information framework to ensure information on noise exposure patterns is better presented.

Department for Transport, Energy and Infrastructure
South Australian Government
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