

2 November 2011

Dr Warren Mundy  
Presiding Commission  
Performance Benchmarking Australian Business Regulation  
Productivity Commission  
By email: [localgov@pc.gov.au](mailto:localgov@pc.gov.au)

Dear Dr Mundy,

### **Local Government Regulation**

Thank you for the opportunity to comment on the Issues Paper released as part of the Productivity Commission's Business Regulation Benchmarking Study of the role of Local Government.

The National Tourism Alliance (NTA) is the forum that unites Australian tourism, providing a single voice to Federal Government on issues of common interest. Our membership comprises the major associations within tourism including the Australian Tourism Export Council, AAA Tourism, Australian Federation of Travel Agents, the Victorian Employers Chamber of Commerce and Industry, Business Events Council of Australia, Restaurant & Catering Australia, Accommodation Association of Australia, Board of Airline Representatives, Bus Industry Confederation, Australasian Casino Association, Caravan, RV & Accommodation Industry of Australia, Tourism & Transport Forum, Tourism Accommodation Australia, Winemakers' Federation of Australia, the Australian Regional Tourism Network, as well as all of the state Tourism Industry Councils.

Tourism is the activity generated by visitors travelling to, and staying in, places outside their usual environment for leisure, business and other purposes. By definition, 'tourism activity' stretches across multiple industries and ancillary services, notably accommodation, restaurants and cafes, transport, arts and recreation and education and training, and further encompasses the visitor journey both to and within a destination.

Tourism contributes over \$34 billion to Australia's GDP and employs over 500,000 Australians. Tourism is Australia's largest services export industry, providing 9.0 per cent or \$22.8 billion of Australia's total exports in 2009-10. Australia is also a significant beneficiary of global tourism spending, ranking 8<sup>th</sup> globally and receiving 3.3 per cent of global tourism receipts.<sup>i</sup>

Tourism is also a highly dispersed sector, in which over 47 cents of every tourism dollar is spent in regional Australia, and more than 93 per cent of businesses within the sector being small and medium enterprises.

Tourism also has significant flow-on effects to other areas of the Australian economy.<sup>ii</sup> For every additional dollar of value added generated by activity in the tourism industry, a total of \$1.91 of value added is created, ahead of other industries such as mining, retail trade and education and training.

### **Regulatory reform and tourism**

Regulatory reform has frequently been identified as a key supply side opportunity to improve Australian tourism's competitiveness. A key objective of the National Long Term Tourism Strategy is "investment that will ensure Australian tourism product remains competitive in a global marketplace." The NLTS identifies that "regulatory reform is needed to provide transparency and certainty for investors and business." According to the NLTS "the different levels of government in Australia present regulatory challenges to businesses, resulting in complex and lengthy investment and development approval processes, and impediments to reinvestment."<sup>iii</sup>

In 2009, the Jackson Report identified planning regulations as "an issue of international competitiveness for Australia in a global environment in which investment dollars are becoming scarce." According to the report, "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." The report suggested using the COAG process to develop model regulation to reduce the regulatory burden on tourism developers.<sup>iv</sup>

The Victorian Competition and Efficiency Commission also undertook an inquiry into the impact of State and local government regulation on Victorian tourism. Issues raised in the draft report included the need for improved strategic planning in relation to tourism, the impact on tourism development of restrictive land-use zones and the complexity and costs of land-use planning regulation. The report also highlighted critical issues relating to the planning application process for major tourism projects.<sup>v</sup>

### **Benchmarking local government regulatory activities**

Rather than attempting to address all the questions posed within the Issues Paper, we have highlighted some key lessons from the experiences of tourism operators regarding the business costs of local government regulation.

As part of our response, we have provided a confidential case study with this letter. The case study highlights key differences that a tourism operator has experienced in the planning process in Australia and the UK, drawing on firsthand experience applying for development permits for an identical product.

The planning and development approvals process has been identified as a significant source of additional costs to tourism businesses and an impediment to the development of new tourism products, including accommodation, restaurants and cafes and tourist attractions. In particular, the operator draws attention to the significantly greater costs of planning processes in Australia compared to their overseas experience.

The development of benchmarks would assist in highlighting areas of regulation which impose significant costs on businesses. As shown in the case study, there is a misalignment in incentives and costs in the planning process. Councils have little incentive to ensure a speedy process as costs are borne solely by developer. The risks of appeal exist primarily on one side of the planning equation – it is therefore in the interests of the local government to maximise the regulatory burden on planning applicants, regardless of the relevance of these burdens.

The NTA also believes that it is crucial that cross-industry comparisons also be enabled through the development of relevant benchmarks across all areas of local government regulatory activity. As part of its inquiry into regulatory burdens on Victorian tourism, the Victorian Competition and Efficiency Commission undertook its own analysis of major tourism project planning applications and their treatment compared to other major projects. The VCEC measured the different types of projects across a number of metrics:

- Perception of complexity by council officers
- Requests for further information
- Referral to other regulatory bodies
- Notification to public and attraction of objections
- Appealed to the Victorian Civil and Administrative Tribunal
- Timeframes for determination

In each of these areas, outcomes for major tourism projects were worse than outcomes for other major projects.<sup>vi</sup> The significant holding costs that arise due to delays in planning application process necessarily impacts on the costs of tourism developments, both overall and relative to other developments. The experience of tourism developers has demonstrated to the sector the importance of local government having a sufficient level of expertise in tourism to enable them to overcome these disadvantages.

There are also concern within the tourism sector regarding differential enforcement or non-enforcement of regulations by local government, particularly in the areas of building code regulation and provision of camping and accommodation areas. Any benchmarking of enforcement of local government regulation must take into account the need for consistency of enforcement and the principle of competitive neutrality.

Different regulatory requirements for Class 3 and class 2 buildings within the Building Code of Australia result in lower building costs for Class 2 buildings, as demonstrated in the report of the *Tourism Investment and Regulatory Reform Review*.<sup>vii</sup> There are concerns that local governments

have not effectively enforced building code regulations after construction has been completed and have ignored the practice of conversion of Class 2 buildings to short-term accommodation. In addition, concerns have been raised about local Governments providing “accommodation areas” for drive tourism in minimal amenity facilities without applying true costs to the provision of these services. In many cases, this is in direct competition with licensed commercial entities. Recently, the Office of the Tasmanian Economic Regulator has ruled against a number of local councils on this very basis and current guidelines are being reviewed by the State Government.

Recognising that effectiveness is key to achieving intended public policy outcomes of local government regulatory activity, it would also be useful to develop a range of outcomes-focused benchmarks that allow Councils to assess the actual positive impacts of regulations over time. Policy makers should be aware of areas where regulations and the consequent cost burdens on business are not significantly contributing to desired community outcomes. An example highlighted in the case study is the cost and irrelevance of the development of a Cultural Heritage Management Plan. It would be useful to understand whether there are particular types of planning applications that can be identified more specifically that do in fact require Cultural Heritage Management Plans. At a more general level, benchmarking should allow regulations to more closely reflect a “risk-based” approach, in which developments or businesses that are required to comply with particular regulations are in fact those that are likely to impact negatively on the achievement of the desired policy outcomes.

NTA members appreciate the opportunity to provide feedback to this discussion paper. If you have any questions in relation to our letter please do not hesitate to contact me.

Yours sincerely

**Juliana Payne**

**Chief Executive Officer**

---

<sup>i</sup> *Tourism Satellite Account (cat. No. 5249.0)*, Australian Bureau of Statistics

<sup>ii</sup> *State of the Industry Report 2011*, Tourism Research Australia

<sup>iii</sup> *National Long Term Tourism Strategy*, Australian Government

<sup>iv</sup> *The Jackson Report on behalf of the Steering Committee*, National Long term Tourism Strategy Steering Committee

<sup>v</sup> *Unlocking Victorian Tourism (draft report)*, Victorian Competition and Efficiency Commission

<sup>vi</sup> *Ibid.*

<sup>vii</sup> *Tourism Investment and Regulatory Reform*, Tourism Ministers’ Meeting.