



**Draft Report**

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# **Tourism Regulation Review**

6 August 2021



**Government of  
South Australia**

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## About the South Australian Productivity Commission

The Commission provides the South Australian Government with independent advice on facilitating productivity growth, unlocking new economic opportunities, supporting job creation and removing existing regulatory barriers.

Premier and Cabinet Circular, *The South Australian Productivity Commission (PC046)* sets out the objectives and functions of the Commission; how inquiries are referred to the Commission, undertaken and reported on; and how the Commission and public sector agencies work together.

The Commission is supported by the Office of the South Australian Productivity Commission (OSAPC) which is an attached office of the Department of the Premier and Cabinet.

### Commission's approach

The Commission is required to take a broad perspective in developing advice for the South Australian Government. It must consider the interests of industry, business, consumers and the community, regional South Australia, social-economic implications and ecological sustainability.

The Commission conducts its own independent quantitative and qualitative analysis. It also draws on the experience, evidence and views of all inquiry stakeholders.

The release of this issues paper supports interested parties to participate in the inquiry by highlighting the key issues and by raising questions to generate feedback.

It is important to emphasise that the Commission has no predetermined views on the matters covered by the inquiry. This issues paper sets out the Commission's initial understanding of the relevant matters. Feedback from stakeholders will assist further analysis and review that will contribute to the development of a draft report.

### Making a submission

The Commission invites submissions on the draft report by 3 September 2021. Submissions may address any of the issues covered by the paper and the terms of reference.

Submissions are also accepted from South Australian Government agencies if approved by their Chief Executive or Minister.

An electronic submission in Word or PDF format is preferred, along with any supporting documentation containing facts, figures, data or examples:

- through our website [www.sapc.sa.gov.au](http://www.sapc.sa.gov.au); or
- via email at [sapc@sa.gov.au](mailto:sapc@sa.gov.au); or
- via post at: GPO Box 2343, ADELAIDE SA 5001.

### Key dates

**29 March 2021**

Notice of inquiry

**6 April 2021**

Issues Paper published

**April – July 2021**

Initial public consultation

**14 May 2021**

Submissions to issues paper due

**6 August 2021**

Draft report published

**August – September 2021**

Draft report public consultation

**3 September 2021**

Submissions due on draft report

**1 October 2021**

Final report presented to the Premier

**30 December 2021**

Final report made public

## **Confidentiality**

Transparency is an important part of the Commission's independent process for gathering evidence and other elements of the inquiry process. The Commission will publish the submissions that it receives on its website unless the author clearly indicates that the submission is confidential or the Commission considers the material to be offensive, potentially defamatory, beyond the scope of the inquiry's terms of reference, or an abuse of process.

## **Disclosure**

The Commissioners have declared to the South Australian Government all personal interests that could have a bearing on current and future work. The Commissioners confirm their belief that they have no personal conflicts in regard to this inquiry.

## **More information**

For more information on the Commission, including circular PC046, how to communicate with the Commission and details on the Commission's approach to handling confidential material visit our website at [www.sapc.sa.gov.au](http://www.sapc.sa.gov.au), email to [sapc@sa.gov.au](mailto:sapc@sa.gov.au) or call 08 8226 7828.

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## Key Messages

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This regulatory review focuses on regulations relating to tourism, with specific attention to nature-based tourism and agritourism. Its purpose is to recommend actions to the SA Government, that through better regulatory practice, reduce costs to business without compromising the public interest and make the regulatory processes more adaptable to foster innovative proposals.

The regulatory review is part of the Modern Regulation project which also includes a regulatory review of referrals in project approvals and an inquiry into SA's regulatory framework.

Tourism is defined by customers, meaning that it covers a wide range of activities that collectively are regulated by many regulators.

Tourism is a small but significant part of South Australia's economy and the sector is predominantly comprised of small businesses. In 2019, nearly three in four tourism businesses in the state had less than five employees. The small scale of most tourism businesses has implications for their capacity to manage complex regulations.

The Commission considers that the main regulatory issues faced by nature-based and agritourism businesses in South Australia primarily relate to land use and planning; operating, expanding or diversifying a business; and access to public infrastructure. All matters relating to development approval applications are addressed through the Commission's other current regulatory review.

The regulators most relevant to *nature-based tourism* and *agritourism* include: Consumer and Business Services (CBS); PIRSA (charter boats, fishing and meat processing); DEW (crown lands, national parks, pastoral lands, native vegetation); EPA; SA Health (food safety); DIT (Commissioner for Highways - access to roads and road signage); and SafeWork SA.

The review identified several areas to improve regulatory practice:

- developing a proactive culture in regulators to engage with regulated businesses to improve regulatory practice without compromising their regulatory role;
- timely processing of regulatory applications;
- improved coordination between regulators and clearer, simpler approval guidelines;
- increased flexibility to consider new or innovative proposals;
- more adoption and use of online applications and enabling digital technology; and
- strengthening local government regulatory capability to increase consistency.

The draft report contains seven draft recommendations that address: building proactive regulatory cultures; improving the clarity and accessibility of guidance from regulators; improving regulatory services through digital technology; and improving the consistency and capability of local government food regulation.

The Commission also makes several information requests and has set out three discussion options for better coordination among regulators.

## Executive Summary

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The COVID-19 pandemic has had a large impact on the operations of all businesses in the state (and a particularly large impact on tourism with the cessation of international tourist travel to Australia) and it is important that the state ensures its regulations facilitate recovery. The purpose of this review is to consider regulatory reforms that will reduce regulatory barriers to recovery and the future development of the tourism industry.

Tourism is typically defined from the perspective of the consumer. This leads to some conceptual challenges about defining what a tourism business is (and is not) and to what extent the business model for an individual business depends on tourists. As a result, the nature of activities undertaken by tourism businesses in South Australia is highly variable, with the regulations relevant to each business being similarly varied. The Terms of Reference for this review requires the Commission to focus on nature-based tourism and agricultural-based tourism (agritourism).

As described in Chapter 2, tourism is a small but significant part of South Australia's economy, accounting for 3.2 per cent of the gross state product (GSP) in 2018-19. By 2019-20, this had fallen to 2.8 per cent, reflecting the impact of the COVID-19 pandemic and the resulting policy measures on the sector. The trend in South Australia's is consistent with the experience of other jurisdictions across Australia. Nationally, the tourism sector's direct share of the gross domestic product (GDP) was 3.1 per cent in 2018-2019 but declined to 2.5 per cent by 2019-20.

The tourism sector in South Australia predominantly comprises small businesses, a characteristic that is reflected nationally.<sup>1</sup> Nearly three in four tourism businesses had less than five employees, while 20 per cent of businesses had between 5 and 19 employees, five per cent had a workforce of 20 to 199, and less than one percent had more than 200 employees. The small scale of most tourism businesses has implications for their capacity to manage complex regulations and respond to changes in regulations.

Little, if any, regulation is directed solely towards tourism. In general, the regulations focus on the activities conducted by businesses, rather than their customers. The same activities can be relevant to businesses in different parts of the tourism value chain. Accordingly, the Commission's focus is on the key areas of regulation that affect businesses supplying goods and services to nature-based and agritourism tourist customers, with priority being given to issues and regulatory practice that have the highest impact on those sub-sectors.

The Commission considers that the main regulatory issues faced by tourism businesses primarily relate to either:

- land use and planning approvals;
- operational or expansion; or
- access to public infrastructure.

For most businesses, their involvement with regulators is in gaining approval to either start or expand or diversify their business. These approvals take many forms and could include planning and development approval, licences to undertake certain activities or connecting or gaining access to public infrastructure.

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<sup>1</sup> L.E.K Consulting, *Tourism investment and regulation review, National long-term tourism strategy, (Final report, 2011)*.

The regulators most relevant to nature-based tourism and agritourism arising from the Commission's work to date in this review include:

- Attorney Generals Department: Consumer and Business Services (CBS);
- Primary Industries and Regions South Australia (PIRSA) – pastoral lands, charter boats, fishing and meat processing;
- Department for Environment and Water (DEW) – Crown lands, national parks, native vegetation;
- Environment Protection Authority (EPA)
- SA Health – food safety;
- Department for Infrastructure and Transport: Commissioner for Highways – access to roads and road signage; and
- SafeWork SA – workplace health and safety.

The major issues identified through the Commission's consultation with businesses, regulators and other stakeholders fall into the categories identified below.

Issues relating to development approvals, such as native vegetation, were raised by business participants. These matters are not addressed in this regulatory review but instead are dealt with by the Commission's Development Referrals Regulatory Review.

### **Developing an enabling culture in regulators**

Stakeholders from both agritourism and nature-based tourism businesses want regulators to adopt a more flexible and proactive approach to assessing applications. This is primarily an issue of culture in the regulating agency. Businesses would like the regulators to look at how the application might be improved rather than not engaging with the proponent or focussing on why it cannot be approved.

This is particularly important to applicants proposing to provide new or different services. The Commission discussed this issue with a number of regulators that all indicated a willingness to work with businesses. To date, based on the information received from businesses and regulators, the Commission has found little evidence of a proactive culture in agencies that regulate agritourism and nature-based tourism businesses.

The most positive examples relate to interactions with some regulators during the COVID-19 pandemic. As discussed in Chapter 5, there was positive feedback on the responsiveness and attitude of Consumer and Business Services (CBS) in relation to licensing as well as assistance provided in navigating the COVID-19 pandemic restrictions.

The Commission considers this is evidence that regulators can work proactively with businesses when they believe there is support or need for a proactive approach. That said, the majority of the feedback from businesses suggests that agencies view regulations as a set of hard and fast rules that have little flexibility. Further, the Commission has not yet seen any guidance material from regulators that suggests their employees are encouraged or trained to work proactively with businesses.

The Commission has asked agencies that regulate tourism-oriented businesses to provide additional information regarding existing training programs or guidance material that encourage proactive engagement with business. The Commission has also recommended that all relevant agencies have mechanisms to ensure that feedback regarding its regulatory

practice is received on a regular basis and that they use this feedback to improve their practices.

### **Processing applications in a timely manner**

Businesses do not believe that regulators understand the importance of quick decisions (whether positive or negative) to the economics of business. The length of time agencies required to respond to development applications, or to issue licences was a recurring theme in discussion with all businesses.

This issue is relatively important when agencies are asked to consider new activities or new methods for delivering existing services. A related issue is the gaps in communications that occur in response to innovative proposals. A number of businesses indicated that they were not able to contact individuals regarding the progress of their applications or that written communication was not answered in a reasonable timeframe.

To date, the Commission has found very few identifiable target times for the processing of applications or issuing of licences for tourism-oriented businesses. SA Water has targets for its services, but the Commission has found little evidence of clear and publicly available targets in the rest of government. There is also little easily found public reporting regarding the performance of agencies in processing applications related to tourism-oriented businesses.

The Commission considers the establishment of performance targets and public reporting against those targets to be an essential part of effective and accountable regulation. Accordingly, it has a draft recommendation that, to increase accountability for performance, targets be established for all regulating agencies and that those targets be publicly reported. Also recommended are regular reviews of decision-making processes by regulators, and public reporting of the results of those reviews.

### **Coordination between regulators**

As shown in Table 3.1 in Chapter 3, the list of permits and licences required for nature-based tourism or agritourism businesses can be extensive. Given the small size of most tourism-oriented businesses in South Australia, the potential cost in terms of resources and time to address the potential list of requirements can be intimidating and may discourage firms from even attempting to establish new businesses. This list was generated using the Australian Business Licence Information System (ABLIS) which is an Australian Government platform. There is no SA equivalent.

Business stakeholders expressed frustration not only with the number of permits and licenses required, but also being required to provide the same information to different and, in some cases, the same regulators in relatively short periods of time. Businesses would like to see some sharing of common information between regulators to reduce the administrative burden these regulations impose on business.

There was also a perception that regulators were only interested in their own processes which complicated getting all the necessary approvals for the activity in question in a timely manner. Business would prefer more coordination between regulators to ensure the overall approval process is as efficient as possible, that is, considering approvals concurrently rather than sequentially.

The Commission has found that regulators are willing to work together, but only on an ad hoc basis related to a specific issue or project. The lack of ongoing coordination exacerbates the entry cost for new businesses as the cost of obtaining information on the regulatory requirements is high for most small businesses.

The Commission understands that there needs to be a balance between a business's responsibility to invest in its future and the state's desire to develop and expand the economy. It concludes that better coordination between regulators is required. It considers there are several possible options for cooperation to develop further.

To help focus consultation on this matter, the Commission sets out three options for consultation. They are:

1. designate a lead coordinator agency for nature-based tourism and a lead coordinator for agritourism initiatives;
2. build on Option 1 by authorising PIRSA, as part of its accountability for regional development, to facilitate regulatory coordination in its regions; and
3. establish a lead regulator model for nature-based tourism.

The Commission does not yet have a preference for any option and looks to consultation to refine the issues and options for better coordination.

### **New or innovative proposals**

As mentioned above, businesses considered that agencies were reluctant to consider or approve new or innovative proposals. In general, once the dialogue began, businesses found the communication with regulators to be helpful and constructive. Finding the right connection to provide feedback was difficult particularly if the proponent was new to the regulatory process.

The reluctance to consider new or engage on new proposals may be related to the level of resources available to the agencies involved in regulating tourism businesses. Some agency staff indicated that the issuing of licences or permits was only one of their responsibilities and not necessarily a high priority in the context of their other work. As a result, the reluctance to consider new or innovative proposals may be related to the time available to consider these proposals and their relative importance to the agency.

It is also possible that the tolerance for risk in those agencies discourages its employees from engaging with businesses on new ideas. If staff have a perception that mistakes are not tolerated, they may be reluctant to engage on non-standard projects. Over time regulators build up an understanding of appropriate practice in their areas of responsibility and the manner in which currently drafted regulation is to be applied. By definition, new and innovative proposals may not fit this experience and the pathways to consider new proposals may not be immediately clear. In this case, the risk is that the default response is to decline the application, losing opportunities for business and for tourism consumers as a result.

The Commission understands that new and innovative proposals are not necessarily well-developed business proposals and may be unviable. The proposals may lack necessary details and, even when sufficient information is provided, substantial research may be required to determine the impact of the proposal on the public good being regulated.

Businesses' primary purpose is to generate profits. To generate profit, businesses need to take commercial risks. It is not the government's job to take on risks best managed by business. It is government's role to reduce risk from regulatory ambiguity, regulatory gaps, inappropriate/inflexible regulation or absent regulation, among other matters.

At this stage, the Commission has not gathered sufficient evidence to assess the allocation of risks and seeks more information in the next stage of consultations. The Commission is particularly interested in more feedback from agencies on their internal pathways and

guidelines for reviewing non-standard proposals. It also requests more feedback from businesses that have recently tried to develop new or innovative proposals regarding the feedback and guidance they received from South Australia agencies.

### **Approval guidelines**

It is best practice to have clear, publicly available guidelines as to the necessary conditions for approving a development, licence or permit. Clear guidelines reduce the number of inquiries from business and allow for timely consideration of proposals. This is even more important given the structure of the tourism industry in South Australia as most businesses are relatively small and do not have the same capacity as larger businesses to investigate guidelines and develop business proposals.

The Commission's initial review of the public material available to guide businesses in the development of proposals for government, concludes that the guidelines could be improved by communicating the requirements for approval in a clear and concise manner.

The requirements reviewed by the Commission regarding access to Crown or national park land, seem unnecessarily complex. This may be a result of the regulations being designed when sensitive and compatible economic development of the public asset was not considered a priority. This is an area for further investigation by the Commission.

As an example, the government has identified the economic development of nature-based tourism businesses as a priority. In developing an action plan for progressing this initiative, the Department for Environment and Water (DEW)'s Nature-based Tourism Action Plan identifies the reduction of red tape and other barriers to investment as Action 3. However, the Commission has not received any information regarding the agency's progress in reducing red tape or barriers to investment.

Consequently, the Commission proposes recommending that the regulations that govern the development of nature-based tourism businesses be reviewed to ensure that objectives of the new program can be progressed in a reasonable timeframe. The Commission also recommends that DEW and Primary Industries and Regions South Australia (PIRSA) provides consolidated guidance to help facilitate the development of nature-based tourism and agritourism businesses that covers regulations administered by these agencies as well as regulations outside these portfolios.

### **Online applications**

The current state government identifies digitisation of government services as a priority. The state's Digital Transformation Strategy outlines both the approach and benefits of that transformation.

The benefits that are most relevant to the Tourism Review include:

- reduced processing times for applications;
- reduced costs associated with doing business with government;
- increased community engagement; and
- reduced time spent on manual administration of processes.

The Commission considers that the digitisation of government services is particularly important for regional businesses involved in nature-based tourism and agritourism as most

are relatively small and have little time to deal with centralised or manual application processes.

While consultations with businesses and regulators indicated that some progress in developing online applications has been made, both have indicated that more is possible. The Commission has recommended that the government's digital strategy recognise the priorities of the tourism sector in regional South Australia by prioritising the roll-out of digital services in those agencies that are most involved with nature-based tourism and agritourism.

The Commission has also requested that nature-based tourism and agritourism businesses and their regulators provide more feedback to government on their priorities for the development of digital services.

### **Local Government regulatory capability**

The delegation of administrative responsibility to local government can be an effective means of delivering regulatory services in those areas. However, it is important to ensure regulations and standards are applied capably and consistently across council areas. The absence of a consistent application of standards adds to business development costs as services are developed in different regions.

In the Commission consultations to date, this issue was raised in the context of food safety regulations. The Commission research indicates that SA Health provides guidance on the role requirements for environmental health officers and how to manage risk but it does not seem to monitor the application of its guidelines.

To address this issue, the Commission has proposed that the remit of the SA Health food safety regulation function be expanded to increase the capability of local government to administer these regulations by providing on-going professional development advice and support. It has also recommended the establishment of a central and independent process for receiving feedback on, and reviewing, the enforcement of food safety regulations by local governments.

### **Next steps**

With the publication of this draft report, the Commission will now begin the next stage of consultation with stakeholders regarding the information requests identified in the draft report as well as the draft conclusions and recommendations.

This stage includes formal submission to the Commission regarding the draft report as well as individual meetings with regulators and stakeholders on specific issues. The Commission also intends to host several roundtables on specific issues with regulators and businesses both in the regions and the metropolitan area.

As part of the South Australia Regulatory Framework inquiry, the Commission has commissioned surveys of businesses and regulators that will provide additional data on the issues affecting tourism-oriented businesses. The Tourism Review team will consider this data in developing its final report.

As discussed in this draft report, the design and practice of regulation can provide an advantage to incumbents and can add to the entry costs of new businesses. It can also impede innovation by focussing on the detail of the regulation rather than the objectives around which they were designed. The Commission will continue to explore these issues in the next stage of consultations. In particular, the Commission will try to engage with more businesses that have been discouraged from entering the tourism sector.

The Commission has noted the extensive policy package the government has announced with respect to tourism and the objectives expressed in the various policy documents, especially in relation to nature-based tourism. These include greater coordination, provision of information to business to support the development of proposals, streamlining the application process, and removing unnecessary barriers. The Commission expects to gather further information on the state's progress in meeting these objectives.

Finally, the Commission continues to consider the options for better cooperation between regulators and regulated entities in the tourism sector. This matter will also be explored more broadly in the South Australia Regulator Framework inquiry.

# Summary of information requests and draft recommendations

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## Information request 4.1

How accurate and complete is the Commission's description of the process for receiving approval to access or use Crown land?

What other elements of the approval process should be included?

## Information request 4.2

The Commission requests additional examples of unsolicited proposals to access Crown land for nature-based tourism or agritourism including:

- how long it took to resolve them; and
- what is an appropriate timeframe for responding to unsolicited proposals?

## Information request 4.3

To what extent is the process for dealing with multiple regulatory agencies coordinated when considering proposals and how does this differ between solicited and unsolicited proposals? Please provide examples.

## Information request 4.4

What is the experience of nature-based tourism businesses regarding the duration of Crown Land leases?

What improvements can be made regarding the process for obtaining longer term leases for Crown land.

## Information request 4.5

The Commission requests additional feedback on the experience of proponents and regulators on several issues related to accessing national parks and ideas for improvements including:

- the functionality of park management plans;
- the efficiency of the public consultation process;
- the effectiveness of the current process for co-management of parks; and
- the monitoring of tour operator accreditation.

## Information request 4.6

The Commission seeks additional information on Crown lands of interest to agritourism and nature-based tourism businesses that are incorrectly zoned and on the opportunities being foregone.

In addition, the Commission asks how long it took to resolve past issues.

### **Information request 4.7**

The Commission requests additional feedback regarding the experiences of local councils trying to develop coastal infrastructure to accommodate increased tourism demand.

In addition, the Commission would like to understand the respective roles and responsibilities of the Coastal Protection Board, local councils and other agencies for maintaining and protecting the coastal environment.

### **Information request 4.8**

The Commission requests additional feedback regarding the regulation of tourism activity on pastoral lands and in the outback region. That is:

- Are the regulations sufficient to protect the environment and businesses operating in these locations?
- How effectively are regulations enforced?
- Is it clear who is responsible for enforcing the regulations?

### **Information request 5.1**

The Commission requests feedback from regulators and businesses regarding:

- additional issues relating to accessing meat processing facilities by agritourism businesses in South Australia;
- the experience of businesses that have attempted to set up meat processing facilities in South Australia (including mobile abattoirs), including guidance from and interaction with regulators; and
- how do South Australia's regulatory requirements for mobile meat processing differ from other jurisdictions?

### **Information request 5.2**

What has been the experience of tourism businesses that have attempted to use bore or rainwater for commercial purposes, including the guidance received from the regulator? Please provide details.

### **Information request 5.3**

The Commission requests feedback on:

- whether the Commission's characterisation of issues related to processing and serving fish on charter boats is accurate;
- the experiences of tourism operators who have attempted to obtain fish processing licences; and
- the processes and mechanisms that are available for businesses to provide feedback to the regulators.

#### **Information request 5.4**

Is the Commission's characterisation of liquor licensing as applied to nature-based and agritourism operators accurate?

Are there any other liquor licensing issues relevant to the tourism sector?

#### **Information request 5.5**

The Commission requests more information regarding nature-based and agritourism business interaction with SafeWork SA.

Are there any other workplace, health and safety (WHS) issues relevant to the tourism sector?

#### **Information request 6.1**

Does businesses experience match the processes and requirements set out in the Road Sign Guidelines?

Are timeframes for installing signage reasonable? Are these timeframes achieved in practice? Could public reporting against timeframes help to improve outcomes for tourism businesses?

What alternatives exist to Department for Infrastructure and Transport (DIT) installing the signage, including private supply?

#### **Information request 6.2**

Is the Commission's characterisation of the requirements for water and sewerage infrastructure accurate? Are there any regulatory requirements the Commission has missed?

Are timeframes for approval reasonable and is sufficient guidance provided by regulators? Are these timeframes achieved in practice? How can these times be reduced?

Are infrastructure costs placed on businesses reasonable?

How could the requirements placed on businesses be improved while still protecting public health and the environment?

#### **Information request 6.3**

Is the Commission's characterisation of the requirements for use of, upgrades and development of boating infrastructure for tourism activities accurate?

Are there any barriers to the use of, upgrading or developing new boating infrastructure for tourism activities that the Commission has not discussed? How can these barriers be evaluated?

#### **Information request 7.1**

Is the Commission's characterisation of requirements for road transport services accurate? Are there any other regulatory issues affecting road transport for tourism?

How can the regulatory requirements for road transport services be improved? Relevant matters include:

- differences in regulation faced by businesses in the regions compared to metropolitan Adelaide;

- how to reduce barriers faced by businesses near the boundaries of the metropolitan area;
- the appropriateness of the metropolitan area definition and alternate definitions?
- whether accreditation and renewal processes can be improved; and
- whether any regulatory functions can be delegated to qualified individuals or organisations, especially in the regions.

### **Information request 7.2**

Is the Commission's characterisation of the requirements for accommodation businesses accurate? Are there any other regulatory issues accommodation businesses face?

Is there consistency across local governments in enforcing operational requirements on accommodation businesses? How is this consistency monitored? What reporting requirements are in place?

How can the regulatory requirements for tourist accommodation businesses be improved?

### **Information request 8.1**

The Commission requests that regulators provide documentation of training programs or guidance material that is used to train or coach employees on working with businesses proactively to help develop applications.

The Commission also requests additional feedback from businesses on their experiences in working with regulators on innovative proposals both from a positive and negative perspective.

### **Information Request 8.2**

The Commission requests feedback on the following options for improving coordination between regulators:

- Option 1: Designate a lead coordinator agency for nature-based tourism and a lead coordinator for agritourism initiatives whose role is to coordinate regulatory approvals. This role would be supported through a memorandum of understanding (MoU) between relevant regulators and senior committee of all relevant regulators.
- Option 2: Build on Option 1 by authorising Primary Industries and Regions South Australia (PIRSA), as part of its accountability for regional development, to facilitate regulatory coordination in its regions, incorporating local regulators and local government.
- Option 3: Establish a lead regulator model for nature-based tourism and agritourism, drawing on the experience of the Department for Energy and Mining (DEM) as lead regulator

### **Information request 8.3**

The Commission requests that agencies with regulations most affecting nature-based tourism, as identified at the beginning of this chapter, provide more feedback on their internal pathways and guidelines for reviewing non-standard proposals.

The Commission also requests additional feedback from businesses that have recently tried to develop new or innovative proposals regarding the feedback and guidance they received from South Australian agencies and their experience of decision-making by those agencies.

#### **Information request 8.4**

The Commission seeks feedback from nature-based tourism and agritourism businesses and their regulators regarding digitally enabled improvements to regulatory requirements and processes, especially those that make it easier to do business with the regulators.

#### **Draft Recommendation 8.1**

The Commission recommends that regulators relevant to nature-based tourism and agritourism have mechanisms, such as external reference groups, for consulting with stakeholders on regulatory matters and practice.

#### **Draft Recommendation 8.2**

The Commission recommends that regulators relevant to nature-based tourism and agritourism, in conjunction with their regulated businesses:

- develop target timeframes for approvals and measures for efficient processes; and
- publicly report their performance against these targets.

#### **Draft Recommendation 8.3**

The Commission recommends that regulators relevant to nature-based tourism and agritourism undertake periodic reviews of past approval applications, including unsuccessful applications, to identify possible changes to regulatory practice to improve success rates and reduce early cessation of unviable applications.

#### **Draft Recommendation 8.4**

The Commission recommends that regulators relevant to nature-based tourism, in conjunction with their regulated businesses, review and improve the clarity and accessibility of their approval guidelines within 12 months.

#### **Draft Recommendation 8.5**

As the government has emphasised the development of nature-based tourism, the Commission recommends that

- the Department for Environment and Water (DEW) provide consolidated guidance to prospective nature-based tourism businesses covering all the relevant regulatory requirements, including those from regulators outside the portfolio, and evaluate delivering this guidance through a business concierge.
- Primary Industries and Regions South Australia (PIRSA) provides similar support to agritourism.

#### **Draft Recommendation 8.6**

The Commission recommends that the government's digital strategy incorporate the priorities of the tourism sector in regional South Australia by prioritising the roll-out of digital services in those agencies that are most involved with nature-based tourism and agritourism, and regional South Australia.

## **Draft Recommendation 8.7**

That the remit of the SA Health food safety regulation function be expanded to:

- build on the regulatory capability of local government, with specific attention to environmental health officers, by providing on-going professional development advice and support;
- establish a central and independent process for receiving feedback on, and reviewing, the enforcement of food safety regulations by local government, and responding to complaints from businesses; and
- provide advice to local government on improving their regulatory practice arising from analysis of the feedback.

## Definitions

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Agritourism	commercial activities at a working agricultural property conducted for the enjoyment of visitors that generate additional income for the owner
Crown Land	public land owned and administered by the state, typically set aside for various community and government purposes. It includes vacant land and is generally not a freehold title.
Nature-based tourism	leisure trips undertaken largely or solely for the purpose of enjoying natural attractions and engaging in a variety of nature-based activities
Value chain	the entire sequence of activities or parties that provide or receive value in the form of products or services

## Acronyms

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ABLIS	Australian Business Licence Information System
BCA	Building Code of Australia
CBA	Commonwealth Bank of Australia
CBS	Consumer and Business Services
CLMP	Community Land Management Plan
CoH	Commissioner of Highways
CTO	Commercial Tour Operator
CTP	Compulsory Third Party
CWMS	Community Wastewater Management System
DEM	Department for Energy and Mining
DEW	Department for Environment and Water
DIT	Department for Infrastructure and Transport
EPA	Environment Protection Authority
GDP	Gross Domestic Product
GSP	Gross State Product
MoU	Memorandum of Understanding (MoU)
NCC	National Construction Code
NPW	National Parks and Wildlife
NVC	Native Vegetation Council
PIRSA	Primary Industries and Regions South Australia
SA	South Australia
SAPC	South Australian Productivity Commission
TICSA	Tourism Industry Council of South Australia
TRA	Tourism Research Australia
WHS	Workplace Health and Safety

# 1. Introduction

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## 1.1 Purpose of the Review

This review is part of the Modern Regulation project which aims to assist the South Australian Government to make the state's regulatory system a source of comparative advantage while not compromising the public interests protected through existing regulation.

The pandemic has particular significance for this regulatory review. Tourism as a whole has been very adversely affected in South Australia and nationally, especially those parts directly exposed to the cessation of international tourist travel. At the same time, while total expenditures have fallen sharply, domestic consumers have switched their spending towards local tourism offerings. This regulatory review is timely in its potential contribution to ensuring South Australia's regulatory practices facilitate an efficient recovery and future development of the tourism industry.

The Commission is asked to recommend actions that the South Australian Government could consider that would:

- improve the efficiency of the operations and the performance of the relevant state agencies:
  - in ways that cut the costs of regulation on the regulated parties and make it easier to do business in the state; and
  - having regard to the regulating agencies' mandates and the associated public interests
- improve the adaptability and resilience of the regulatory process and encourage timely and effective outcomes including in relation to unusual or innovative development proposals of economic value to the state.

Tourism is typically defined from the perspective of the consumer. This leads to some conceptual challenges about defining what a tourism business is (and is not) and to what extent the business model for an individual business depends on tourists. As a result, the nature of activities undertaken by tourism businesses in South Australia is highly variable, with the regulations relevant to each business being similarly varied. For the purpose of this review, a tourism-oriented business is a business that relies significantly on tourists. The Terms of Reference for this review require the Commission to focus on nature-based tourism and agricultural-based tourism (agritourism).

The Commission notes that there are currently several state-level strategies and plans that support these areas, including the following:

- South Australian visitor economy sector plan 2030;<sup>2</sup>
- South Australian regional visitor strategy 2025;<sup>3</sup>

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<sup>2</sup> South Australian Tourism Commission, *The South Australian Visitor Economy Sector Plan 2030* (2019) <<https://tourism.sa.gov.au/strategies/strategies/tourism-plan-2030>>.

<sup>3</sup> Regional Visitor Strategy Steering Committee, *South Australian Regional Visitor Strategy* (2021) <[https://tourism.sa.gov.au/media/14iowsqt/sa\\_rvs\\_2025\\_final.pdf](https://tourism.sa.gov.au/media/14iowsqt/sa_rvs_2025_final.pdf)>.

- nature-based tourism strategy;<sup>4</sup>
- nature-based tourism co-investment fund (\$5 million);<sup>5</sup>
- tourism industry development fund (\$20 million);<sup>6</sup> and
- regional growth fund (\$150 million over 10 years).<sup>7</sup>

These plans include objectives which are directly relevant to this review, for example the nature-based tourism strategy states the state government will create an environment where nature-based tourism businesses can flourish. They also involve some financial assistance to industries. While this is an important part of the context of the South Australian Government's interactions with tourism operators, financial assistance is out-of-scope of this review.

The focus of this review is primarily on practical matters of regulatory practice relating to the regulations affecting the nature-based and agritourism sectors which is driven by a number of factors including:

- the recent state planning reforms, including those changes affecting the tourism industry, have just been implemented making an evaluation of those changes premature; and
- there is a concurrent review into regulation and practice governing the referrals processes that form an integral part of the state's development approval system.

National regulatory schemes of which South Australia is part and where change requires the agreement of other jurisdictions are excluded from this review. That said, the Commission may highlight areas that would benefit from increased cooperation between jurisdictions based on feedback from external stakeholders. State legislation and regulatory schemes which involve local government are in-scope. The Commission is to have regard to the South Australian Growth State initiative and other relevant state and national policies, reviews and reforms.

## 1.2 Methodology

The Commission has a standard process for conducting reviews and inquiries which is described on our website (see [Inquiry Process](#)) and is being followed in this review. As this review forms part of the Modern Regulation project, it will draw on the regulator performance data collected by the South Australia Regulatory Framework inquiry and the Development Referrals regulatory review instead of that data being collected independently.

The Commission takes the view in approaching this task that:

- Regulations are in place to protect a public interest, which is done in practical terms by regulators.

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<sup>4</sup> Department of Environment, Water and Natural Resources and South Australian Tourism Commission, *Nature Like Nowhere Else: Activating Nature-based Tourism in South Australia* (2016) <<https://tourism.sa.gov.au/media/jmrhijkl/nature-based-tourism-strategy.pdf>>.

<sup>5</sup> National Parks and Wildlife Service South Australia, *Nature-based Tourism Co-investment Fund* <<https://coinvest.parks.sa.gov.au/>>.

<sup>6</sup> South Australian Tourism Commission, *Tourism Industry Development Fund*, <<https://tourism.sa.gov.au/support/tourism-industry-development-fund>>.

<sup>7</sup> Department of Primary Industries and Regions, *Regional Growth Fund*, (10 June 2020) <[https://www.pir.sa.gov.au/regions/regional\\_growth\\_fund](https://www.pir.sa.gov.au/regions/regional_growth_fund)>. Note that this is part of the Recharging our Regions policy and includes support to all businesses in regions including those associated with tourism.

- Businesses establish, expand and diversify their operations by profitably employing people and investing capital. In doing so, they take on risk having regard to the risk and reward dynamics in their activities.
- It is not the state's role to take on risks that belong to business; nor is it the role of businesses to take on risks that properly belong to government.

Regulators are most effective when they deliver benefits to the community that justify the costs of regulation (see Figure 1.1). The benefits of regulation include:

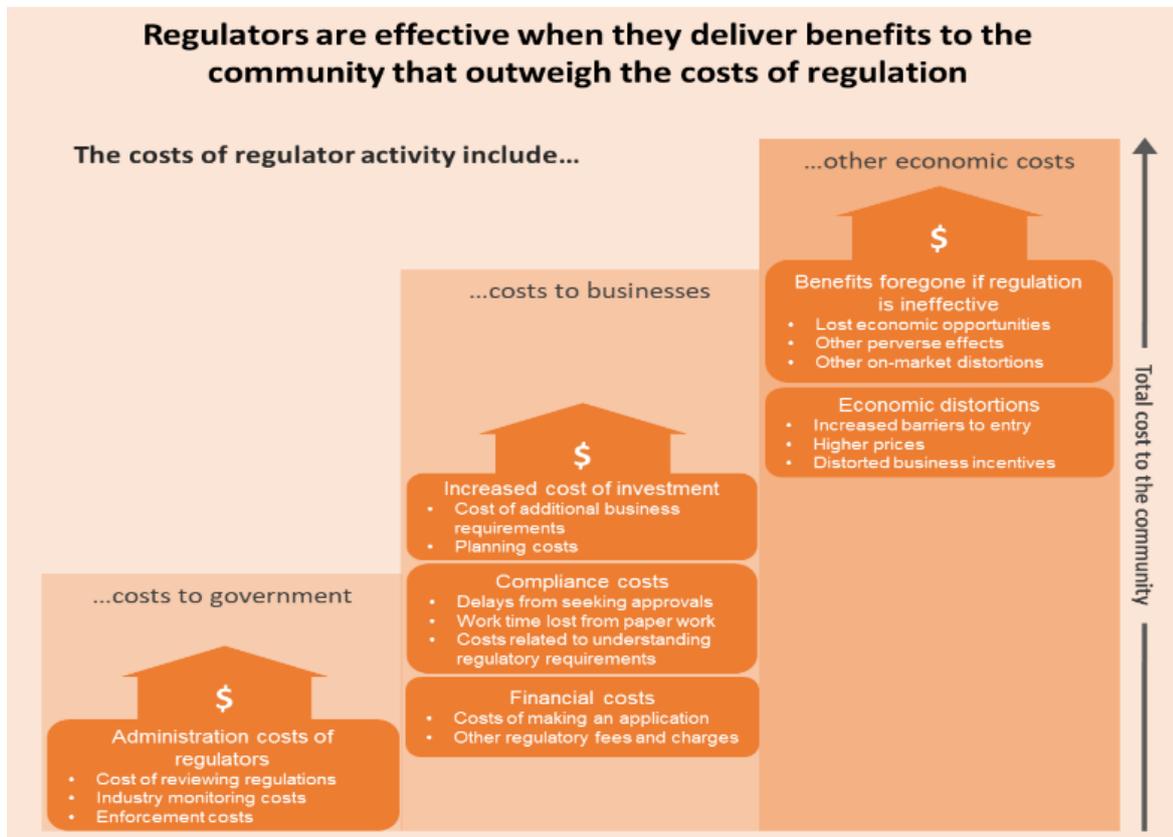
- more competitive and thereby productive and efficient markets;
- better information for businesses and consumers;
- public health and safety;
- environmental amenity;
- more equitable social outcomes; and
- greater access to essential services (e.g. water and telecommunication infrastructure).

On the other hand, regulation can also incur costs to government, businesses and the community. For example, businesses can face increased regulatory costs related to market entry and new investment, or as part of ongoing operations. Specific costs include:

- direct payments to government (e.g. application and licensing fees); and
- the costs of complying with regulations (e.g. time and money spent on paper work or getting legal advice).

Inefficiencies can arise if regulators (and regulations) fail to deliver their expected benefits, or if the requirements they place on regulated entities are too costly or unnecessarily burdensome. Other economic costs can also be incurred from the side effects of regulation, including those on market entry and competition.

Figure 1.1 Cost of Regulator Activity



Source: Adapted from Productivity Commission (Cth), *Identifying and Evaluating Regulation Reforms: Research Report (Commonwealth of Australia, 2011), 12*; W Marneffe & Vereek, 'The Meaning of Regulatory Costs' (2011) 32(341) *European Journal of Economics*.

Accordingly, it is essential that the review receives feedback regarding the experience and practice of both business stakeholders and regulators in its independent work of identifying recommendations and providing advice to the South Australian Government.

The review team has focused on consulting with external stakeholders and regulators and developing case studies to identify issues central to the tourism industry in two areas:

- how the regulations affect businesses establishment or set-up costs; and
- how they affect a business's ongoing operations.

The case studies map the experience of external stakeholders to the documented processes within regulators to identify opportunities for greater efficiency and net benefits — that is achieving the objective of the regulations while reducing impediments to the development and growth of tourism businesses. In the development of the draft report, the Commission has met with over 50 groups and individuals including tourism-oriented businesses, regulators and advocacy groups.

The Commission also conducted a survey of tourism-oriented businesses with the help of the Tourism Industry Council of South Australia (TICSA). The survey sought feedback from tourism businesses on common issues that could be followed up with regulators and other stakeholders. The key issues were subsequently discussed with both stakeholders and regulators.

The Commission has concentrated on the more common issues raised by stakeholders and those issues that can be addressed by the Commission's recommendations.

### **1.3 Overview of Business Stakeholder Issues**

The following overview summarises the common issues raised in consultations with business stakeholders and other research undertaken by the Commission. They are described and addressed in more detail in Chapters 3 through 7.

#### **1.3.1 In-scope Issues**

##### ***More timely government decisions***

The time required by regulators either to process development applications, or issue licences was a consistent theme in discussion with all stakeholder groups. Stakeholders did not believe that government regulators understood the importance of quick decisions to business (whether positive or negative).

##### ***Changing the culture of regulators***

Business stakeholders tended to perceive that some regulators were unwilling to work with them to help develop strong applications and deal with risk issues. Businesses wanted more help from agencies.

##### ***Government regulators working together***

Business stakeholders expressed some frustration in having to provide the same information to different and in some cases, the same regulators, in relatively short periods of time. Businesses would like to see some sharing of common information between regulators to reduce the administrative burden on business.

There was also a perception that the regulators were only interested in their own processes which sometimes complicated getting the necessary approvals for the activity in question. Business sought better coordination between regulators to ensure the approval process is as efficient as possible, suggesting options like a case manager to guide an application through the full-approval process.

##### ***Facilitating new or innovative proposals***

There were concerns about the capacity of regulators to consider new or innovative proposals in a timely manner. The perception was that if the business wanted to develop a new activity or provide a service in an innovative manner, regulators took a very risk averse approach.

Stakeholders also found that communication with regulators on the status of applications could be difficult. In addition, the time involved in obtaining decisions for these types of proposals was often too long.

##### ***Greater clarity about approval guidelines***

Businesses would like clearer guidelines as to the necessary conditions for receiving approval for a development or licence. This is particularly relevant given the structure of the tourism industry in South Australia. As most businesses are relatively small, they do not have the same capacity as larger businesses to develop business proposals.

### **Local government regulatory capability**

There were some concerns regarding the consistency with which regulations are administered by local government. Businesses have indicated that the standards associated with some regulations seem to be interpreted differently by individual local governments and, as a result, the same business may have to operate differently in separate locations even though the same standards are meant to apply.

### **More use of online applications**

While there has been progress in developing online applications for the various development and licence approvals required to operate a business, some application processes are still paper-based and some require business to attend government centres in person. Stakeholders would like to see more progress in moving the application and approval process online, consistent with the state's emphasis on digitising government services.

### **1.3.2 Out-of-scope Issues**

Participants raised several issues that, while very important to the tourism sector, are outside the terms of reference for this review. The Commission notes the issues and draws them to the attention of the South Australian government.

#### **Skill shortages**

A consistent theme arising from the Commission's stakeholder consultation was the persistent shortage of labour in the regions. The Commission notes that this is an issue that impacts all sectors including tourism. Nature-based and agritourism businesses, particularly in the regions, regularly rely on transitory workers due to local labour shortages. Labour shortages have become critical issues in the regions due to the COVID-19 pandemic travel restrictions. This is highlighted in the submission from the nature-based tour operator Wilderness Escape:

*We'd like to see outdoor leaders and tour guides on the skills shortage list and enabling working holiday visa people who secure work to be able to get a visa in this area easier. The past year has been difficult to attract and retain staff and there is a shortage of skilled staff in the outdoor sector. To get staff upskilled to the level that is needed is a considerable cost to the business. Some of the ratios for qualified staff to participant are restrictive and make it harder for our experiences to be viable. (Wilderness Escape submission, p. 3)*

The Commission notes that there are efforts underway to address this issue including the Regional Workforce review by Regional Development South Australia in June 2021. This review proposed the following recommendations to address the workforce issues in regional South Australia:<sup>8</sup>

- increase housing supply;
- create employment readiness pathways;
- improve regionally based workforce resources;
- increase business human resources capacity and capability; and
- reform migration policy.

The Commission also notes that the 2021-22 State Budget includes initiatives to address labour shortages in the regions. This includes investing \$8.3 million over 2020-21 and

<sup>8</sup> <<https://www.rdaadelaide.com.au/wp-content/uploads/2021/06/Regional-Workforce-Policy-Paper-Summary-June2021.pdf>>

2021-22 'to address labour shortages facing regional employers in key sectors, resulting from restrictions on foreign workers imposed due to COVID-19 and includes the establishment of a temporary seasonal worker's regional quarantine facility in Paringa'.<sup>9</sup>

### **Insurance**

The Commission heard that there were issues related to obtaining appropriate and affordable public liability insurance for adventure tourism operators. For example, the submission from the nature-based tour operator Wilderness Escape stated:

*It is increasingly difficult to find suitable, affordable insurance as an outdoor, adventure tourism, edutourism and corporate tourism tour operator. It would be great to see support around insurance from government. (Wilderness Escape submission, p. 2)*

The increasing difficulty in obtaining insurance for adventure tourism operators has been identified as a national phenomenon.<sup>10</sup> The sector has been advocating for a system similar to that of New Zealand which has a universal system of no-fault risk underwritten by the national government. Under this system, employers and stakeholders pay levies to the New Zealand Accident Compensation Corporation<sup>11</sup> which manages the process.

In addition, some stakeholders mentioned that hospitality businesses that do not own their premises (particularly hotels) face challenges obtaining insurance and with ballooning insurance premiums.<sup>12</sup>

### **Barriers to digital uptake**

Several stakeholders based in remote and rural South Australia discussed the difficulties accessing digital technology due to poor internet access. The *South Australian Regional Visitor Strategy 2020* also identifies telecommunication blackspots in regional South Australia as a key issue for business operators and visitors.<sup>13</sup>

The Commission notes that the Australian Government Department of Infrastructure, Transport, Regional Development and Communications is currently funding 132 place-based telecommunication infrastructure projects across regional, rural and remote Australia through the Regional Connectivity Program.<sup>14</sup>

In addition, a Regional Telecommunications Independent Review was announced in June 2021 by the Australian government which 'will examine the adequacy of telecommunication services in regional, rural and remote Australia' and will consider issues including:<sup>15</sup>

- the impact of government policies and programs;
- insights from COVID-19;
- emerging technologies;

<sup>9</sup> Further information available at <<https://www.statebudget.sa.gov.au/our-budget/regions>>.

<sup>10</sup> Reporting on this issue can be found at <<https://www.abc.net.au/news/2020-06-10/adventure-tourism-businesses-close-as-insurers-refuse-coverage/12333032>> and at <<https://www.insurancebusinessmag.com/au/news/breaking-news/public-liability-withdrawal-leaving-tourism-operators-vulnerable-226563.aspx>>

<sup>11</sup> <<https://www.acc.co.nz/>>

<sup>12</sup> Commission's consultations with the Australian Hotels Association, SA.

<sup>13</sup> <<https://tourism.sa.gov.au/media/gymodaud/south-australian-regional-visitor-strategy.pdf>>

<sup>14</sup> Additional information about the Regional Connectivity Program, including funding rounds, amounts and the 2018 Regional Telecommunications Independent Review can be found at: <<https://www.communications.gov.au/what-we-do/internet/regional-connectivity-program>>

<sup>15</sup> Further information is available at: <<https://www.rtirc.gov.au/>>

- service reliability;
- regional development; and
- improving coordination between tiers of government.

## **1.4 Structure of the Report**

This draft report begins in Chapter 2 with an overview of the South Australian tourism sector, having regard to trends, composition and location and the impact on it of the pandemic and policy actions.

Chapter 3 sets out the regulatory framework governing tourism activities that are the subject of this review. The scope of the framework is broad because tourism activity is part of many sectors of the economy.

The following chapters address relevant aspects of the regulatory framework in detail: Chapter 4 considers land use regulations; Chapter 5 addresses regulations that are relevant to operating, expanding and diversifying tourism businesses; Chapter 6 considers access to public infrastructure; and Chapter 7 addresses relevant transport and accommodation regulations. Each of these chapters makes requests for further information to enable the Commission's task to be completed.

Chapter 8 provides the Commission's conclusions and draft recommendations.

The Commission looks forward to consulting with stakeholders on its draft report.

## 2. Overview of the tourism sector in South Australia

### 2.1 Introduction

This chapter provides an overview of the tourism sector in South Australia including its characteristics and contribution to the state. Where possible time trends and interjurisdictional comparisons are also provided.

Tourism is a small but significant part of South Australia's economy, accounting for 3.2 per cent of the gross state product (GSP) in 2018-19 (Table 2.1). By 2019-20, this had fallen to 2.8 per cent, reflecting the impact of the COVID-19 pandemic and the resulting policy measures on the sector. As Table 2.1 indicates, the trend in South Australia's is consistent with the experience of other jurisdictions across Australia. Nationally, the tourism sector's direct share of the gross domestic product (GDP) was 3.1 per cent in 2018-2019 but declined to 2.5 per cent by 2019-20.

*Table 2.1: Tourism's direct share of GSP (per cent) by state, territory and Australia, 2006-07 to 2019-20*

	NSW	Vic	Qld	SA	WA	Tas	NT	ACT	Australia
Per cent (%)									
2006-07	2.9	2.7	4.2	<b>2.8</b>	2.4	4.8	6.9	3.0	3.1
2007-08	2.9	2.7	4.2	<b>2.6</b>	2.3	4.5	5.7	2.9	3.1
2008-09	2.8	2.7	3.7	<b>2.8</b>	2.0	4.4	5.7	2.5	2.9
2009-10	2.7	2.6	3.6	<b>2.9</b>	1.9	4.8	5.4	3.0	2.8
2010-11	2.7	2.6	3.4	<b>2.7</b>	1.7	4.0	4.4	2.4	2.7
2011-12	2.6	2.7	3.7	<b>2.6</b>	1.7	4.2	4.3	2.6	2.7
2012-13	2.7	2.8	3.9	<b>2.6</b>	1.8	4.5	4.0	2.7	2.8
2013-14	2.8	2.8	3.7	<b>2.8</b>	1.9	4.4	4.1	2.6	2.9
2014-15	2.8	2.8	3.6	<b>3.2</b>	2.3	4.5	4.6	3.0	2.9
2015-16	2.8	2.9	3.9	<b>3.1</b>	2.6	4.5	4.7	2.8	3.1
2016-17	2.8	3.0	3.6	<b>3.0</b>	2.5	5.3	4.6	2.9	3.0
2017-18	3.0	3.1	3.8	<b>3.1</b>	2.1	5.1	4.0	3.4	3.1
2018-19	3.0	3.3	3.8	<b>3.2</b>	2.1	5.4	4.2	3.0	3.1
2019-20	2.4	2.6	3.2	<b>2.8</b>	1.7	4.6	3.3	2.2	2.5

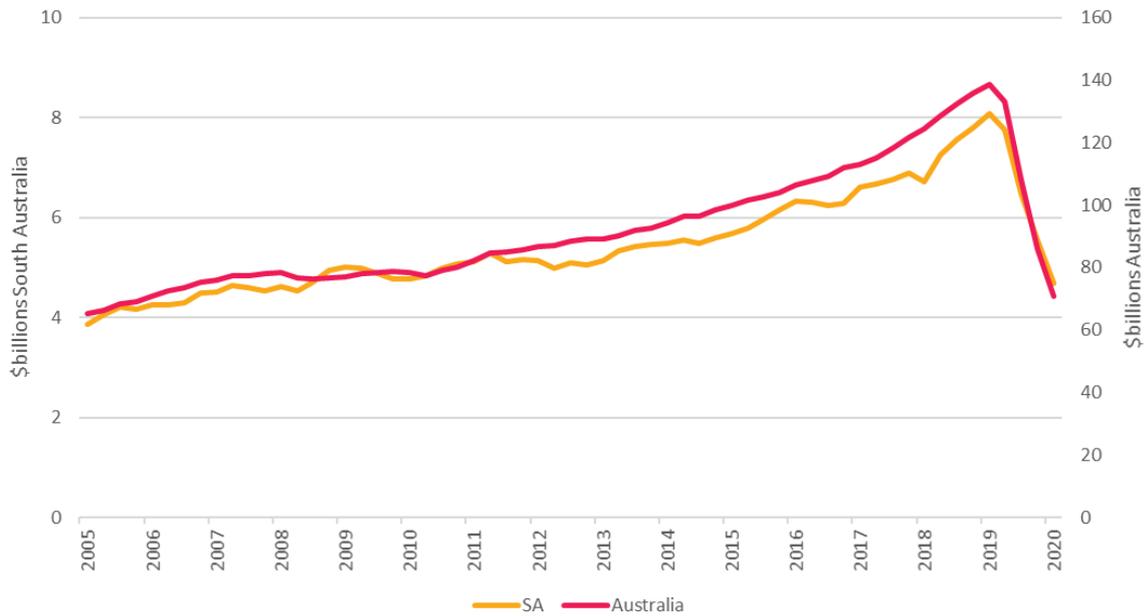
Source: *Tourism Research Australia (2021)*.

Figure 2.1 illustrates the trend in total tourism spending in South Australia and Australia for the period 2005 to 2020. Tourism expenditure in South Australia has grown steadily over the last decade following the national trend. However, there was a large drop in tourism spending during 2020, reflecting the impact of the COVID-19 pandemic. Total annual tourism expenditure in South Australia reached a high of \$8.1 billion in 2019.<sup>16</sup> By 2020, South Australia's total annual tourism expenditure had fallen to \$4.7 billion, reflecting a nearly 42 per cent drop from the previous year, but less than the nearly 50 per cent fall in tourism expenditure for Australia as a whole over the same period.

<sup>16</sup> *Tourism Research Australia, Tourism Satellite Accounts 2019-20 (2020)*.

While the full extent of the impact of the COVID-19 pandemic on the tourism sector is yet to be determined, border closures and other travel restrictions have already resulted in significant contraction of, and disruption to, the sector.

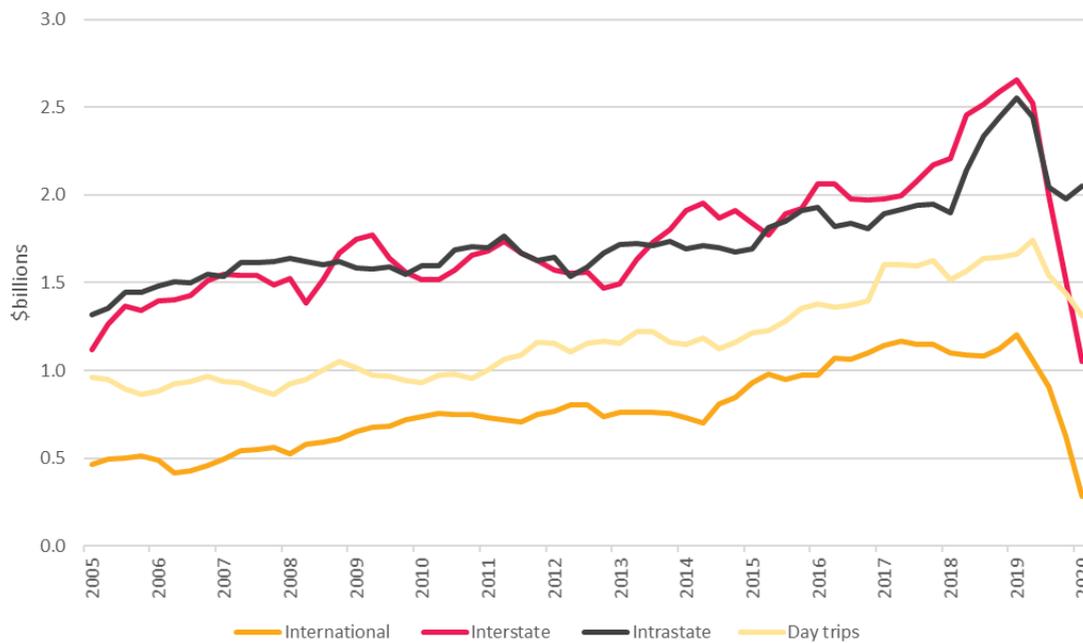
Figure 2.1: Total annual tourism expenditure, (\$bn), South Australia and Australia, 2005-20.



Source: Tourism Research Australia (2021)

Figure 2.2 provides a breakdown of the total tourism expenditure by type for South Australia for the period 2005 to 2020. International tourism expenditure, the smallest component has been steadily increasing over this period until December 2019, after which the impacts of the COVID-19 pandemic including restricted international travel are reflected in its sharp decline. The top two expenditure categories of interstate and intrastate travel continued to grow till December 2019. While both these types of expenditure suffered a decline in December 2019, it appears that intrastate expenditure had begun to recover by December 2020.

Figure 2.2: Annual tourism expenditure by type, South Australia (\$bn), 2005-20



Source: Tourism Research Australia (2021)

Notwithstanding the absolute decline in total tourism expenditure in South Australia during the COVID-19 pandemic in 2019-20, data from Tourism Research Australia (TRA) shows that the state's share of total tourism expenditure during the past decade has held steady, fluctuating around 6 per cent. By December 2020, the state's share of national total tourism expenditure stood at 6.6 per cent.<sup>17</sup>

Table 2.2, sourced from the Tourism Industry Council of South Australia (TICSA),<sup>18</sup> shows that the state's share of tourism expenditure increased slightly across all categories. For example, while the total expenditure in South Australia declined by 42 per cent between 2019 and 2020 (column a), its share of total national tourism expenditure increased by 5.8 per cent (column e). International tourism expenditure declined by nearly 77 per cent and interstate expenditure declined by 61 per cent during the same period (column a). The state's share (column e) on the other hand increased by 2.7 per cent and 7.1 per cent respectively during this period. This outcome shows that South Australian tourism expenditure is less dependent on international tourists than the rest of Australia. The share of visitors to South Australia stood at 7.9 per cent in 2020, reflecting a 6.8 per cent increase from the previous year (column d).

<sup>17</sup> Tourism Research Australia, State Tourism Satellite Account 2018-19 (2020).

<sup>18</sup> Tourism Industry Council of South Australia (TICSA) report, *Tourism Barometer*.

Table 2.2: Expenditure and yield by type, South Australia, 2020.

	Expenditure (\$m)	Yield (\$/visitor)	Yield (\$/night)	Share of visitors (per cent)	Share of expenditure (per cent)
	(a)	(b)	(c)	(d)	(e)
<b>Day trip</b>	<b>\$1,310</b>	<b>\$98</b>		<b>8.1%</b>	<b>7.5%</b>
Annual % change (2019-2020)	-21.1%	1.0%		6.9%	6.3%
3-year trend % change	-6.5%	-5.2%		7.2%	7.8%
10-year trend % change	3.5%	3.7%		6.8%	6.0%
<b>Intrastate</b>	<b>\$2,049</b>	<b>\$473</b>	<b>\$155</b>	<b>7.2%</b>	<b>6.2%</b>
Annual % change (2019-2020)	-19.8%	-5.0%	-10.9%	6.3%	5.9%
3-year trend % change	2.7%	0.5%	-0.6%	6.0%	5.4%
10-year trend % change	2.5%	-3.5%	-4.0%	6.4%	6.5%
<b>Interstate</b>	<b>\$1,049</b>	<b>\$919</b>	<b>\$155</b>	<b>8.4%</b>	<b>8.2%</b>
Annual % change (2019-2020)	-60.5%	2.5%	-22.9%	7.7%	7.1%
3-year trend % change	-19.1%	3.4%	-3.8%	7.4%	6.6%
10-year trend % change	-3.6%	1.4%	-5.6%	7.3%	7.0%
<b>International</b>	<b>\$280</b>	<b>\$2,645</b>	<b>\$96</b>	<b>6.2%</b>	<b>2.5%</b>
Annual % change (2019-2020)	-76.8%	7.0%	-12.7%	5.6%	2.7%
3-year trend % change	-37.4%	2.7%	-2.9%	5.7%	2.8%
10-year trend % change	-9.2%	10.7%	6.3%	6.9%	2.9%
<b>Total</b>	<b>\$4,688</b>	<b>\$248</b>	<b>\$205</b>	<b>7.9%</b>	<b>6.6%</b>
Annual % change (2019-2020)	-42.0%	-11.5%	-2.6%	6.8%	5.8%
3-year trend % change	-10.8%	-3.0%	2.3%	6.9%	5.8%
10-year trend % change	-0.2%	-0.7%	1.0%	6.8%	6.1%

Source: Tourism Industry Council of South Australia, Ticsa Tourism Barometer (March Quarter 2021), 11.

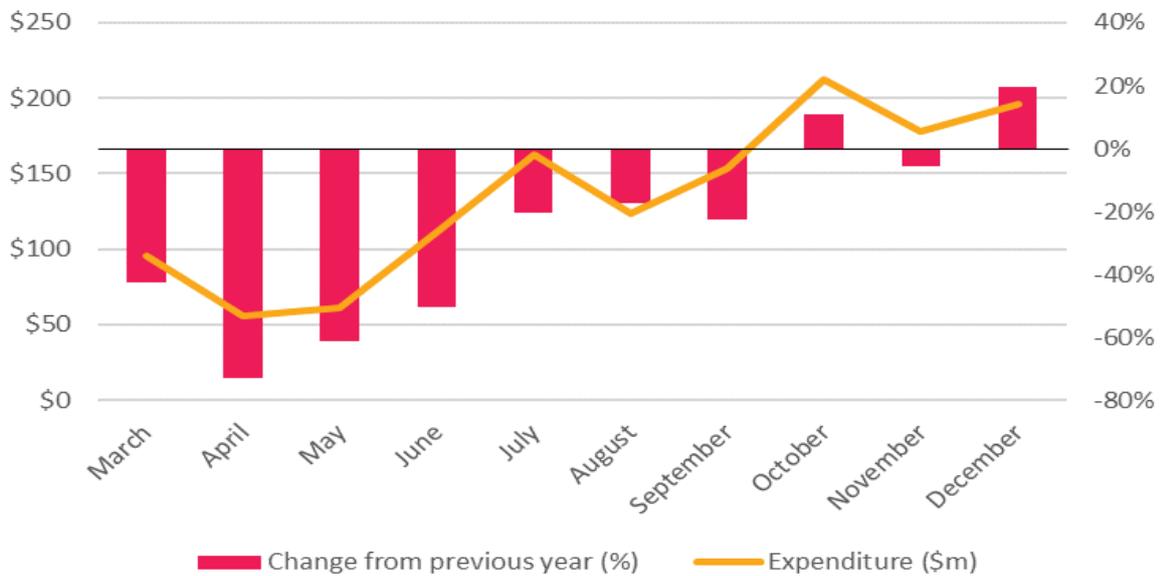
Note: Year ending in December. Market share represents the historical market share currently for the previous year and from three years ago.

In response to the closures of domestic and international borders, governments, including South Australia and the Australian Government have sought to promote domestic tourism through increased marketing, voucher schemes and air travel subsidies. These actions, combined with domestic residents being unable to travel overseas, have resulted in a partial replacement of overseas tourists by domestic tourists.

Being less dependent on international visitors appears to have contributed to regional South Australia being less severely affected by COVID-19 than Adelaide. Since April 2020, regional South Australia has seen a gradual recovery in domestic overnight tourism expenditure, as shown in Figure 2.3. That said, Table 2.2 also shows the impact of having fewer international tourists as the dollars per visitor is much higher for the international tourist group; although, the expenditure per night is lower.<sup>19</sup>

<sup>19</sup> The Commission notes that regional tourism expenditure data comes from the national visitor survey and may not include all expenditure.

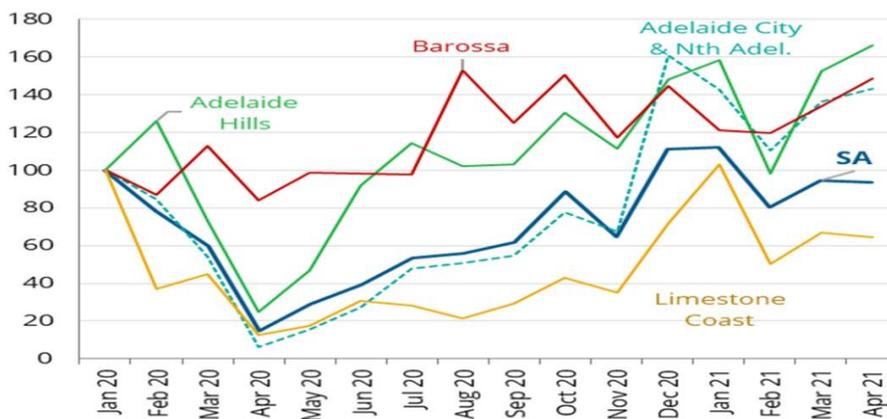
Figure 2.3: Monthly domestic overnight tourism expenditure and per centage change from previous year, regional South Australia, 2020



Source: Tourism Research Australia (2021)

Figure 2.4, based on data sourced from the Commonwealth Bank using customer credit and debit card spending, shows the trends in domestic travel and tourism spending in regional South Australia indexed to January 2020.<sup>20</sup> Compared to March 2020, domestic travel and tourism spending was higher in all the regions in March 2021, with the Barossa and Adelaide Hills regions performing the best, noting that this data only includes spending by customers using one specific electronic payment method.

Figure 2.4: Domestic travel and tourism spending trends in regional South Australia, January 2020 - April 2021



Source: Chart based on spend by Commonwealth Bank of Australia (CBA) customers through consumer credit and debit cards.

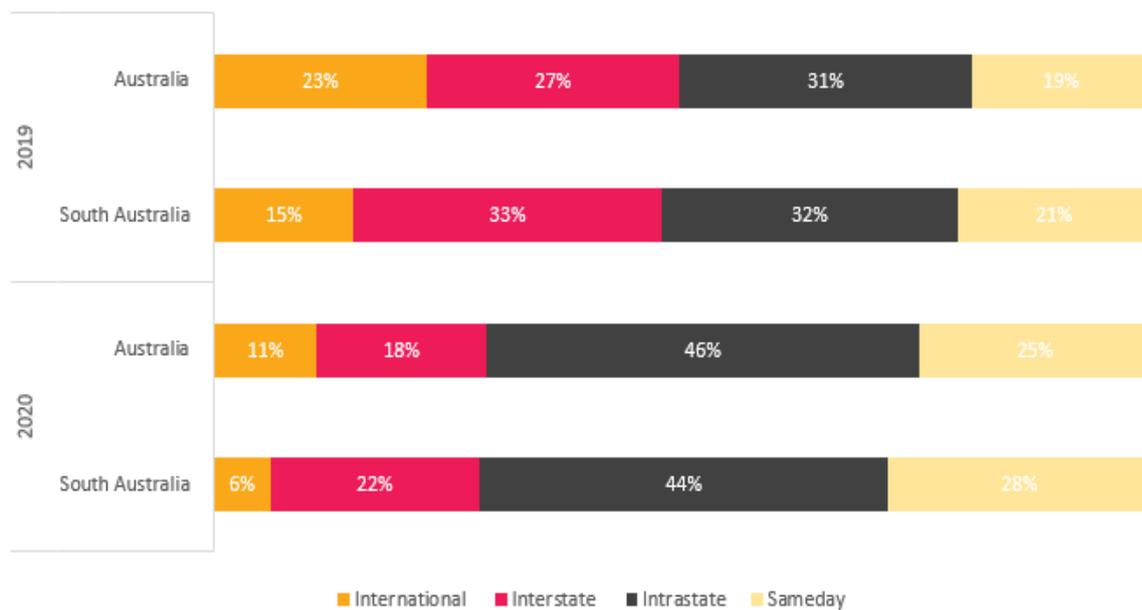
Disclaimer: This confidential information has been made available to state and territory governments for the sole purpose of assisting states and territories to better understand the economic impacts of COVID-19. Individuals must not use the information for any purpose other than this sole purpose and specifically, individuals must not use the information as the basis for any trading decision in shares, derivatives or other financial products. Data is not

<sup>20</sup> Provided to the Commission by the Department of Treasury and Finance.

adjusted for cash-to-card effect and CBA merchant or customer market share, which may include biases by region, category and demographic and may also change over time.

Historically, the South Australian tourism sector has been more oriented toward domestic than international travel, as indicated in Figure 2.5.<sup>21</sup> In 2019, international tourism accounted for 15 per cent of total tourism expenditure in South Australia, and 23 per cent nationally. Approximately one third of the state’s tourism expenditure was from interstate tourism and a further 31 per cent from intrastate tourism in 2019. In comparison, in 2020 with the impact of the pandemic, international tourism expenditure accounted for only 6 per cent of total tourism expenditure in the state, while the share of international tourism expenditure nationally was 11 per cent. Intrastate tourism contributed to 44 per cent of total tourism expenditure in South Australia, while just over one fifth was from interstate tourism. The composition of specific expenditure categories has changed as a result of the restrictions caused by the pandemic but with South Australia somewhat less affected than other jurisdictions.

Figure 2.5: Tourism expenditure by category, South Australia and Australia (per cent of total spending), 2019 and 2020

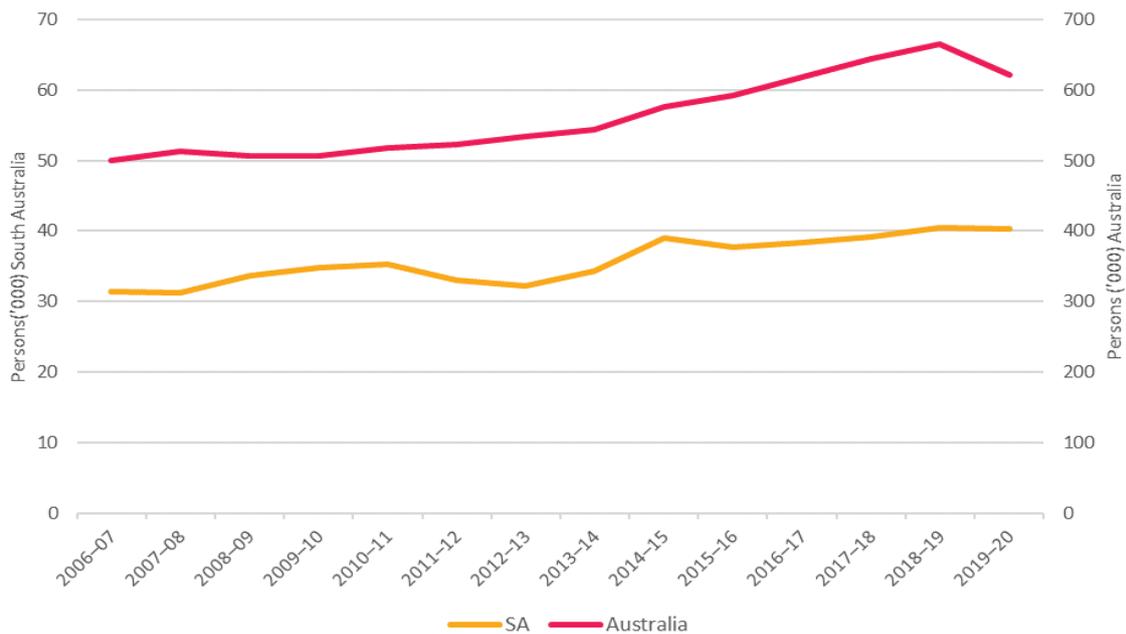


Source: Tourism Research Australia (2021)

In South Australia, direct employment attributed to tourism increased from 31,500 in 2006-07 to 40,400 in 2019-20, accounting for 4.2 and 4.8 per cent of state employment respectively (Figure 2.6). Between 2015-16 and 2019-20, the number of people directly employed in tourism stayed relatively steady. In comparison, there was a significant increase in direct tourism employment nationally during the same period, peaking at 665,000 in 2018-19. However, in 2019-20, this figure dropped to 621,000 reflecting the impact of the COVID-19 pandemic.

<sup>21</sup> International visitors include those who are visiting from another country for less than 12 months. Same day visitors are domestic residents who travel at least 50km away from home (round trip), are away from home for at least 4 hours, but do not spend a night away from home as part of their travel. Further information on these definitions is available from the Tourism Research Australia, *TRA Online Training Manual V9.1*, (2019) <<http://traonline.tra.gov.au/webapi/help/manual/TRA%20Online%20Training%20Manual%20SW2.pdf>>.

Figure 2.6: Direct tourism employment, South Australia (left hand axis, persons '000) and Australia (right hand axis, persons '000), 2006-07 - 2019-20



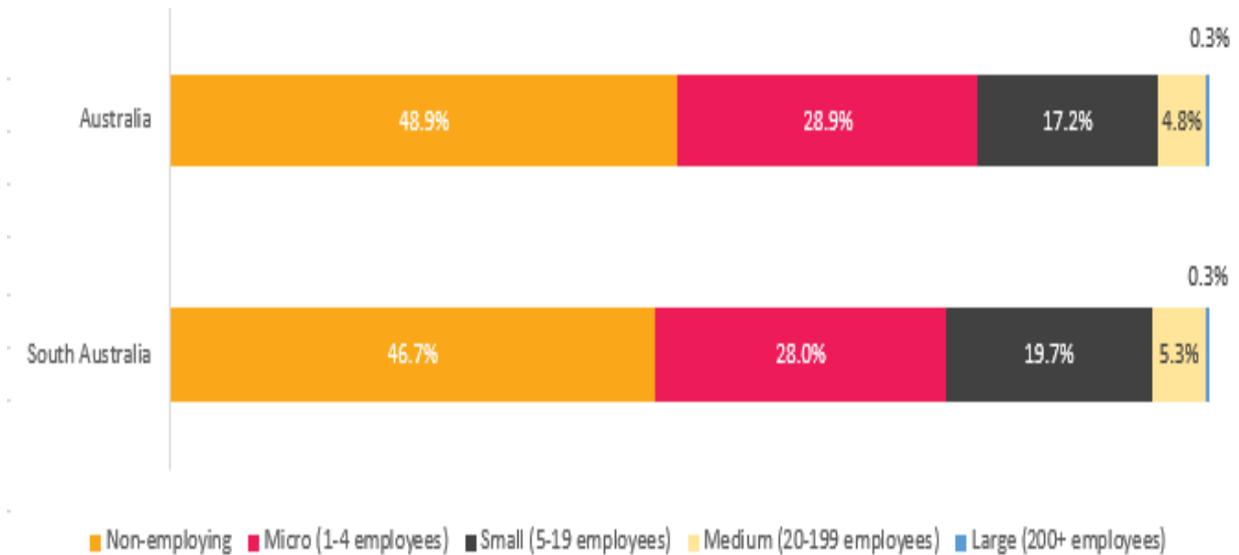
Source: Tourism Research Australia (2020)

## 2.2 Tourism business characteristics

As illustrated in Figure 2.7, the tourism sector in South Australia is predominantly comprised of small businesses, a characteristic that is reflected nationally.<sup>22</sup> In June 2019, nearly three in four tourism businesses had less than five employees, while 20 per cent of businesses had between five and 19 employees, five per cent had a workforce of 20 to 199, and less than one percent had more than 200 employees. The small scale of most tourism businesses has implications for their capacity to manage complex regulations and respond to changes in regulations.

<sup>22</sup> L.E.K. Consulting, *Tourism investment and regulation review, National long-term tourism strategy, (Final report, 2011).*

Figure 2.7: Size distribution of tourism businesses, Australia and South Australia, June 2019 (per cent of tourism businesses)



Source: Tourism Research Australia (TRA) TBIA employment size data tables  
 <<https://www.tra.gov.au/data-and-research/reports/tourism-businesses-in-australia-june-2014-to-2019/tourism-businesses-in-australia-june-2014-to-2019>>

Table 2.3 presents the geographic distribution of tourism businesses in South Australia in June 2019. The majority of tourism businesses are concentrated in the Adelaide region, with nearly 13,000 businesses accounting for 70.9 per cent of the state’s share. The Fleurieu Peninsula accounted for 4.6 per cent of tourism businesses in the state, while the Adelaide Hills and the Limestone Coast both had 4.2 per cent of the businesses.

Table 2.3: Geographic distribution of tourism businesses in South Australia, June 2019

	Number of tourism businesses	Share of tourism businesses (per cent)
Adelaide	12,952	70.9
Adelaide Hills	773	4.2
Barossa	359	2.0
Clare Valley	193	1.1
Eyre Peninsula	585	3.2
Fleurieu Peninsula	836	4.6
Limestone Coast	767	4.2
Murray River, Lakes and Coorong	308	1.7
Riverland	348	1.9
Yorke Peninsula	428	2.3
Flinders Ranges and Outback	511	2.8
Kangaroo Island	115	0.6
Unknown regions in SA	103	0.6
<b>Total South Australia</b>	<b>18,278</b>	<b>100</b>

Source: TRA TBIA employment size data tables

<<https://www.tra.gov.au/data-and-research/reports/tourism-businesses-in-australia-june-2014-to-2019/tourism-businesses-in-australia-june-2014-to-2019>>

Table 2.4 presents the different types of businesses across the tourism sector in June 2019. The distribution in South Australia generally mirrors that of Australia. Other retail trade comprises the largest share of tourism businesses in South Australia (44.7 per cent), followed by cafes, restaurants and takeaway food services (23.6 per cent).

Table 2.4: Business types in tourism, South Australia and share of total Australian tourism (per cent), June 2019

	South Australia (%)	Australia (%)
Accommodation	4.5	4.1
Cafes, restaurants and takeaway food services	23.6	23.5
Clubs, hotels, taverns and bars	4.5	2.9
Rail transport	0.0	0.0
Taxi transport	8.8	12.6
Air and space, water and other transport	1.8	1.7
Motor vehicle hiring	0.5	0.6
Travel agency and tour operator services	2.1	2.6
Cultural services	4.0	5.0
Casinos and other gambling services	0.5	0.4
Other sports and recreation services	3.9	4.1
Automotive fuel retailing	1.2	1.3
Other retail trade	44.7	41.2
<b>Total</b>	<b>100</b>	<b>100</b>

Source: TRA TBIA employment size data tables

<<https://www.tra.gov.au/data-and-research/reports/tourism-businesses-in-australia-june-2014-to-2019/tourism-businesses-in-australia-june-2014-to-2019>>

## 2.3 Conclusion

Tourism is a small but significant part of South Australia's economy, accounting for 3.2 per cent of GSP. The tourism sector in regional South Australia is less dependent on international tourism when compared to Adelaide and the rest of the country which has contributed to regional South Australia being less affected by COVID-19 than Adelaide.

The sector predominantly comprises small businesses. In 2019, early three in four tourism businesses had less than five employees and less than one percent had more than 200 employees. The small scale of most tourism businesses has implications for their capacity to manage complex regulations and respond to changes in regulations.

### 3. South Australian tourism regulation – an overview

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The Terms of Reference for this review ask the Commission to provide advice regarding the effect of the application of regulations on the tourism industry. This chapter identifies the type of businesses within the scope of this review and provides a brief summary of South Australian Government regulations that apply to them, including those delegated to local governments. There are other relevant regulations imposed by the Australian Government, that are beyond the scope of this review which have been excluded.

The requirements of these regulations, and how they are applied, are considered in subsequent chapters.

#### 3.1 Defining tourism businesses

Tourism is typically defined from the perspective of the consumer. This leads to some conceptual challenges including: defining what a tourism business is (and isn't); and to what extent the business model for an individual business depends on tourists. As a result, the scope and nature of activities undertaken by tourism businesses in South Australia is broad and variable, with the regulations relevant to each business being similarly varied. The Terms of Reference for this review state that the review should focus on nature-based tourism and agritourism.

The Commission has adopted the following definitions of these two tourism-industry sub-sectors.

Nature-based tourism comprises leisure trips undertaken largely or solely for the purpose of enjoying natural attractions and engaging in a variety of nature-based activities, including:

- visits to national parks, state parks or marine parks;
- visits to wildlife parks, zoos or aquariums;
- visits to botanical or other public gardens;
- bushwalking or rainforest walks;
- whale or dolphin watching (in the ocean);
- snorkelling; and
- scuba diving.

Agritourism comprises commercial activities at a working agricultural property<sup>23</sup> conducted for the enjoyment of visitors that generate additional income for the owner, including:

- outdoor recreation;
- educational experiences;
- entertainment;
- hospitality; and
- on-farm direct sales.

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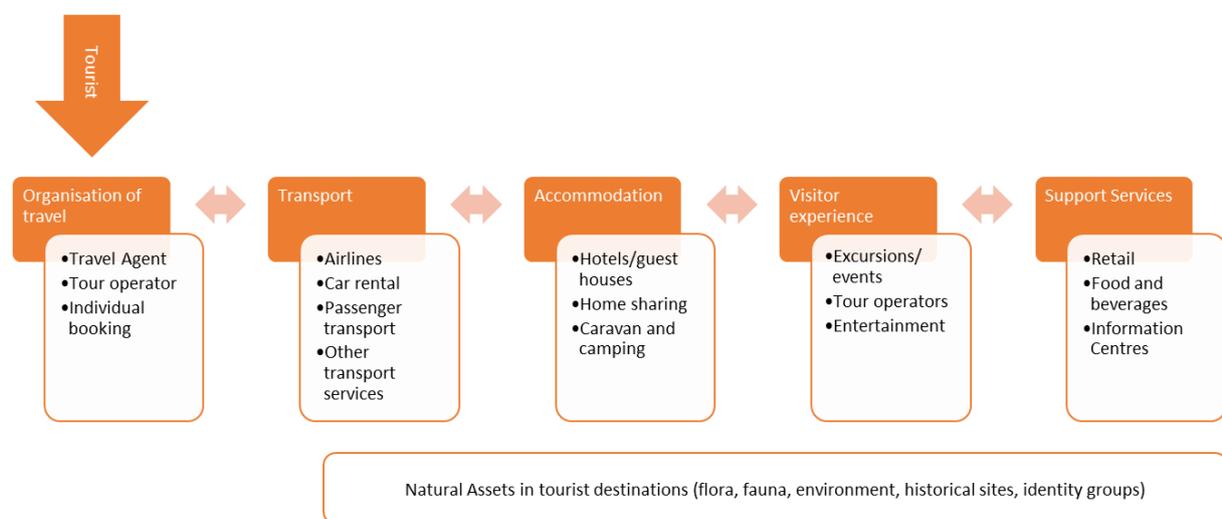
<sup>23</sup> This may also include aquaculture and fisheries.

The Commission's focus is on businesses that directly provide those services. That said, these businesses operate within a complex tourism value chain where tourists move into an area, primarily for one or more of the purposes set out above, and consume products or services from a range of complementary businesses and then return home or move to other destinations.

Value chains are defined as 'the entire sequence of activities or parties that provide or receive value in the form of products or services'.<sup>24</sup> In a tourism context, the value chain starts with travel organisations and booking services and includes transportation; accommodation; food and drinks, tourist activities and support services.

Figure 3.1 provides an illustration of a generalised example of a tourism value chain. Within each stage, value is shared by both direct providers and suppliers of goods and services.

Figure 3.1: Example tourism value chain



Source: SAPC

Note: the activities listed are illustrative only. This example tourism value chain has been tailored to the two sectors by the SAPC but there are many tourism value chains that have been used for tourism project evaluation in the past.

### 3.2 How tourism is regulated

Relatively little regulation is directed solely towards tourism. In general, the regulations focus on the activities conducted by businesses to ensure the goods and services provided are safe and public amenities are protected. Similarly, these same activities can be relevant to businesses in different parts of the tourism value chain. Accordingly, the Commission's focus is on the key areas of regulation affecting businesses that supply goods and services to nature-based and agritourism tourist customers, with priority being given to issues that have the highest possible impact, given the scope of the review.

The Commission considers that the main regulatory issues faced by tourism businesses primarily relate to:

- land use and planning;
- operating or expanding an established business; and

<sup>24</sup> Sandra Averous-Monnery and Mark Barthel, *How to map tourism value chains and identify key actions* (one Planet, 2019).

- obtaining access to public infrastructure.

For most businesses, their main involvement with regulators will be in gaining approval to either start, expand or diversify their business. These approvals take many forms and could include planning and development approval, and licences to undertake certain activities or to connect to public infrastructure. Table 3.1 presents two hypothetical examples of the possible South Australian and local government licences required to run a nature-based tourism business and a agritourism business.<sup>25</sup> These licences are based on a search of the Australian Business Licence and Information Service (ABLIS) and are simultaneously both excessive and incomplete for most businesses. There are further licences and permits required by the Australian Government; however, these have been excluded as they are out-of-scope of the review.

*Table 3.1: Permits and licence requirements for hypothetical nature-based and agritourism businesses*

	Nature-based tourism	Agritourism
Dept for Innovation and Skills	Covid19 business information and support	Covid19 business information and support
Dept for Environment and Water	Marines parks permit	Native Seed/Plant Collection Permit
	Crown Land Occupation Licence	
	Permit to Keep and Sell Protected Animals (Fauna Dealer)	
SA Water	Trade Waste Discharge Permit	Trade Waste Discharge Permit
Consumer and Business Services	Approval of a Responsible Person (Licensed Venues)	Approval of a Responsible Person (Licensed Venues)
	Incorporation of an Association	Incorporation of an Association
	Late Night Trading Code of Practice	Late Night Trading Code of Practice
	Liquor Licensing General Code of Practice	Liquor Licensing General Code of Practice
	On Premises Liquor Licence	On Premises Liquor Licence
	Registration of a Co-operative	Registration of a Co-operative
	Short Term Liquor Licence	Restaurant and Catering Liquor Licence
		Employee Training Guidelines
		General and Hotel Liquor Licence
		Liquor Production and Sales Licence
		Small Venue Liquor Licence
Dept for Infrastructure and Transport	Land Division Certificate	Land Division Certificate

<sup>25</sup> For this example, the hypothetical nature-based tourism business included the following criteria: operating in a national/state park or reserve, outdoor adventure operation and whale watching cruise operation. The hypothetical agritourism business criteria included: operating a restaurant and wine bar and chicken farming (for meat). Note that for illustrative purposes the search included all possible options to obtain a comprehensive list of requirements. Further information is available at <<https://ablis.business.gov.au/>>

	Nature-based tourism	Agritourism
SafeWork SA	First Aid in the Workplace Code of Practice	First Aid in the Workplace Code of Practice
	Hazardous Manual Tasks Code of Practice	Hazardous Manual Tasks Code of Practice
	How to Manage Work Health and Safety Risks Code of Practice	How to Manage Work Health and Safety Risks Code of Practice
	Managing Electrical Risks in the Workplace Code of Practice	Managing Electrical Risks in the Workplace Code of Practice
	Managing Noise and Preventing Hearing Loss at Work Code of Practice	Managing Noise and Preventing Hearing Loss at Work Code of Practice
	Managing the Risk of Falls at Workplaces Code of Practice	Managing the Risk of Falls at Workplaces Code of Practice
	Managing the Risk of Plant in the Workplace	Managing the Risk of Plant in the Workplace
	Managing the Work Environment and Facilities Code of Practice	Managing the Work Environment and Facilities Code of Practice
		Preparation of Safety Data Sheets for Hazardous Chemicals Code of Practice
		Work Health and Safety Consultation, Cooperation and Coordination Code of Practice
SA Health	High Risk Manufactured Water System Registration	High Risk Manufactured Water System Registration
Forestry SA	Permit to Hold an Event or Activity in a Forest Reserve	
Dept of Treasury and Finance	Registration for Payroll Tax	Registration for Payroll Tax
Return to Work SA	Registration of Employers	Registration of Employers
Local government	Use of commercial vehicles on specified streets	Approval to remove trees
	Approval for the Distribution of Printed Materials	Approval for the Distribution of Printed Materials
	Certificate of compliance	Certificate of compliance
	Certificate of occupancy	Certificate of occupancy
	Development Approval	Development Approval
	Permission to Display a Banner on Council Property	Permission to Display a Banner on Council Property
	Permission to Obstruct Streets and Footways	Permission to Obstruct Streets and Footways
	Permission to Place or Display a Moveable Sign	Permission to Place or Display a Moveable Sign
	Permission to Undertake Commercial Activities at the Central Market	Permission to Undertake Commercial Activities at the Central Market
	Permit to Erect a Hoarding or Place a Skip Bin on a Road	Permit to Erect a Hoarding or Place a Skip Bin on a Road
	Public Venues and Facilities	Public Venues and Facilities
		Food Business Notification
		Approval to Place or Display Goods in a Public Place

Nature-based tourism		Agritourism
		Outdoor Dining Permit
		Permit to Light a Fire on Council Land

Source: ABLIS. <https://ablis.business.gov.au/>

### 3.2.1 Land use

Businesses seeking to conduct tourism activities need access to land, on which either to locate and develop a business such as accommodation or to conduct tourism activities.

Where businesses seek access to Crown land, they need approval from the South Australian Government. While the Department for Environment and Water (DEW) is the largest landholder in South Australia, other government departments also have significant land holdings. For example, the Department for Infrastructure and Transport (DIT) is responsible for the care and control of transport corridors and the seabed.

Nature-based tourism often requires access to Crown land. The *Crown Land Management Act 2009* sets out the requirements for disposal, management and conservation of Crown land. Some stakeholders have suggested there is a lack of clarity surrounding what types of development are allowed on Crown land, as well as the process to approach government for access to Crown land or to purchase surplus Crown land.

Under the *National Parks and Wildlife Act 1972*, businesses must obtain a licence from DEW to operate within a national park. Stakeholders have suggested that possible issues might include the length of time to obtain a licence, a possible lack of clarity over what types of activities are eligible for a licence, the proportionality of fees and the length of licences. South Australia also has 14 wilderness protection areas established under the *Wilderness Protection Act 1992* which places the highest level of protection for land under South Australian legislation.<sup>26</sup>

Tourism businesses seeking to operate in a state forest or marine park face similar requirements under the *Marine Parks Act 2007* and *Forestry Act 1950*.

In general, access to Crown land can take the form of either a licence (for entry or specific activities) or a lease, which grants exclusive rights.

Local governments are often the custodians of dedicated Crown land. This land is governed by the *Local Government Act 1999*.

For most tourism business, once they have access to land, they still require development approval of some sort such as for accommodation or a cellar door. Before this can occur, they require a development approval, either from the local government, or in national parks or unincorporated areas, the South Australian Government. The development approval process is set out under the *Planning, Development and Infrastructure Act 2016* and includes referrals to other agencies to ensure that the proposed development complies with other legislative requirements. Planning and building rules that apply to a development approval will depend on the type and location of the development. Planning rules are included in the *Planning and Design Code* as well as the *Design Standards*, while building rules include the *National Construction Code (NCC)* (which comprises both the *Building Code of Australia* and the *Plumbing Code of Australia*) and *Ministerial Building Standards*.

<sup>26</sup> Department of Environment, Water and Natural Resources, *Wilderness protection in South Australia*, (2018).

Two regions that include significant numbers of agritourism and nature-based tourism businesses, Barossa Valley and McLaren Vale, have additional requirements on development under the *Character Preservation (Barossa Valley) Act 2012* and the *Character Preservation (McLaren Vale) Act 2012*. These acts recognise the character and heritage of these regions and restrict inappropriate urban development and urban expansion.

### **3.2.2 Operating or expanding a tourism business**

Businesses providing food services are covered by the *Food Act 2001*. The *Food Act 2001* however, is enabling legislation with regulations that automatically adopt national food standards. Under Standards 3.2.2 and 3.2.3 of the Australia New Zealand Food Standards Code, specific health and hygiene requirements are set out for food businesses. These include responsibilities around the health of food handlers, the hygiene practices of food handlers and other general duties. Food businesses are not licenced in South Australia, but they must be registered and have their operations periodically inspected. SA Health has policy responsibility, with compliance and enforcement being primarily the responsibility of local governments (and SA Health in the case of unincorporated areas).

The provision of liquor is covered by the *Liquor Licencing Act 1997* and the *General Code of Practice*, with licensing and compliance the responsibility of Consumer and Business Services.

Businesses of all types operating in South Australia face requirements under the *Work Health and Safety Act 2012*. Their duties imposed by this Act are the same regardless of the industry concerned. Businesses do not need licences or formal approval and compliance and enforcement is conducted primarily on a complaints basis by SafeWork SA, although significant guidance material is provided to businesses on how to meet their obligations under this Act.

As businesses seek to expand or diversify, they may seek to add additional activities such as hosting events, functions or add a restaurant. These activities may be inconsistent with their original planning approval, so a new planning approval may be required.

#### ***Transport***

Businesses providing transport services to tourists have requirements placed upon them by the *Passenger Transport Act 1994* and the *Passenger Transport Regulations 2009*. This covers both tour providers as well as standalone transport providers including taxis and ridesharing services. The Department for Infrastructure and Transport is the regulator for this Act and its requirements include accreditation of operators and drivers and requirements for regular vehicle inspections and some limits about the age and kilometres travelled for each vehicle.

Commercial marine transport is regulated by the Australian Government via the *Marine Safety (Domestic Commercial Vessel) National Law (Application) Act 2013*; however, the *Harbours and Navigation Act 1993* governs the use of South Australian Government-owned marine infrastructure.

The construction of new boating infrastructure such as pontoons and jetties require approval under the *Planning, Development & Infrastructure Act 2016*, and require referrals to the Coastal Protection Board under the *Coast Protection Act 1972*.

## **Accommodation**

Short-term visitor accommodation is not directly regulated as an activity in South Australia. Instead, providers must meet requirements under the *Planning, Development and Infrastructure Act 2016* and the *Building Code of Australia*. This includes having planning approval for their intended land use, meeting building standards (including accessibility requirements), meeting fire safety requirements and meeting other requirements assessed as part of a development approval.

In terms of operational requirements, accommodation businesses must meet general hygiene principles under the *South Australian Public Health Act 2011*. They also must register infrastructure that might pose a health risk to customers (such as cooling towers in air-conditioning systems and swimming pools and spas) and face inspections. The relevant local government's environmental health officer is responsible for enforcing these requirements; SA Health is responsible where there is no relevant local government. Accommodation businesses also face general requirements of Australian consumer law for which Consumer and Business Services has a regulatory role.

Camping is legal in South Australia with the permission of the land holder. Permission for camping on Crown land requires the permission of the agency responsible for the care and control of the land and is subject to the requirements of the Acts set out in section 3.2.1.

### **3.2.3 Access to public infrastructure**

Tourism businesses rely on public infrastructure ranging from roads, mains water and sewerage systems, to jetties and harbours. The processes for accessing this infrastructure are set out by the owning agency's policies and practice, but often access is subject to overarching legislation.

Connections to roads are subject to the *Roads (Opening and Closing) Act 1991* and the *Road Traffic Act 1961*. Depending on the size and type of developments, new developments or alterations to road entrances must be approved by DIT.

Tourism signage on state roads is also subject to DIT's *Road Sign Guidelines* which set out what signage is allowed and the process for having tourism signage installed on state roads. Tourism signage on local roads is the responsibility of local governments.

The processes to connect to SA Water's water and sewerage networks are set out in SA Water's Connections Policy. To discharge trade waste into the sewerage network, a business must apply for trade waste authorisation under the *Water Industry Act 2012* and in some cases will be required to pre-treat the waste on-site before it can be discharged.

Businesses that operate outside of existing networks of water and sewerage infrastructure face separate requirements for providing drinking water and managing and treating waste. The provision of safe drinking water is governed by the *Safe Drinking Water Act 2011*, while wastewater, human and trade waste are governed from both an environmental and public health perspective by a mix of legislation and their accompanying regulations including the:

- *South Australian Public Health Act 2011*;
- *Environment Protection Act 1993*;
- *Local Government Act 1999*;
- *Water Industry Act 2012*; and

- *Planning, Development and Infrastructure Act 2016.*

### **3.3 Conclusion**

The regulations applying to tourism businesses depend on their business activities and may be broad as shown in two hypothetical examples. The following chapters examine four regulatory areas in greater detail, reflecting the issues identified in consultation and through the Commission's assessment of other evidence that has been gathered to date. The Commission has used this information to focus on the areas that are specific to nature-based tourism and agritourism.

The Commission's interest in its review of these areas of regulation is not just the design of regulation but also its practice. In its analysis of the impacts of regulation, the Commission will pay attention to its cost to government and to business but also its other economic effects, as explained in Chapter 1. There are also questions discussed later in the report about how the tourism sector is consulted when regulation is designed or reviewed.

## 4. Land Use

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### 4.1 Introduction

Most agritourism and nature-based tourism businesses require land use permission to develop, expand or operate their businesses. This may involve getting approval for a different type of service being offered (e.g. developing a cellar door at a vineyard) or getting access to national parks to operate a tour. For businesses operating on private land, development approvals are governed by the planning system. Where the land in question is controlled by the state (e.g. national parks, pastoral leases or other Crown land), additional approvals are required to operate on or have access to the land in question. Consistent with the terms of reference of this review, this chapter considers the regulatory processes involved with gaining land-use permissions to develop and operate agritourism and nature-based tourism businesses.

Stakeholders identified several common issues related to land use including:

- the time required to process applications;
- the willingness of regulators to work with business;
- getting clear feedback on proposals; and
- a lack of coordination between regulators.

The chapter covers several specific areas of land regulation. Section 4.2 addresses Crown lands in general terms, describing the current system for accessing Crown lands and issues raised by stakeholders. Section 4.3 covers National Parks more specifically and notes some issues arising from zoning of some parts of national parks and forest reserves. The remainder of the chapter addresses coastal development and pastoral leases and provides a brief conclusion.

### 4.2 Crown lands

Land in South Australia is identified by a land title reference. Private land is held under a Certificate of Title which certifies that the person named on the title document is the legal owner. Private land is administered under the *Real Property Act 1886*. Crown land has a different land title reference to private land and may be listed as a Crown Record or a Crown Lease and is administered under the *Crown Land Management Act 2009*. Approximately one fifth of South Australia is classified by the Department of Environment and Water (DEW) as Crown land. It comprises approximately 26 million hectares.<sup>27</sup> This excludes the area of Crown land under pastoral lease, a further 40 million hectares (see Table 4.1).

Crown land may be:

- sold if surplus to government requirements;
- reserved for national parks to protect the natural environment (this will be discussed in more detail in section 4.3);

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<sup>27</sup> <<https://www.environment.sa.gov.au/topics/crown-land/south-australias-crown-land>>

- licenced for a particular activity or use such as conservation, grazing, agriculture, jetties and pontoons, boat ramps, coastal protection works, houseboat mooring, retaining walls and beekeeping;
- leased for a range of purposes that includes agriculture, conservation and irrigation and other activities;
- dedicated to a custodian for a specific purpose such as community parks, state heritage sites, town squares, community halls, coastal lands, waterway corridors, sporting grounds, war memorials, cemeteries, racetracks, showgrounds, caravan parks, camping areas, traveling stock routes, channel reserves, rest areas, walking tracks and community and government infrastructure and facilities; and
- unalienated (all other public land).

While much of the land used for nature-based tourism sits within the management and control of DEW, there are also parcels of Crown land that are under the management and control of other agencies such as local governments, the Department of Infrastructure and Transport (DIT) for rail and road corridors and the Department of Primary Industries and Regions (PIRSA) for pastoral leases.

*Table 4.1 Areas of Crown lands in South Australia*

	Area (Ha)	% of state
Crown land administered by DEW through the Crown Lands Program	4,744,087	4.8
National parks	21,293,062	21.7
Pastoral lease land	40,000,000	40.0
<b>Total of above categories of Crown land</b>	<b>66,037,149</b>	<b>66.5</b>

*Source: Crown Lands Program, Department for Environment and Water*

#### 4.2.1 Crown Lands Program

Administration of Crown land by DEW through its Crown Lands Program includes the following activities:

- authorising the use, access and occupation of Crown land;
- ensuring activities and developments on Crown land are compliant
- assisting government agencies, local councils and property professionals;
- issuing tenure over Crown land such as licences, leases, easements and dedications; and
- selling Crown land.

The program is managed in the context of the objects and principles of the *Crown Land Management Act 2009*.

The objects of the Act are to:

- provide administrative procedures for the efficient handling of Crown land transactions;

- encourage fair and transparent decision-making in the allocation of Crown land; and
- provide a system for the management of Crown land that achieves a balance between the social, economic and environmental needs of the community.

The principles of Crown land management as outlined in in the Act ensure:

- the principles of ecologically sustainable land management are observed in the management and administration of Crown land;
- the objects and objectives of other relevant legislation are given due weight; and
- Crown land is occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the state, consistent with the above principles.

#### **4.2.2 Crown land assessments**

When assessing the allocation of Crown land, consideration must be given to the objects and principles of the *Crown Land Management Act 2009*. The department will also consider other factors such as:

- how the proposal may align or interact with state economic priorities and other policies and guidelines;
- the impacts of current or previous uses (biodiversity and contamination); and
- the status of native title over the land.

Box 4.1 lists legislation that may also apply when dealing with Crown Land<sup>28</sup>.

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<sup>28</sup> <<https://www.environment.sa.gov.au/topics/crown-land/south-australias-crown-land>>

#### Box 4.1 Other Legislation Relevant to Crown Land

- *Crown Rates and Taxes Recovery Act 1945*
- *Land for Public Purposes Acquisition Act 1914*
- *Real Property Act 1886*
- *Conveyancers Act 1994*
- *Development Act 1993*
- *Local Government Act 1999*
- *Native Title Act 1993 (Cth)*
- *Aboriginal Heritage Act 1988*
- *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*
- *Landscape South Australia Act 2019*
- *Native Vegetation Act 1991*
- *Environmental Protection Act 1993*
- *Pastoral Land Management and Conservation Act 1989*
- *Coastal Protection Act 1972*
- *National Parks and Wildlife Act 1972*
- *Heritage Places Act 1993*
- *River Murray Act 2003*
- *Irrigation Act 2009*
- *Marine Parks Act 2007*
- *Renmark Irrigation Trust Act 2009*<sup>29</sup>

#### 4.2.3. Accessing Crown lands for a tourism proposal.

Crown Land is generally leased from the Government for a certain period but on occasion it can be purchased freehold. There are generally two ways to gain access to Crown land for a tourism proposal:

- Seek access as part of a government program (such as the nature-based tourism co-investment fund). Association with a program that encourages the activity and provides a transparent assessment process with a specific a set of criteria, one of which would be suitability of land use, may facilitate a more efficient approval. The formal requirements for gaining access to the land are unchanged.

<sup>29</sup> <<https://www.environment.sa.gov.au/topics/crown-land/south-australias-crown-land/managing-crown-land>>

- Submit a proposal through the unsolicited bid process. These requests can be made at any time and are not specific to any program or call for tender.<sup>30</sup> For an unsolicited bid the process would be managed by the agency responsible for care and control of the land, or the Department of Treasury and Finance if above the \$3 million threshold for infrastructure projects, or \$1 million for non-infrastructure programs.<sup>31</sup>

Once a tourism business has access to land, they still require development approval, either from local government, or, in the case of national parks or unincorporated areas, from the state government. The development approval process is set out under the *Planning, Development and Infrastructure Act 2016*<sup>32</sup> and potentially includes referrals to other agencies to ensure that the proposed development complies with other legislative requirements. This review will not consider these parts of the approval process.

#### 4.2.4 Local councils and Crown land

While Crown Land is owned by the state, local councils are sometimes the custodians of the land and may have Crown land included on their Community Land Registers as required under the *Local Government Act 1999*<sup>33</sup>. Each parcel of Crown Land that is under the care and control of a council needs a Community Land Management Plan (CLMP) that outlines suitable and agreed uses for each parcel of land. The Regional Council of Goyder has provided the Commission with an example of this in relation to the care and control of World's End Reserve. The CLMP states the dedication of land is for recreation purposes pursuant to the environmental benefit and is categorised by the council as general parkland. It is understood by the Commission that plans are not often updated as the process is time consuming owing to the amount of community consultation required. In addition, the parcels of land are often quite small.

To access this land, the business would need to approach the council and, if the specified activity or development fitted within the CLMP, the council has the authority to enter into a lease agreement, permit or some other legal arrangement with the proponent for access to the land. That said, all other planning requirements would still need to be met.

If the proposed activity or development does not fit within the scope of the CLMP for the Crown land being pursued, it also requires a change to the CLMP and approval from the council for this to occur. This can be a lengthy process. The Commission has been advised that the proponent is normally required to provide a detailed plan and a significant amount of supporting information to have the proposal assessed, which can be expensive and time consuming.

#### Information request 4.1

How accurate and complete is the Commission's description of the process for receiving approval to access or use Crown land?

What other elements of the approval process should be included?

<sup>30</sup> <<https://www.environment.sa.gov.au/get-involved/unsolicited-proposals>>

<sup>31</sup> <[https://www.treasury.sa.gov.au/\\_\\_data/assets/ ifpdf\\_file/0006/36816/Guidelines-for-Assessment-of-Unsolicited-Proposals-September-2018.pdf](https://www.treasury.sa.gov.au/__data/assets/ ifpdf_file/0006/36816/Guidelines-for-Assessment-of-Unsolicited-Proposals-September-2018.pdf)>

<sup>32</sup> *Planning, Development and Infrastructure Act 2016*

<sup>33</sup> *Local Government Act 1999*

#### 4.2.5 Issues identified regarding access to Crown land for nature-based and agritourism business

The Commission's consultations with stakeholder groups and business operators identified several key issues relating to accessing Crown lands.

The lack of speed in the approval process was regularly raised by businesses. There is often an absence of timeframes in assessing proposals for access to Crown land. In the unsolicited bids process, the first step has a target of no longer than 45 days<sup>34</sup>; however, there are no set timeframes for the remaining two steps. Box 4.1 shows how difficult the experience can be using the example of Martindale Hall.

##### Box 4.1 Martindale Hall

*In 2015, following an unsuccessful expression of interest, an unsolicited bid was put to the South Australian Government, (Minister of Environment and Water), to obtain access to Martindale Hall conservation park, with the aim of upgrading the Hall and building complimentary accommodation and hotel facilities on the park. In response to requests for information, the developers spent considerable time and funds to have architectural plans drawn with input from professional heritage architects and hosted several community consultation sessions with the understanding that the proposal was an acceptable use of the property. The issue was complicated by unresolved matters related to the charitable trust associated with the property. The proponents worked with the department and the community for over 18 months and indicate that they were never given a definitive timeframe as to when the bid would be either accepted or rejected by the Government. The proponent has abandoned the proposal, but there are still ongoing issues regarding acceptable uses of Martindale Hall.*

The Commission's consultations with business made it clear that an important issue from their perspective is getting a quick and clear answer on the proposed development. In addition, clear feedback on why the proposal was not acceptable is essential as it affects businesses' willingness to develop similar proposal in the future.

The timeliness of responses was also raised by the Caravan Parks Association of SA (SA Parks).

*In some cases, a park (or council) may wish to acquire some Crown land in order to secure the land before investing heavily into the business infrastructure. The acquisition of Crown Land can be a time lengthy and frustrating process. (SA Parks submission, DR3, p.2)*

##### Information request 4.2

The Commission requests additional examples of unsolicited proposals to access Crown land for nature-based tourism or agritourism including:

- How long it took to resolve them; and
- What is an appropriate timeframe for responding to unsolicited proposals?

<sup>34</sup> <[https://www.treasury.sa.gov.au/\\_\\_data/assets/pdf\\_file/0006/36816/Guidelines-for-Assessment-of-Unsolicited-Proposals-September-2018.pdf](https://www.treasury.sa.gov.au/__data/assets/pdf_file/0006/36816/Guidelines-for-Assessment-of-Unsolicited-Proposals-September-2018.pdf)>

Dealing with multiple agencies or parties can also complicate the process for businesses as the timeframes for decisions are often not coordinated between parties and, as a result, can lengthen the approval process. For example, for Crown land under the care and control of local councils, businesses may require approval from the council and DEW, and be required to facilitate a public consultation process if the proposed use is not consistent with the CLMP.

#### **Information request 4.3**

To what extent is the process for dealing with multiple regulatory agencies coordinated when considering proposals and how does this differ between solicited and unsolicited proposals? Please provide examples.

The length of Crown land leases has been an issue for businesses that want to expand or diversify as they need the security of either freehold ownership or a long-term lease to arrange finance. Consultation with businesses has indicated that recent changes have helped to address the issue of longer-term leases

#### **Information request 4.4**

What is the experience of nature-based tourism businesses regarding the duration of Crown land leases?

What improvements can be made regarding the process for obtaining longer term leases for Crown land.

### **4.3 National park land access**

Access to national parks is a key issue for both nature-based tourism businesses and the state government.

For a nature-based tourism business, access to national parks is key to delivering their services as a large portion of consumer interests relate to experiencing nature in national parks. Access is required for commercial tours, bushwalking experiences and accommodation experiences.

The state government has legislative responsibility through the *National Parks and Wildlife Act 197* (NPW Act) for managing the South Australian park system. It is also promoting the development of activities in national parks to build the conservation capacity of parks and boost state and local economies.

The \$5 million Nature Based Tourism Co-investment Fund announced in March 2020, as part of the \$130 million Parks 2025 investment strategy, is particularly relevant to this review. It is described as a pilot grant program designed to assist eligible businesses and organisations to deliver sustainable, quality tourism experiences in South Australia. The Nature Based Tourism Co-investment Fund does not have a closing date and remains open until all funds have been exhausted. The Commission has been advised that there has been a high level of enquiries for the fund but, to date, only three proposals have been approved. There is no public information regarding the number of proposals under consideration.

### 4.3.1 Access to national parks

Access to national parks is under the management and control of DEW. This includes all reserves proclaimed under the *National Parks and Wildlife Act 1972* (NPW Act), *the Wilderness Protection Act 1992* and conservation reserves dedicated to the Minister under the *Crown Land Management Act 2009*.

Commercial activities that currently take place in our national parks include:

- coach and bus tours;
- boating activities;
- bushwalking;
- camping;
- four-wheel driving;
- observing wildlife (including bird watching);
- fishing;
- rock-climbing and abseiling; and
- cycling.

As described in section 4.2.3 access to national park land can be gained through government programs such as the Nature-Based Tourism Co-investment Fund, or through an unsolicited proposal.

### 4.3.2 National park management plans

Section 38 of the NPW Act requires a plan of management for national parks.

These are strategic documents that set a long-term vision for a park. Management plans contain concise background information about the park and outline the objectives and strategies developed to meet that vision.<sup>35</sup>

The plans include all current and potential activities that may take place under the planning regulations for the park. They also need to include any potentially identified development proposals, infrastructure upgrades and appropriate recreational activities such as horse riding and dog walking.

As well as ways to manage the national park and its wildlife, the plans provide a broad overview of what may be possible to develop in certain areas such as campgrounds, trails, and carparks.

Any upgrades and developments in a national park must fit within what the park management plan allows. Given the plans are only required to be updated every 10 years, it is unlikely all current potential developments would be included in the plans.

Under the new planning legislation, all national parks are now conservation zones. This adds another layer of regulation and scrutiny to proposed developments. The Commission has been advised that the classification requires all permitted activities to be specified in the park

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<sup>35</sup> <<https://www.parks.sa.gov.au/park-management/management-plans>>

management plan by type of activity and location. If the proposed activity is not specified, a longer development approval process is required to amend the park management plan, requiring proper public consultation. Effectively, this means a longer, costlier and riskier process for proponents, disproportionately affecting small businesses.

#### 4.3.3 Co-management of national parks with traditional owners

In 2004, the NPW Act was amended to include shared responsibility for the management of national parks with Aboriginal groups, through the creation of either a co-management board or a co-management advisory committee. Further legislation amendments were made in 2013 to extend co-management to wilderness protection areas.<sup>36</sup>

Co-management arrangements are established by agreement between the South Australian Government and the Aboriginal traditional owners and are often established with the determination of native title. Co-management agreements reflect specific natural and cultural aspects of the park and Aboriginal community, and adhere to four principles:

- continued cultural, spiritual and traditional use of the park by the relevant Aboriginal group;
- continued enjoyment of the park by members of the public;
- preservation and protection of Aboriginal sites, features, objects and structures of spiritual or cultural significance; and
- protection of natural resources, wildlife, vegetation and environmental features of the park.

There are now 12 co-management agreements in place over 35 of South Australia's national parks.

#### 4.3.4 National park licences

In addition to gaining access to national parks for either nature-based or agritourism operations, pursuant to regulation 36(b) of the *National Parks and Wildlife (National Parks) Regulations 2016* anyone conducting tours in South Australia's national parks for fee or reward requires a Commercial Tour Operator Licence.

The requirements for Commercial Tour Operator (CTO) Licences are set out in DEW's *Commercial Tour Operator Licencing and Permitting Policy*. The policy applies to both tour activities conducted in parks or reserves, as well as marine mammal interactions that require an approval under the *National Parks and Wildlife (Protected Animals – Marine Mammals) Regulations 2010*.

In general, CTO licences are issued through a non-competitive process, with no restriction on the number of non-competitive licences or permits. Some CTO licences are issued through a competitive allocation process where unrestricted commercial tourism activity presents an unacceptable risk to a site or species. One example is licensing shark-cage diving, which is limited to three operators (state-wide) and has restrictions on the number of days they can operate, to minimise their impact on shark populations.

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<sup>36</sup> <<https://www.environment.sa.gov.au/topics/park-management/co-management-of-parks>>

Commercial Tour Operator licences are subject to the conditions outlined in the Commercial Tour Operator Licence Terms and Conditions<sup>37</sup>. These include general conditions for all permitted activities such as walking tours can only be conducted on designated walking trails, but also list activities that can be permitted within each park and any special conditions. DEW can impose additional conditions and may change conditions at any time to address risks, in consultation with affected businesses.

Commercial Tour Operator licences can be issued for a period ranging from two months (typically for seasonal activities) to ten years. Generally, a one-year licence or permit will be issued unless businesses demonstrate they have the appropriate accreditation. Three-year licences can be issued if the operator is accredited under one or more of:

- Australian Tourism Accreditation Program;
- Nature Based Eco Certification Program;
- Climate Action Certification Program; and/or
- Green Globe Company Standard.

A five-year licence or permit can be issued to businesses that are accredited under one or more of the:

- Advanced Ecotourism Eco Certification Program;
- Ecotourism Eco Certification Program; and
- Respecting our Culture.

Licences longer than five years in length (up to a maximum of 10 years) can only be granted through a competitively allocated process and where the business meets the requirements for a five-year licence or permit.

When applying for a CTO licence, an operator is required to:

- detail their intended activities and location (including an assessment of risks when required);
- provide evidence of approved accreditation where required;
- demonstrate compliance with the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*;
- declare any offences committed, including convictions and any current proceedings under relevant Commonwealth, state or territory law; and
- demonstrate compliance with transport safety regulations relevant to the proposed activities.

Operators are also expected to hold and maintain public liability insurance for a minimum of \$10 million throughout the term of their permit.

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<sup>37</sup> <<https://d35s2bz2fw949f.cloudfront.net/parks/docs/Commercial-Tour-Operator-Licence-Terms-Conditions.pdf?mtime=20210401090711&focal=none>>

Commercial Tour Operators are charged a licence fee as well as a visitor-use fee. Fees for licences are based on the cost of administration; however, competitively allocated licences may be influenced by market valuation in addition to the cost of administration.

#### **4.3.5 Issues identified regarding national park access for nature based and agritourism business**

The Commission met with several businesses either operating, or interested in developing, nature-based tourism businesses that had concerns with the process to get access to national parks. Businesses were reluctant to provide specific feedback on DEW processes, especially where they had active proposals under consideration or ongoing business relationships to manage. DEW was also asked to identify businesses that the Commission could consult with regarding the agency's processes. The department advised this information was not available for the draft report owing to the time pressures associated with reviewing proposals for the co-investment fund. This has limited the information available to the Commission. It will pursue this further in the next stage of the review.

Business operators and regulators have advised the Commission that it is relatively straightforward to apply for licences for nature-based and agritourism activities in national parks for existing commercial activities. However, it can be a much more difficult process for new proposals that require infrastructure.

The timeframe for making decisions was identified as a common issue for access to national parks. A decision requiring changes to park management plans is perceived as taking a minimum of six months, and more likely in excess of 12 months. The long timeframe is a significant hurdle for most businesses given the uncertainty involved in obtaining consensus on a new activity in a park.

Businesses have also raised concerns at the level of detail they are required to provide to both the department and to the general public through public consultation. There was some concern that the level of information required to be disclosed in the public consultation process would negatively affect the business' competitive advantage.

Stakeholders have also raised concerns that developing infrastructure within a national park is not as financially viable as doing the same development outside the park. This relates to the land being government owned and, as a result, the potential for capital appreciation on the asset is limited. The tenure arrangements can also limit their ability to obtain financing for the proposed development.

The Commission has also been advised that co-management of parks can be a difficult process, as potential operators need to consult with both the Government and the co-managers of the parks who may have different views on the proposed activities or infrastructure. This is a process that can be worked through but often takes a long time and therefore can be a deterrent for private operators. The Commission has been advised that the traditional owners are not consulted early enough in the process of developing businesses and activities in national parks.

With respect to commercial tour operators, concerns were raised regarding the monitoring and enforcement of licence conditions. That is, the accreditation of tour operators was not being monitored closely and no action was taken when the standards were not met. Some businesses contend this results in equity issues between operators and a lower quality service which may impact on future business.

**Information request 4.5**

The Commission requests additional feedback on the experience of proponents and regulators on several issues related to accessing national parks and ideas for improvements including:

- the functionality of park management plans;
- the efficiency of the public consultation process;
- the effectiveness of the current process for co-management of parks; and
- the monitoring of tour operator accreditation.

**4.3.6. Issues identified regarding change in land use**

Every part of South Australia is zoned to guide the types of developments and activities that are appropriate for the land in that zone. All zones are listed within the state government's Planning and Design Code. This has recently replaced each individual council's development plans throughout South Australia. If a proposed development does not meet the provisions of the Planning and Design Code, it may be rejected by the relevant authority.

The Commission has been informed that in some cases proposals put forward for land use would seem suitable for nature-based and agritourism businesses. However, in evaluating the proposals, it seems the zoning for some land in national parks or forest reserves is inappropriate and therefore the developments cannot gain approval until the zoning issues have been resolved.

Stakeholders have also advised that the new planning legislation has highlighted the amount of land in national parks that is inappropriately zoned. This is despite stakeholders providing submissions to Planning and Land Use Services. In addition, stakeholders have advised that it is unclear how or if these issues will be resolved. As an example of the issue, there are sections of forest with existing buildings and commercial logging that have been zoned 'conservation' and not 'commercial or recreation'. Forestry SA were not consulted about the changes to the zoning classifications and are now pursuing a time-consuming process to have the issue rectified.

**Information request 4.6**

The Commission seeks additional information on Crown lands of interest to agritourism and nature-based tourism businesses that are incorrectly zoned and on the opportunities being foregone?

In addition, the Commission requests information on how long it took to resolve past issues?

**4.4 Coastal Development**

Proposals for new development or substantial changes to land use on coastal land are referred to the Coast Protection Board.

The Coast Protection Board was formed in 1972 with the proclamation of the *Coast Protection Act 1972*. The functions of the Coast Protection Board (as stated in the Act) are to:

- protect the coast from erosion, damage, deterioration, pollution and misuse;
- restore any part of the coast that has been subjected to erosion, damage, deterioration, pollution or misuse;
- develop any part of the coast aesthetically, or to improve it for those who use and enjoy it;
- manage, maintain and develop those coast facilities that the Board is responsible for;
- report to the Minister where required; and
- carry out, or be involved in, research into the protection, restoration or development of the coast.<sup>38</sup>

A guide to coastal development assessment and planning was produced in 2013 by DEW. Elements of this guide include:

- Specific policy provisions to facilitate tourism development were adopted by the Board in 2016.
- The policy supports environmentally sustainable public access to the coast, balancing visitation with conservation.
- The Department for the Environment and Water supports the Board in providing advice and support to councils, developers and the community.

The Coastal Protection Board has two key strategic considerations when considering tourism development to coastal areas:

- that tourism development is not impacted by foreseeable coastal hazards, at a cost to operators, community and government; and
- that tourism development does not have a negative impact on the values that draw tourism and investment to the South Australian coast – land and seascapes, environmental values, and atmosphere.

#### **4.4.1. Issues identified regarding Coastal Protection**

As illustrated in Chapter 2, intra and inter-state travel has increased significantly as a result of the COVID-19 travel restrictions. Several coastal regions have expressed concerns regarding the pressure that increased visitation has put on local facilities and services available, such as designated campgrounds, bins and rubbish removal, carparks and amenities blocks.

Many of these essential services are on coastal land where there may be a significant risk of the natural landscape being damaged because the existing infrastructure is incapable of coping with the increase in numbers

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<sup>38</sup> <<https://www.environment.sa.gov.au/topics/coasts/coast-protection-board>>

### Information request 4.7

The Commission requests additional feedback regarding the experiences of local councils trying to develop coastal infrastructure to accommodate increased tourism demand.

In addition, the Commission would like to understand the respective roles and responsibilities of the Coastal Protection Board, local councils and other agencies for maintaining and protecting the coastal environment.

## 4.5 Pastoral Leases

Pastoral land in South Australia covers approximately 41,000,000 hectares, or around 40 per cent of the state, and comprises 324 leases. In addition to livestock, many of the leaseholders have diversified their businesses to have some level of tourism on their properties.

The management, condition and use of pastoral lands is provided for in the *Pastoral Land Management and Conservation Act 1989*.

A review of this Act was conducted in 2019, led by the state government with PIRSA the lead agency. It has been acknowledged in this tourism review that the pastoral rangelands contribute to South Australia's economy and pastoral industry, are important for Aboriginal culture and ecological biodiversity, and support local communities through regional employment and tourism.<sup>39</sup>

### 4.5.1 Issues identified regarding pastoral leases.

The following issues were raised in the consultation process:

- Apart from a healthy ecosystem, the priorities identified by pastoralists were financial viability, productivity and the ability to diversify.
- The major priority identified by the public was access.
- There was overwhelming support for mixed use of the land providing that land condition and ecology is preserved. The mixed use mainly focused on tourism.

There are some concerns that the increase in visitor numbers on pastoral lands are having detrimental effects on the environment as well as an impact on those who manage the infrastructure required to support the increase in visitors. That is, there are insufficient resources provided to regulate and maintain services on these properties. This was reinforced by material provided to the Commission by the Outback Communities Authority.<sup>40</sup>

<sup>39</sup>

<[https://pir.sa.gov.au/primary\\_industry/pastoral\\_leases\\_in\\_sa/pastoral\\_act\\_review#:~:text=Following%20the%20transfer%20of%20the,State%20Government%20in%20August%202019.&text=The%20management%2C%20condition%20and%20use,provided%20for%20in%20the%20Act](https://pir.sa.gov.au/primary_industry/pastoral_leases_in_sa/pastoral_act_review#:~:text=Following%20the%20transfer%20of%20the,State%20Government%20in%20August%202019.&text=The%20management%2C%20condition%20and%20use,provided%20for%20in%20the%20Act)>

<sup>40</sup>

<[https://pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0003/360570/KPPM\\_PLA\\_Review\\_Consultation\\_Summary\\_Report\\_FINAL\\_updated\\_25-05-20-converted\\_2.pdf](https://pir.sa.gov.au/__data/assets/pdf_file/0003/360570/KPPM_PLA_Review_Consultation_Summary_Report_FINAL_updated_25-05-20-converted_2.pdf)>

### Information request 4.8

The Commission requests additional feedback regarding the regulation of tourism activity on pastoral lands and in the outback region. That is:

- Are the regulations sufficient to protect the environment and businesses operating in these locations?
- How effectively are regulations enforced?
- Is it clear who is responsible for enforcing the regulations?

## 4.6 Conclusion

Differences are always highly likely between what businesses want to develop on public land and what regulators see as appropriate uses of that land. That said, the Commission considers that these differences can be narrowed by clearly identifying the acceptable uses for public lands and by ensuring the process for evaluating innovative proposal is transparent, timely and efficient.

This is particularly relevant for national parks which are protected areas and are essential spaces to enjoy nature in all its forms, as well as providing a wide range of environmental, social and economic benefits to people and communities.<sup>41</sup> At the same time, the Commission notes the South Australian Government has expressed interest in expanding nature-based tourism through the introduction of the *Nature-Based Tourism Co-investment Fund*.<sup>42</sup> As noted earlier in Chapter 2, the tourism sector in SA is dominated by small businesses that often do not have the time or resources to investigate complex regulations. Hence, to achieve the objectives of the Co-investment Fund, it is important to minimise the entry costs for new businesses by minimising the time and effort required to understand and comply with regulations governing their activities.

The Department of Environment and Water provides a comprehensive checklist for tenure and access requirements and a specific guide outlining the process involved with accessing Crown land. Businesses have advised the Commission that the process required to apply for access to Crown land and/or national parks is complex and requires several approval stages, often involving several agencies and regulators. Based on the evidence so far, including the advice and experience of proponents, the Commission concludes the guidance would benefit from greater clarity and simplicity, and from testing the guidance with business organisations and other potential proponents (see recommendations in Chapter 8).

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<sup>41</sup> <<https://www.parks.sa.gov.au/understanding-parks/conservation>>

<sup>42</sup> <<https://coinvest.parks.sa.gov.au/>>

## 5. Business operations and expansion

### 5.1 Introduction

This chapter discusses regulatory issues related to business operations and expansion in the areas of food safety, liquor licensing and workplace health and safety (WHS) that arose in the Commission's consultations with agritourism and nature-based tourism operators. For each of these issues a brief discussion of the relevant legislature is provided, followed by significant issues identified by stakeholders and regulators. Examples from other jurisdictions are presented for comparison where appropriate and possible.

The following issues are discussed in detail:

- access to meat processing facilities;
- using rain or bore water for commercial purposes;
- liquor licences attached to a vehicle; and
- interactions with WorkSafe SA.

Agritourism and nature-based tourism businesses are subject to a range of regulations administered by different agencies depending on the type and number of activities they offer. It was evident from the Commission's consultations that navigating this regulatory landscape poses particular challenges to small operators that form the majority of tourism businesses in South Australia. In addition, certain regulatory requirements meant for larger business operations may present practical and economical impediments to smaller businesses.

Table 5.1 sets out the Acts and the associated administering agencies that are relevant for the issues discussed in this chapter.

*Table 5.1: Administering agencies and Acts*

Agency	Acts
SA Health	<i>Food Act 2001</i> <i>Safe Drinking Water Act 2011</i> <i>Public Health Act 2011</i>
Department of Primary Industries and Regions SA (PIRSA)	<i>Primary Produce (Food Safety Schemes) Act 2004</i> <i>Fisheries Management Act 2007 (SA).</i>
Consumer and Business Services (CBS)	<i>Liquor Licencing Act 1997</i>
SafeWork SA	<i>Work Health and Safety Act, 2012 (SA)</i>

## 5.2 Food safety

Food safety in South Australia is managed under the food regulatory system comprising the *Public Health Act 2011*<sup>43</sup>, *Food Act 2001*,<sup>44</sup> relevant sections of the *Food Standards Code*<sup>45</sup> and *Safe Drinking Water Act 2011*.<sup>46</sup> Food safety regulations are enforced by a number of agencies and departments including:<sup>47</sup>

- SA Health
  - registrations of food businesses (both making and selling of food);
  - food safety programs, handling of food in a food business and food hygiene;
  - primary food producers who sell food direct to the public, and packaging, treating or substantially transforming food;
  - dairy distributors;
  - general food and labelling compliance issues; and
  - other advice relating to food safety matters or legislation.
- Department of Primary Industries and Regions SA (PIRSA)
  - food safety in the primary industry sector such as meat (e.g. abattoirs, butchers), eggs or seafood (except for dairy).
- Dairy Authority of South Australia (Dairysafe)
  - safety and quality of the production and processing of dairy products, including food safety arrangements and accreditation of dairy farmers, dairy processors and dairy transport businesses.
- Local Government
  - food safety in local government areas.

### 5.2.1 Setting up a food business

Under the *Food Act 2001*, a food business in South Australia is defined as a ‘business, enterprise or activity that involves the handling of food intended for sale or the sale of food’.<sup>48</sup> All food businesses must notify their intention of setting up their business to the relevant enforcement agency (usually the local council) before starting any food handling operations.<sup>49</sup> Primary food production businesses, defined as ‘the growing, raising, cultivation, picking, harvesting, collection or catching of food and associated onsite activities, with the exception of any “substantial transformation of food”, direct sale of food to the public or activities’<sup>50</sup> are

<sup>43</sup> <[https://www.legislation.sa.gov.au/LZ/C/R/SOUTH%20AUSTRALIAN%20PUBLIC%20HEALTH%20\(NOTIFIABLE%20CONTAMINANTS\)%20REGULATIONS%202020/CURRENT/2020.25.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/R/SOUTH%20AUSTRALIAN%20PUBLIC%20HEALTH%20(NOTIFIABLE%20CONTAMINANTS)%20REGULATIONS%202020/CURRENT/2020.25.AUTH.PDF)>

<sup>44</sup> <<https://www.legislation.sa.gov.au/LZ/C/A/FOOD%20ACT%202001/CURRENT/2001.44.AUTH.PDF>>

<sup>45</sup> <<https://www.foodstandards.gov.au/code/Pages/default.aspx>>

<sup>46</sup> <<https://www.legislation.sa.gov.au/LZ/C/A/SAFE%20DRINKING%20WATER%20ACT%202011/CURRENT/2011.16.AUTH.PDF>>

<sup>47</sup> <<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/public+health/food+safety+for+businesses/food+regulation/food+regulation+in+south+australia>>

<sup>48</sup> <<https://www.legislation.sa.gov.au/LZ/C/A/FOOD%20ACT%202001/CURRENT/2001.44.AUTH.PDF>>

<sup>49</sup> <<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/public+health/food+safety+for+businesses/starting+a+food+business>>

<sup>50</sup> <<https://www.legislation.sa.gov.au/LZ/C/A/FOOD%20ACT%202001/CURRENT/2001.44.AUTH.PDF>>

exempt from this requirement, and are regulated under the *Primary Produce (Food Safety Schemes) Act 2004*<sup>51, 52</sup>.

Food and accommodation businesses are also required to comply with the *Safe Drinking Water Act 2011*<sup>53</sup> and *Safe Drinking Water Regulations 2012* which commenced in March 2013.<sup>54</sup> Domestic rainwater tanks and private bore water supplies are exempt from the Act. There are also exemptions for small business operators using rainwater tanks in low-risk premises including short-term accommodation facilities such as bed and breakfasts, hotels, caravan parks and camping grounds. They are however required to provide a risk management plan.<sup>55</sup>

## 5.2.2 Issues identified in nature-based and agritourism

The Commission's consultations with business operators in agritourism and nature-based tourism helped identify several key issues related to food safety, discussed below. Mobile food operators including food trucks are considered out-of-scope for the purpose of this review.

### **Access to meat processing facilities**

One of the issues that emerged during the Commission's consultations with agritourism stakeholders relates to business operators in regional and remote areas not having suitable access to meat processing facilities. They face the challenge of having to transport animals for long distances for processing, adding to the cost and compromising the quality of the meat. Agritourism operators whose business operations include the provision of gourmet food to their customers consider this as a constraint on their ability to provide a true 'paddock to plate' experience. As described in Table 5.1, food safety is regulated by SA Health and meat processing is regulated by PIRSA.

The Commission's consultations suggested that a potential solution may be mobile abattoirs where the processing plant is transported to the animals rather than transporting the animals to the plant. There are multiple levels of regulations including food safety, water quality, waste management and disposal, environmental issues, workplace health and safety, local council planning and zoning that require consideration in licensing mobile abattoirs.

In South Australia the requirements for setting up a mobile abattoir are the same as for fixed meat processing facilities.<sup>56</sup> The national standards for meat processing are enforced in South Australia under the *Primary Produce (Food Safety Schemes) Act 2004 and Food Safety Schemes (Regulations)* administered by PIRSA.<sup>57</sup>

Figure 5.1 presents these requirements for primary processing of meat, which includes the killing of animals for meat for human consumption and by-products. This information fact sheet

<sup>51</sup> <[https://www.legislation.sa.gov.au/LZ/C/A/PRIMARY%20PRODUCE%20\(FOOD%20SAFETY%20SCHEMES\)%20ACT%202004.aspx](https://www.legislation.sa.gov.au/LZ/C/A/PRIMARY%20PRODUCE%20(FOOD%20SAFETY%20SCHEMES)%20ACT%202004.aspx)>

<sup>52</sup> Further information related to food safety in primary food production is available at <[https://www.pir.sa.gov.au/biosecurity/food\\_safety](https://www.pir.sa.gov.au/biosecurity/food_safety)>.

<sup>53</sup> <<https://www.legislation.sa.gov.au/LZ/C/A/SAFE%20DRINKING%20WATER%20ACT%202011.aspx>>

<sup>54</sup> The Act is based on the *Australian Drinking Water Guidelines* available at <<https://www.nhmrc.gov.au/about-us/publications/australian-drinking-water-guidelines>>.

<sup>55</sup> <<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/public+health/water+quality/providing+safe+drinking+water/risk+management+plans+for+drinking+water+providers>>

<sup>56</sup> The Commission's communications with PIRSA. Further information available at:

<[https://pir.sa.gov.au/biosecurity/food\\_safety/meat](https://pir.sa.gov.au/biosecurity/food_safety/meat)> and <[https://pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0005/332438/Fact\\_Sheet\\_-\\_Meat\\_processing\\_legislation\\_and\\_standards\\_in\\_SA.pdf](https://pir.sa.gov.au/__data/assets/pdf_file/0005/332438/Fact_Sheet_-_Meat_processing_legislation_and_standards_in_SA.pdf)>.

<sup>57</sup> <[https://www.legislation.sa.gov.au/LZ/C/A/PRIMARY%20PRODUCE%20\(FOOD%20SAFETY%20SCHEMES\)%20ACT%202004/CURRENT/2004.20.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/A/PRIMARY%20PRODUCE%20(FOOD%20SAFETY%20SCHEMES)%20ACT%202004/CURRENT/2004.20.AUTH.PDF)>

is available on the PIRSA website, which also includes additional information on further processing and value adding.<sup>58</sup>

Figure 5.1: PIRSA fact sheet on the requirements for primary meat processing standards and legislation in South Australia

Primary Processing		
Relevant Legislation and Standards	Summary of key requirements	Infrastructure requirements
<p><b>Food Standards Australia New Zealand Food Standards Code:</b></p> <ul style="list-style-type: none"> <li>Standard 1.2 Labelling and other information requirements</li> <li>Standard 2.2.1 Meat and meat products</li> <li>Standard 3.2.2 Food safety practices and general requirements</li> <li>Standard 3.2.3 Food premises and equipment</li> <li>Standard 4.2.3 Primary production and processing standard for meat</li> </ul> <p><b>Food Act 2001</b></p> <ul style="list-style-type: none"> <li>Food Regulations 2017, Section 14</li> </ul> <p><b>Primary Produce (Food Safety Schemes) Act 2004</b></p> <ul style="list-style-type: none"> <li>Primary Produce (Food Safety Schemes) (Meat) Regulations 2017</li> </ul> <p><b>Australian Meat Standards</b></p> <ul style="list-style-type: none"> <li>Australian Standard for the Hygienic Production and Transportation of Meat and Meat Products for Human Consumption</li> </ul>	<ul style="list-style-type: none"> <li>Accreditation &amp; approved food safety arrangement</li> <li>Documented system, including monitoring</li> <li>Qualified Meat Inspector (ante &amp; post mortem inspection)</li> <li>Undercover yarding for stock to be killed</li> <li>Chiller capacity for stock to be killed</li> <li>Restraint &amp; stunning equipment</li> <li>Arrangements for holding suspect and diseased stock</li> <li>Pest control</li> <li>Construction standards that facilitate cleaning and sanitising</li> <li>Microbiological testing program</li> </ul>	<ul style="list-style-type: none"> <li>Chiller with capacity to reduce carcasses to 7 degrees within 24 hours of stunning</li> <li>Yarding for livestock</li> <li>Drainage, waste treatment and disposal (solid and liquid)</li> <li>Power</li> <li>Potable water</li> <li>Minimum 82 degree water for sterilisation</li> <li>Rail height to keep carcasses off floor</li> <li>Separation of dirty/clean processes</li> <li>National Livestock Identification System (NLIS) - hardware and software</li> </ul>

Source: <[https://pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0005/332438/Fact\\_Sheet\\_-\\_Meat\\_processing\\_legislation\\_and\\_standards\\_in\\_SA.pdf](https://pir.sa.gov.au/__data/assets/pdf_file/0005/332438/Fact_Sheet_-_Meat_processing_legislation_and_standards_in_SA.pdf)>

The Commission notes that a public consultation and review of on-farm meat processing in Kangaroo Island was completed in 2018-19 by PIRSA.<sup>59</sup> The review examined several different options including:

- a facility for primary meat processing (single or multi-species);
- a small shared facility;
- a mobile processing facility, which travels to livestock, and
- the use of existing accredited facilities.

An economic assessment of these options concluded that while there are no regulatory impediments to establishing mobile abattoirs, they were not economically viable in Kangaroo Island primarily due to the demand for processing being below the volume of work required to sustain operations.

<sup>58</sup> <[https://pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0005/332438/Fact\\_Sheet\\_-\\_Meat\\_processing\\_legislation\\_and\\_standards\\_in\\_SA.pdf](https://pir.sa.gov.au/__data/assets/pdf_file/0005/332438/Fact_Sheet_-_Meat_processing_legislation_and_standards_in_SA.pdf)>

<sup>59</sup> The public discussion paper is available at <[https://pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0004/332437/Discussion\\_Paper\\_-\\_Artisan\\_On-farm\\_Meat\\_Processing\\_on\\_KI.pdf](https://pir.sa.gov.au/__data/assets/pdf_file/0004/332437/Discussion_Paper_-_Artisan_On-farm_Meat_Processing_on_KI.pdf)>

‘Consultation with industry and government experts indicated that a mobile processing facility is unlikely to be a financially viable option for artisan meat processing on the Island. Furthermore, there was little demand for a mobile processing unit.’<sup>60</sup>

Complying with the relevant biosecurity requirements, including having a meat safety officer onsite, the limited capacity of mobile facilities as well as waste disposal issues were identified as key limiting factors in setting up mobile abattoirs.<sup>61</sup> The review discussion paper also noted that producers to date have indicated that it was more cost effective to transport livestock to a processing facility than vice versa.

While all states follow the *Australian Standard for the Hygienic Production and Transportation of Meat (AS4696)* and the Australia New Zealand Food Standards Code, their administration may vary between the states as described in Table 5.2. As such, it is evident that the practice and culture of the regulator has a significant effect on the interpretation of national standards.

Table 5.2: Jurisdictional comparison of the operation of mobile abattoirs

State	Status
Victoria*	Amendments to the <i>Meat Industry Act 1993</i> made by the <i>Primary Industries Legislation Amendment Act, 2019</i> commenced on 1 February 2020 and make it possible for vehicle- based meat processing facilities to be licensed by PrimeSafe (the statutory authority responsible for regulating meat, poultry, seafood and pet food in Victoria).
New South Wales*	There are no NSW regulations prohibiting the operation of mobile abattoirs. The standards are the same for all operators. Australia’s first mobile abattoir was licensed to operate in NSW.
Western Australia	Mobile abattoirs can be approved if they comply with existing standards ( <i>Food Act 2008, Food regulations 2009</i> , and Australian Standard for Hygienic Production and Transportation of Meat and Meat Products for Human Consumption).
Queensland	Mobile abattoirs would be assessed for accreditation primarily under the requirements of the Australian Standard for the Hygienic Production and Transportation of Meat and the Australia New Zealand Food Standards Code.
Tasmania	Mobile abattoirs cannot be used for commercial meat processing within Tasmania.
Northern Territory	Current legislation does not allow for mobile abattoirs to operate in the territory.
South Australia	The requirements are the same for all operators. None currently operating in the state.

\*mobile abattoirs currently operating in the state

<sup>60</sup> BDO EconSearch, *Economic analysis of meat processing options in Kangaroo Island: A report to Primary Industries and Regions SA and Livestock SA* (25 June 2019), 11.  
<[https://www.pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0004/346873/Economic\\_Analysis\\_of\\_Meat\\_Processing\\_Options\\_on\\_Kangaroo\\_Island\\_-\\_Prepared\\_by\\_BDO\\_EconSearch.pdf](https://www.pir.sa.gov.au/__data/assets/pdf_file/0004/346873/Economic_Analysis_of_Meat_Processing_Options_on_Kangaroo_Island_-_Prepared_by_BDO_EconSearch.pdf)>

<sup>61</sup> The Commission’s communications with PIRSA and PIRSA (2018) *Artisan on-farm meat processing on Kangaroo Island*, Discussion paper. (October 2018)  
<[https://pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0004/332437/Discussion\\_Paper\\_-\\_Artisan\\_On-farm\\_Meat\\_Processing\\_on\\_KI.pdf](https://pir.sa.gov.au/__data/assets/pdf_file/0004/332437/Discussion_Paper_-_Artisan_On-farm_Meat_Processing_on_KI.pdf)>.

Source: <https://www.beefcentral.com/processing/mobile-abattoirs-soon-to-start-rolling-in-australia/>  
<[https://pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0004/332437/Discussion\\_Paper\\_-\\_Artisan\\_On-farm\\_Meat\\_Processing\\_on\\_KI.pdf](https://pir.sa.gov.au/__data/assets/pdf_file/0004/332437/Discussion_Paper_-_Artisan_On-farm_Meat_Processing_on_KI.pdf)>

New South Wales was the first state to licence a mobile meat processing facility in 2019.<sup>62</sup> In Victoria, amendments to the *Meat Industry Act, 1993* in 2019 made it possible to license vehicle-based meat processing facilities since early 2020. While there are no known regulatory barriers to operate mobile abattoirs in Western Australia or Queensland, there are none operating currently. In Tasmania, mobile abattoirs cannot be used for commercial meat processing, and current regulations in the Northern Territory do not allow the operation of mobile abattoirs.

The Commission notes that there are currently 24 meat processing facilities spread across South Australia as presented in Table 5.3. In addition, there are eight game meat processing facilities across South Australia, which can be used by agritourism operators in the regions.<sup>63</sup>

Table 5.3: Meat processing facilities in South Australia

Region	Number of meat processing facilities
Adelaide	8
Southeast	2
Riverland	2
Yorke Peninsula	3
Mid and Far North	4
West Coast	5
<b>Total</b>	<b>24</b>

Source: Information received from PIRSA

Based on the Commission's communications with PIRSA, currently there are no formal applications for mobile abattoirs in the state. During the Commission's consultations, some stakeholders expressed concern about the responsiveness of the regulators towards new meat processing businesses. In particular, the perception of business stakeholders was that the culture at the Biosecurity SA Food Safety Program within PIRSA was not supportive with respect to the development of new businesses.<sup>64</sup>

While the Commission's consultations and analyses to date indicate that there are no significant issues in the regulation of mobile meat processing facilities in South Australia, it seeks to test this understanding through additional information and feedback from stakeholders.

### Information request 5.1

The Commission requests feedback from regulators and businesses regarding:

- additional issues relating to accessing meat processing facilities by agritourism businesses in South Australia;

<sup>62</sup> <<https://www.farmonline.com.au/story/6245853/mobile-abattoir-gets-first-commercial-licence-in-australia/>>

<sup>63</sup> The Commission's communications and information received from PIRSA.

<sup>64</sup> The Commission's consultations with meat industry stakeholders.

- the experience of businesses that have attempted to set up meat processing facilities in South Australia (including mobile abattoirs), including guidance from and interaction with regulators; and
- how South Australia's regulatory requirements for mobile meat processing differ from other jurisdictions?

### **Using rain or bore water for commercial use**

During the Commission's consultations, several agritourism stakeholders raised the issue of difficulties related to using rain or bore water for commercial use. The Commission heard that agritourism businesses in regional areas tend to rely solely on rain or bore water as they have no access to mains water. Moreover, some agritourism businesses that have the option of using water from the mains as well as rain and bore water tend to use only the mains due to the high costs and additional requirements involved in complying with the *Safe Drinking Water Act 2011* administered by SA Health.<sup>65</sup>

SA Health requires that 'bore water that is supplied to the public for drinking (Including food preparation) is subject to the requirements of the *Safe Drinking Water Act 2011*.'<sup>66</sup> Under the Act, all drinking water suppliers are required to:

- register as a drinking water provider;
- implement a risk management plan;
- provide water quality results to consumers; and
- comply with audits and inspections.<sup>67</sup>

SA Health also requires water quality testing to be carried out by an approved laboratory.

From a tourism business perspective, the *Safe Drinking Water Act 2011* applies to drinking water provided in short-term accommodation such as bed and breakfasts, farm-stays, motels, hotels, caravan parks and holiday rentals. There are exemptions for rainwater supplies in low-risk premises including short-term accommodation. Detailed instructions on the application of the Act to accommodation businesses are provided as a fact sheet by SA Health, available on their website.<sup>68</sup>

In addition, the following are exempt from the *Safe Drinking Water Act 2011*:<sup>69</sup>

- water for private domestic purposes (rainwater or bore water);
- rainwater supplied at low-risk premises (for example short-term accommodation facilities including bed and breakfast, hotels, caravan parks, camping grounds, but

<sup>65</sup> The Commission's consultations with agritourism stakeholders

<sup>66</sup> <<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/public+health/water+quality/providing+safe+drinking+water>>

<sup>67</sup> *ibid*

<sup>68</sup> Available at

<<https://www.sahealth.sa.gov.au/wps/wcm/connect/909b56004e88eb5096399e3a30168144/Accommodation+Premises-Public+Health-Water+Quality-20140120.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-909b56004e88eb5096399e3a30168144-nwLVCOv>>.

<sup>69</sup> <<https://www.sahealth.sa.gov.au/wps/wcm/connect/907f9e004e88ed7c96499e3a30168144/160212+Safe+Drinking+Water+Act+Exemptions+Fact+Sheet.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-907f9e004e88ed7c96499e3a30168144-nwKjVPZ>>

does not apply to places where food or beverages are prepared and provided for sale or supply);

- optional rainwater supplies (additional to mains water);
- discretionary sources of water at recreational parks and reservoirs; and
- boiled rainwater used in small, regulated food premises (such as roadhouses and cafes that use very low volumes of boiled rainwater).

The Commission will further investigate specific issues faced by tourism businesses in relation to using rain or bore water for commercial purposes, including the regulatory process and practice.

### Information request 5.2

What has been the experience of tourism businesses that have attempted to use bore or rainwater for commercial purposes, including the guidance received from the regulator? Please provide details.

### ***Processing and serving fish on charter boats***

The Commission's consultations with nature-based tourism business stakeholders raised the issue of processing and serving fish on charter boats. In particular, the Marine Fishers Association of South Australia indicated that their members are keen to diversify and add value to existing business offerings in the form of processing fish on charter boats. The Commission also heard that preparing and serving fish trigger a host of food safety issues which pose a barrier, especially for small operators.<sup>70</sup>

A processor's licence is required for filleting fish on charter boats under current regulations.<sup>71</sup> The Commission is aware that there are charter fisher operators currently operating in South Australia who possess a processor's licence which enables them to catch and fillet fish on the boat.<sup>72</sup>

Charter boat fisheries are managed by PIRSA, which administers the *Fisheries Management Act 2007 (South Australia)*, through the *Charter Boat Fishery Management Plan*<sup>73</sup>. The Act defines a fish processor as: 'a person who for the purpose of trade or business process, purchases or obtains fish,' and processing is defined as: 'scaling, gilling, gutting, filleting, freezing, chilling, packing or other activity involved in preparing fish for sale.'<sup>74</sup>

Under the current system in South Australia, a fish processor can be registered as:<sup>75</sup>

- a full processor with no restrictions on who they sell the product to; or

<sup>70</sup> The Commission's consultations with Food SA

<sup>71</sup> <[https://www.pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0010/74836/fish-processor-application-for-registration-2020-21.pdf](https://www.pir.sa.gov.au/__data/assets/pdf_file/0010/74836/fish-processor-application-for-registration-2020-21.pdf)>

<sup>72</sup> The Commission's consultations with charter fishers' stakeholders

<sup>73</sup> <[https://www.pir.sa.gov.au/fishing/recreational\\_fishing/charter\\_boat\\_fishery](https://www.pir.sa.gov.au/fishing/recreational_fishing/charter_boat_fishery)>

<sup>74</sup> <<https://www.legislation.sa.gov.au/LZ/C/A/FISHERIES%20MANAGEMENT%20ACT%202007/CURRENT/2007.4.AUTH.PDF>>

<sup>75</sup> <[https://www.pir.sa.gov.au/fishing/fish\\_processors](https://www.pir.sa.gov.au/fishing/fish_processors)>

- a restricted processor, which is only available to those who hold a commercial fishing or aquaculture licence. They may only sell to a person who is not a registered fish processor and who sells the product as a meal or part of a meal directly to the public.

The current fee structure for fish processor registration in South Australia is illustrated in Figure 5.2.

Figure 5.2: Fee structure for fish processor registration in South Australia, 2020-21

	Annual Fee
<b>BASE FEE</b> - trade in scalefish and associated species (not including other major species ie prawn, rock lobster, or abalone)	\$1184.00
<b>1 x OTHER MAJOR SPECIES</b> - trade in scalefish and associated species and one other major species (either prawn, rock lobster or abalone)	\$2719.00
<b>2 x OTHER MAJOR SPECIES</b> - trade in scalefish and associated species and two other major species (either prawn and rock lobster, prawn abalone or rock lobster and abalone)	\$4254.00
<b>3 x OTHER MAJOR SPECIES</b> - trade in scalefish and associated species and all three other major species (prawn, rock lobster and abalone)	\$5789.00
<b>Commercial Fishery Licence Holders</b> (restricted)	\$206.00
<b>Additional Asset Fee</b>	\$36.25

Source: Application for fish processor registration, available at: [https://www.pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0010/74836/fish-processor-application-for-registration-2020-21.pdf](https://www.pir.sa.gov.au/__data/assets/pdf_file/0010/74836/fish-processor-application-for-registration-2020-21.pdf)

As discussed above in section 5.2.1, South Australia's public health regulations require that anyone serving food, including growers and harvesters of seafood be compliant with the *Food Act 2001* and conform to the *Food Standards Code*.<sup>76</sup> The Commission's consultations with nature-based tourism stakeholders indicated that compliance costs associated with this requirement could be too high for small charter boat operators as the interpretation of the standards does not seem to recognise the difference in the scale of operations being proposed.

The South Australian government committed \$500,000 in 2019 to diversify the charter boat sector through the Charter Boat Diversification Program – 'Fishing for tourism', managed through PIRSA.<sup>77</sup> Key objectives of the program include:

- strengthening the charter boat sector by co-investing in projects to enhance charter boat operators offering a tourism experience;
- broaden tourism offerings that will be attractive to the domestic and international tourism and visitor market; and

<sup>76</sup> [https://www.pir.sa.gov.au/biosecurity/food\\_safety/seafood](https://www.pir.sa.gov.au/biosecurity/food_safety/seafood)

<sup>77</sup> [https://www.pir.sa.gov.au/grants\\_and\\_assistance/fishing\\_for\\_tourism\\_-\\_charter\\_boat\\_diversification\\_program](https://www.pir.sa.gov.au/grants_and_assistance/fishing_for_tourism_-_charter_boat_diversification_program)

- position the sector for strong future growth in the nature-based tourism sector.<sup>78</sup>

While recreational fishers do not require a licence for general fishing in South Australia, there are size, bag and boat limits. Permits and registrations are required for certain activities including lobster pots and fishing in reservoirs.<sup>79</sup>

The Commission notes that there are on-going discussions between industry stakeholders and PIRSA around improving the flexibility of existing regulations to support the charter fishing sector.<sup>80</sup> The Commission also notes the importance of consulting with all types of stakeholders and end-users during this process.

The Commission intends to further investigate issues related to charter fishing operations including the design, process and practice of the regulations involved.

### Information request 5.3

The Commission requests feedback on:

- whether the Commission's characterisation of issues related to processing and serving fish on charter boats is accurate;
- the experiences of tourism operators who have attempted to obtain fish processing licences; and
- the processes and mechanisms that are available for businesses to provide feedback to the regulators.

## 5.3 Liquor licensing

The regulation of the sale, supply and consumption of alcohol in South Australia is managed under the *Liquor Licensing Act 1997*.<sup>81</sup> It governs liquor licence applications, approvals and compliance and underwent a series of reforms that took effect in November 2019 in response to the Anderson Review.<sup>82</sup>

The following licence categories are available under the new system:<sup>83</sup>

- General and Hotel Liquor Licence;
- On premises liquor licence;
- Residential licence;
- Restaurant and catering liquor licence;
- Club licence;

<sup>78</sup> *ibid*

<sup>79</sup> <[https://www.pir.sa.gov.au/fishing/recreational\\_fishing](https://www.pir.sa.gov.au/fishing/recreational_fishing)>

<sup>80</sup> The Commission's communications with PIRSA

<sup>81</sup> <<https://www.legislation.sa.gov.au/LZ/C/A/LIQUOR%20LICENSING%20ACT%201997/CURRENT/1997.65.AUTH.PDF>>

<sup>82</sup> Further information available at <<https://www.cbs.sa.gov.au/campaigns/reform-sa-liquor-laws>> and <[https://www.agd.sa.gov.au/sites/default/files/anderson\\_report\\_review\\_of\\_liquor\\_licensing\\_act\\_1997\\_june\\_2016.pdf?v=1492476510](https://www.agd.sa.gov.au/sites/default/files/anderson_report_review_of_liquor_licensing_act_1997_june_2016.pdf?v=1492476510)>.

<sup>83</sup> More information is available at <[https://www.cbs.sa.gov.au/sites/default/files/resource-files/licence\\_category\\_information.pdf?timestamp=1623028973537](https://www.cbs.sa.gov.au/sites/default/files/resource-files/licence_category_information.pdf?timestamp=1623028973537)>.

- Small venue licence;
- Packaged liquor licence;
- Liquor production and sales licence;
- Five-year short-term licence; and
- Short-term licence.

A tourism operator intending to sell or produce alcohol must apply for a liquor licence from the Commissioner for Consumer Affairs, Liquor and Gambling. Liquor licensing decisions are guided by the objects of the Act which include, among others, to promote and support the tourism sector:

*to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act. (Liquor Licencing Act 1997, Part 1.3)*

There are exemptions to liquor licensing under certain situations including cottage or bed and breakfast style accommodation businesses, which cater for a maximum of 16 people if:<sup>84</sup>

- the alcohol is complementary;
- the alcohol is supplied to an adult staying at the premises;
- the alcohol has been purchased on a retail basis from a licensee;
- the supply of liquor is ancillary to the provision of accommodation;
- no more than 1.5 litres per accommodation booking is supplied;
- alcohol is supplied with a meal hosted by the operator of the accommodation, no more than 750 ml per person; or
- a picnic basket with alcohol is supplied, no more than 750 ml per adult.

The Commission notes that Consumer and Business Services (CBS) have granted 128 liquor production and sales licences between July 2020 and June 2021 and have not refused any applications.<sup>85</sup>

### 5.3.1 Issues identified in nature-based and agritourism

The Commission's consultations with nature-based and agritourism stakeholders indicated that tourism business operators were generally happy with the most recent reforms to liquor licensing. This is echoed in the submission from the South Australian Tourism Commission:

*Overall, since the reforms to the liquor licensing laws under the Liquor Licensing (Liquor Review) Amendment Act 2017, are viewed as being easier to navigate and the processes for applications simplified. For example, the launch of the online portal for managing liquor licensing issues, including applications makes the process much easier. (South Australian Wine Industry submission, DR5, p. 8)*

<sup>84</sup> <<https://www.sa.gov.au/topics/business-and-trade/liquor/apply/not-needed>>

<sup>85</sup> The Commission's communications with Consumer and Business Services

The Commission also received positive feedback on the responsiveness and attitude of CBS in relation to licensing as well as assistance provided in navigating the COVID-19 pandemic restrictions.

*During the COVID-19 pandemic, Consumer and Business Services (CBS) has been accommodating and responsive. For example, CBS has been willing to grant short-term licences in order to temporarily expand a licensing area by including an outdoor area or different building to enable the industry to manage the impact of capacity limitations, social distancing requirements and other restrictions. (South Australian Wine Industry submission, DR5, p. 8)*

Stakeholders also acknowledged the flexibility and adaptability of the regulatory system in relation to liquor licensing during the COVID-19 pandemic:

*For example, we were encouraged by the temporary changes that were introduced in 2020 during COVID-19 to keep small bars and business afloat by relaxing the liquor licensing restrictions and allowing the home delivery of alcohol. This is a positive example of how the regulatory system can be adapted to the current conditions and respond to the realistic level of risk. (South Australian Tourism Commission submission, DR4, p.3).*

The Commission also notes that council response and attitudes vary widely which could impact businesses. For example, this is particularly the case in situations where an application for a licenced hotel is also linked to a development application process, as indicated by the following submission:

*Members have indicated that CBS has had a quick turnaround time, but that some local councils at times have been very slow to respond to indicate their consent to an application. One member indicated that it took the council two weeks to respond for consent, but CBS only three days to grant the application. One of the objectives of the liquor licensing reforms was to simplify processes; clearly that has been achieved by CBS. Councils now need to get onboard to develop consistent processes to streamline their involvement. (South Australian Wine Industry submission, DR5, p. 8)*

### **Liquor licence attached to a vehicle**

The Commission heard that tour operators who also serve alcohol on their vehicles are required to obtain an 'on premises liquor licence' which is attached to a specific vehicle. Thus, whenever there is a change in vehicle, the operator is forced to update their liquor licence, which is costly and inefficient.<sup>86</sup>

The Commission understands that CBS are aware of this issue, and it is currently under review.<sup>87</sup>

#### **Information request 5.4**

Is the Commission's characterisation of liquor licensing as applied to nature-based and agritourism operators accurate?

Are there any other liquor licensing issues relevant to the tourism sector?

<sup>86</sup> The Commission's consultations with stakeholders

<sup>87</sup> The Commission's communications with CBS

## 5.4 Workplace health and safety

The safety, health and welfare of employed persons or those engaged in industry in South Australia are ensured by the *Work Health and Safety Act, 2012 (SA)* and the *Work Health and Safety Regulations, 2012 (SA)*.<sup>88</sup> They are applicable to all businesses and are enforced by the regulator, SafeWork SA. Workplace health and safety involves managing the risks to the safety and health of employees as well as customers and visitors. In addition to enforcing the WHS laws in South Australia, SafeWork SA provides advice and education on WHS and investigates workplace incidents.<sup>89</sup>

Workplace health and safety codes of practice, which are part of the legislative umbrella, guide the measures that are to be taken by employers to prevent workplace injury. They include best practice controls for particular types of hazards, identifying and managing risks and achieving the standards required under the Act.<sup>90</sup>

A preliminary search of the Australian Business Licence Information System (ABLIS) database for WHS requirements for a hypothetical nature-based or agritourism business in South Australia provided the following:

- First Aid in the Workplace Code of Practice;
- Hazardous Manual Tasks Code of Practice;
- How to Manage Work Health and Safety Risks Code of Practice;
- Managing Electrical Risks in the Workplace Code of Practice;
- Managing Noise and Preventing Hearing Loss at Work Code of Practice;
- Managing the Risk of Falls at Workplaces Code of Practice;
- Managing the Risk of Plant in the Workplace;
- Managing the Work Environment and Facilities Code of Practice;
- Preparation of Safety Data Sheets for Hazardous Chemicals Code of Practice; and
- Work Health and Safety Consultation, Cooperation and Coordination Code of Practice.

### 5.4.1 Issues identified in nature-based and agritourism

#### ***Regulator culture***

Some stakeholders noted issues relating to the business culture and interactions with SafeWork SA, especially relating to industry engagement as illustrated by the submissions from the South Australian Wine Industry and Wilderness Escape:

*However, some regulators are less proactive and appear to be giving less attention to industry engagement. For example, since the restructuring of SafeWork SA following the evaluation by ICAC in 2018, the links with industry are not as strong as they used to be and the industry is rarely proactively advised of or consulted on activities or projects. There is also room to improve how Return to Work SA engages with stakeholders, including industry associations. (South Australian Wine Industry submission, DR5, p. 8)*

<sup>88</sup> <<https://www.legislation.sa.gov.au/lz/c/a/work%20health%20and%20safety%20act%202012.aspx>>

<sup>89</sup> <<https://www.safework.sa.gov.au/about-us/our-role>>

<sup>90</sup> <<https://www.safework.sa.gov.au/workplaces/codes-of-practice>>

*We had a scenario this year with SafeWork SA, where we wanted to implement a new electric winch to one of our amusement structures. We wanted to continue to operate the amusement structure using the existing manual winch mechanism, that was already licensed and approved, while we were going through the SafeWork SA approval for the electric winch mechanism. SafeWork SA did not permit for this to occur and as such we lost 3-4 months revenue, and had to spend significant staff time working through this approval process with SafeWork SA. We estimate that this shutdown cost our business \$140,000. The timing of the shutdown was also our peak season and when we were hoping to be able to generate some income after what had been a dismal year due to COVID-19. There was a lack of empathy and no sense of urgency from SafeWork to help us get running again as quickly as possible. We agree with your other stakeholders that the culture of how regulators interact with business should be raised and reviewed as part of this tourism regulation review. (Wilderness Escape submission, DR7, p. 3)*

The Commission's consultations with stakeholders did not raise any further WHS issues.

### **Information request 5.5**

The Commission requests more information regarding nature-based and agritourism business interaction with SafeWork SA.

Are there any other workplace, health and safety (WHS) issues relevant to the tourism sector?

## **5.5 Conclusion**

This chapter discussed regulatory issues identified during the Commission's consultations with agritourism and nature-based tourism operators related to business operations and expansion in the areas of food safety, liquor licensing and WHS. Specific issues in food safety included interpretation of national standards for mobile meat processing facilities, using bore water for commercial purposes and processing and cooking fish on charter boats. As some of these regulations were established to regulate different businesses, the Commission is requesting additional information on these issues to determine whether the cost of these regulations is excessive in the case of smaller tourism-oriented businesses.

The Commission's consultations and submissions to the review indicate that stakeholders generally view the recent reforms to liquor licensing favourably. In addition, stakeholder interactions with CBS are positive and proactive.

The Commission notes that while there were no specific issues raised by stakeholders in relation to WHS, there were concerns about the culture and attitude towards businesses by the regulator, SafeWork SA.

## 6. Access to public infrastructure for tourism

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The South Australian Government and Local Governments own a significant amount of infrastructure across the state, ranging from roads, water and sewerage networks to boating infrastructure. Agritourism and nature-based tourism businesses benefit from connections to networks of infrastructure (including roads, water and sewerage) as well as access to other infrastructure such as jetties. Access to natural assets such as mountains, forests, caves and landscapes are addressed in Chapter 4.

This chapter discusses regulatory issues related to accessing and using public infrastructure by tourism businesses. These includes timeframes, conditions and costs of access and connection.

### 6.1 Roads

The state government through the Department for Infrastructure and Transport (DIT) manages around a quarter of South Australia's road network, including; 13,000 km of sealed roads; and 10,000 km of unsealed roads.<sup>91</sup> Local governments are responsible for maintaining 75,000 km of local roads.

Issues that tourism businesses face with utilising the state's road network include connections to state roads and placing signage on roads to facilitate access.

#### 6.1.1 Connecting to roads

A development of a new tourism business, or significant expansion of an existing one, may affect traffic flows on the road network where it is located. As a result, development applications that have potential to alter traffic on arterial roads may require referral to the Commissioner of Highways for assessment.

The Commissioner of Highways (CoH) is the statutory body responsible for development referrals affecting arterial road transport routes and corridors, future road widening and advertisements near signalised intersections. The CoH is established under the *Highways Act 1926* and has the role of carrying that Act into effect.

The Commission will consider the process of referrals to CoH as part of its Development Referrals Review. However, a common theme from tourism businesses during consultation is that the costs of undertaking the required traffic assessments can be high.

*If a park is redeveloping and wishes to change entries onto departmental roads it can be a costly process to get approvals. Traffic surveys must be undertaken, and specialist departmental approved consultants must be appointed and paid for by the business operator. These consultants can be expensive. (SA Parks submission, DR3, p. 2)*

#### 6.1.2 Roadside signage

Tourism signage on state roads (under the care and control of DIT) is also subject to DIT's *Road Sign Guidelines* which sets out what signage is allowed and the process for having tourism signage installed on state roads. These guidelines are developed in conjunction with the South Australian Tourism Commission and supplement the Australian Standard AS 1742.6 *Manual of uniform traffic control devices – Tourist and Services signs*.

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<sup>91</sup> Department for Infrastructure and Transport, *Roads and traffic monitoring* (9 April 2021) <<https://www.sa.gov.au/topics/driving-and-transport/roads-and-traffic/road-responsibilities>>.

The Department for Infrastructure and Transport has advised that they have received 17 applications for new tourism signage within the last 12 months. Of these applications, two were not approved as they did not meet the minimum criteria, nine were approved and the remainder were still being assessed.

Tourism signage on local roads is the responsibility of local governments and the policies and practices differ between local governments. However, the installation of roadside signage is considered 'roadwork'<sup>92</sup> and is subject to the *Planning, Development and Infrastructure Act 2016*. The Department for Infrastructure and Transport has delegation to approve tourism signage on state roads, and local councils have delegation to approve tourism signage on local roads.

The purpose of tourism signage is not to promote individual businesses, but to aid navigation. Signage designed to promote individual businesses is classed as advertising and is instead subject to the *Advertising Signs Assessment Guidelines for Road Safety*. Advertising signs, unlike tourism signs, require a development approval under the *Planning, Development and Infrastructure Act 2016*. The advertising signs guidelines have not been updated since the introduction of the *Planning, Development and Infrastructure Act 2016*.

### **Tourist attractions**

To be eligible for a tourist attraction sign on a state road, the guidelines provide ten essential criteria that an attraction must meet:

- The attraction should be already established and operational with tourism as its core business.
- The business must be registered with the Australian Tourism Data Warehouse;
- It must have all relevant local, state and commonwealth approvals to operate.
- The attraction caters for casual visitors without the need for pre-booking (except for large groups).
- It must be open for a minimum of five days a week, including weekends and public holidays, and is expected to be open during daylight hours for a minimum of six hours.
- Adequate parking must be available onsite or within close and convenient proximity.
- It must have marketing material (a brochure, printed material or a website) that provides clear directions, details opening hours and information about the visitor experience and printed material should be made available at the closest visitor information centre.
- It must provide conveniently located toilet facilities that comply with disability access legislation.
- The entrance should be clearly identified (within the property boundary) with the attraction name, the opening days, hours of operation and contact details.
- The attraction should be open for a minimum of nine months of the year for permanent signage.

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<sup>92</sup> *Planning, Development and Infrastructure Act 2016*, s 185.

The criteria are based on recommendations of the National Tourism Signing Reference Group who encourage common assessment and application of signage for tourist attractions, establishments, features and driving experiences nationally.

There are also various approved symbols that can be displayed on attraction signs indicating various types of attraction such as Aboriginal, lookout, walking trail, wineries and heritage. For each of these, there are additional criteria which are outlined in section 4 of the *Road Sign Guidelines*.

Only state significant attractions can be signed on freeways, expressways and motorways. To be classified as a state significant attraction, an attraction must operate seven days a week during normal business hours and have visitation of fee-paying customers in excess of 100,000 per year.

Tourism signage remains the property and responsibility of DIT, but the applicant is required to cover the costs of manufacturing, installation and maintenance.

### ***Accommodation signage***

Directional signing for accommodation is provided to inform travellers that suitable facilities are available to meet their overnight accommodation needs. Signs are not intended to promote an accommodation facility or to enable the accommodation to increase patronage.

Tourism accommodation businesses seeking directional signage must, in addition to the criteria outlined above, be:

- currently operating and hold all relevant state and local government licences and other appropriate consents;
- be open daily;
- be available for casual accommodation (without a prior booking);
- be open to the general tourist (not exclusively for coach tours or other organised groups); and
- have clear signage on the property, near or on the property line so that the entrance is clearly identified to motorists.

### ***Signage locations***

The location and type of signs vary depending on the location of the attraction or service business. In townships and built-up areas, where the speed limit is 60 km/h or lower, advance signs are not provided. Instead DIT deems fingerboard signs at the intersection of the arterial road to be sufficient. These signs are usually the responsibility of the local government.

Attractions or businesses accessed directly from a DIT arterial road are not able to apply for sign approval as they are able to provide suitable signing on their own property unless: it is located on a road with a speed limit of 80 km/h or higher; the entrance cannot be identified from a distance of 250 m; or access is hazardous.

In rural areas, if an attraction or service business is located on a council road that intersects with a DIT arterial road, and is less than 10 km from the turnoff, then advance and intersection/position signs will be considered if the speed limit is 80 km/h or greater. If the speed limit is less than 80 km/h, only intersection/position signs will be considered.

### **Issues identified regarding road signage**

Stakeholders have questioned the location, consistency and timeframes for installation of signage.

*Obtaining signage on local government roads appear to be a relatively easy process; however, if a business wants signage on a DIT road it is more complex. The application process needs to be simplified and consideration of more signage for roads with speed limits of over 80 km/h would be helpful to business. (SA Parks submission, DR3, p. 2)*

Applications can be made online via DIT's website, where applicants are asked to provide details of the attraction, and to demonstrate that they meet all the criteria outlined above (including providing documentation where appropriate). In the Commission's view, the application process seems simple and not unduly arduous.

The Department for Infrastructure and Transport commits to confirming the ownership of the road and assessing the application against criteria, guidelines and site considerations and providing a response to applicants within 28 days of application. Once the applicant accepts DIT's sign permit, DIT will organise manufacture and installation of signs and invoice the customer once the installation has been completed. The Department for Infrastructure and Transport has advised that the timeframe for installing can depend on the availability of contractors, but generally signs are manufactured and installed within one to three months. However, there are no publicly committed timeframes surrounding the installation of approved signs; nor is there public reporting of time taken to process these applications.

The Commission has also heard that in the past the transport department (then Transport SA) had a regional manager which, while not having any decision-making authority regarding road signage, made the process simpler for applicants in the regions. No comparable position currently exists, and all signage applications are centrally assessed by DIT.

#### **Information request 6.1**

Does businesses experience match the processes and requirements set out in the Road Sign Guidelines?

Are timeframes for installing signage reasonable? Are these timeframes achieved in practice? Could public reporting against timeframes help to improve outcomes for tourism businesses?

What alternatives exist to Department for Infrastructure and Transport (DIT) installing the signage, including private supply?

## **6.2 Water and sewerage**

Access to water infrastructure, both for drinking and other purposes, is critical for many tourism businesses as is infrastructure to process and remove waste produced. This section examines the process for connecting to water and sewerage networks, and the requirements of businesses locating in areas that cannot reasonably be connected to existing infrastructure.

### **6.2.1 Water**

When moving to or establishing a tourism business on a property that already has a water and sewerage connection, businesses are not required to apply for a connection. The conveyancer will notify SA Water of a change of ownership and services can be used

immediately. Where the property is not already connected to the network, a business will have to apply to SA Water for a connection. Connections to SA Water are managed under SA Water's Connections Policy.<sup>93</sup>

The connection fee for a standard connection is determined by the type and size of water, sewerage or fire service requested. A business can nominate the size of service they would like on application or SA Water can advise of the most suitable size. In some circumstances, SA Water will need to nominate a minimum or maximum size to suit their needs to conform to its operational or infrastructure requirements.

SA Water commits to assessing an application, designing a connection to meet Australian standards and providing an invoice, as well as design and installation information within 20 days. In contrast to DIT for road signage, SA Water has publicly available connection timeframes. Once paid, SA Water commits to connect a standard water connection within 25 days, or a non-standard water connection within 35 days.<sup>94</sup> SA Water only installs a new service up to the meter and businesses may need to engage a licensed plumber to complete the connection of the property.

Many nature-based or agritourism developments occur outside of the existing SA Water network area. In this case a business can still apply to connect to the SA Water network but will have to pay the costs of extending the network. SA Water will provide a fixed cost quotation as part of the assessment. SA Water can contribute 50 per cent of the cost of extending the mains if it is determined by SA Water that it will benefit other customers.

The Commission has heard from most business that the connection process to the SA Water network is relatively simple and the Commission has not heard any issues other than the cost of extending the network.

## 6.2.2 Wastewater and trade waste

The process and requirements for connecting to the SA Water wastewater network are similar to those of the water network outlined above and are detailed in SA Water's Connections Policy. Timeframes for the installation of sewerage are slightly longer, with standard connections installed within 30 days and non-standard within 50 days.

Outside of the SA Water area, local governments are responsible for effluent and some sewage collection, treatment and disposal for country towns. Local governments currently operate 175 Community Wastewater Management System (CWMS) in 50 councils throughout the state,<sup>95</sup> which collect, treat, reuse and/or dispose of primary treated effluent from septic tanks on individual properties. Most CWMSs are owned and operated by the relevant local government.

The Commission has heard that in many regional areas, CWMS systems are at, or near, capacity and that new tourism businesses are often required to pay for infrastructure upgrades to the CWMS in order to connect. Similarly, expanding businesses can be asked to pay for the entire cost of upgrades if the CWMS is near capacity.

<sup>93</sup> SA Water, *Connections Policy* (2018) <[https://www.sawater.com.au/\\_\\_data/assets/pdf\\_file/0008/9926/SA-Water-Connections-Policy.pdf](https://www.sawater.com.au/__data/assets/pdf_file/0008/9926/SA-Water-Connections-Policy.pdf)>.

<sup>94</sup> SA Water, *Fact Sheet – Household application process* <[https://www.sawater.com.au/\\_\\_data/assets/pdf\\_file/0009/426645/SAW\\_Fact-Sheet-Household-application-process\\_FINAL.pdf](https://www.sawater.com.au/__data/assets/pdf_file/0009/426645/SAW_Fact-Sheet-Household-application-process_FINAL.pdf)>.

<sup>95</sup> Local Government Association of South Australia, *Overview of CWMS* <<https://www.lga.sa.gov.au/about-lga/what-we-do/community-wastewater-management-systems/overview-of-cwms>>.

*In regional areas caravan parks that are connected to Community Wastewater Management Systems may face costly charges if developments lead to the need for them to increase their capacity into the system. (SA Parks submission, DR3, p. 2)*

### **Trade waste**

Trade waste requires additional treatment compared to wastewater and substances created from household and general business activities. Before discharging trade waste into the SA Water network, a business must apply for a trade waste authorisation under the *Water Industry Act 2012*. SA Water's Restricted Wastewater Acceptance framework<sup>96</sup> outlines the policy requirements and authorisation compliance and the Restricted Wastewater Acceptance Standards outline the common admissible contaminant concentration discharge limits. SA Water also produce numerous guidelines and fact sheets including for specific business activities such as for commercial food preparation.

For tourism businesses, the most common activities that would require a trade waste authorisation is the preparation and selling of food and, in the case of accommodation businesses, laundry services. These activities are typically low volume discharges and are usually required to pay administration fees and are audited, whereas larger customers<sup>97</sup> face volumetric charges.

Applications can be made either online or via mail and SA Water advises that applications are typically assessed within 10 business days of their receipt and a payment of a \$175 application fee.

SA Water conducts inspections of authorised businesses to assess compliance with authorisation details and to confirm operator details. The frequency of audits is based on risk, which is assessed by both the types of activity and history of compliance. Businesses are also charged an administration fee (currently \$65.50), a fee per inspection (currently \$141.00) and fines for failure to comply with conditions.

The Commission has not heard of any issues with obtaining authorisation although many businesses were required to install some on-site infrastructure such as a grease trap prior to obtaining authorisation.

### **6.2.3 Off network properties**

Many nature-based and agritourism businesses are located in areas without existing water and sewerage networks. These businesses face separate requirements for providing drinking water and managing and treating their waste products. The requirements to provide safe drinking water under the *Safe Drinking Water Act 2011* are discussed in Chapter 5.

Wastewater is governed from both a public health and environmental perspective by the:

- *South Australian Public Health Act 2011*;
- *South Australian Public Health (Wastewater) Regulations 2013* and its prescribed codes:
  - The Onsite Wastewater Systems Code; and
  - The Community Wastewater Management Code.

<sup>96</sup> SA Water, *Restricted Wastewater Acceptance Framework*

<[http://www.sawater.com.au/\\_\\_data/assets/pdf\\_file/0018/6723/Restrictedwastewateracceptanceframework.pdf](http://www.sawater.com.au/__data/assets/pdf_file/0018/6723/Restrictedwastewateracceptanceframework.pdf)>.

<sup>97</sup> Those with trade waste discharges that exceed 10 tonnes of biochemical oxygen demand or suspended solids, 20 tonnes of total dissolved solids or a volume of 10,000 kL per year.

- *Environment Protection Act 1993*;
  - Environment Protection (Water Quality) Policy 2015;
  - Environment Protection (Noise) Policy 2007; and
  - Environment Protection (Air Quality) Policy 2016.
- *Local Government Act 1999*;
- *Water Industry Act 2012*;
  - *Water Industry Regulations 2012*.

Where connection to a SA Water sewer or CWMS is not practical, installation of an onsite wastewater system is generally required.

Approval is required before installing or altering an onsite wastewater system. In most cases, this will be through the council's environmental health officer, although larger systems (greater than 40 effective persons) and those in areas of the state not covered by local government, approval must be obtained from SA Health.

The Commission has heard that while most businesses were provided with a list of approved 'drop in' systems by SA Health,<sup>98</sup> which helps businesses to find suitable products that enable them to get development approval, this list was considered too prescriptive. Some businesses said they believed they were only able to install one of these systems and were unaware custom solutions were allowed that are more adaptable to growth and business circumstances.

### **Case study – Lot 100**

Lot 100 was established in 2018 as an agritourism business in the Adelaide Hills that combines an orchard with a craft brewery, small batch distillery, restaurant and function centre on former cattle pasture.

As the site is located outside of the SA Water area, in order to get development approval, they required referrals to the Environment Protection Authority (EPA) for processing of waste-water as well as SA Health for human waste (as well as the Native Vegetation Council). They were provided a list of approved septic systems by SA Health and purchased and installed a system from this list. Lot 100 have advised that as they used an approved product, they found the process simple and approval was easy to obtain.

As Lot 100 expanded, this system reached its capacity and started to produce odours. The system they had installed was not easily expandable, so a new septic system was required. The system most suitable to their size on the approved list was a membrane system which would have cost around \$1 million; however, as they are only open four days a week, this system would not have been suitable as it functions best with continuous waste flow.

Lot 100 instead pursued a custom solution designed for the site, that would be expanded through adding additional soakage beds should they require. As this was not a pre-approved system, they required approval from SA Health for the system before they could progress with a development application. Lot 100 have advised that SA Health

<sup>98</sup> SA Health, *Approved wastewater products in South Australia – Septic tanks, biological filters, holding tanks and pump sumps* (2021).

were receptive to the custom system, and had approved systems from that provider before, but that approval took three months to obtain.

### Information request 6.2

Is the Commission's characterisation of the requirements for water and sewerage infrastructure accurate? Are there any regulatory requirements the Commission has missed?

Are timeframes for approval reasonable and is sufficient guidance provided by regulators? Are these timeframes achieved in practice? How can these times be reduced?

Are infrastructure costs placed on businesses reasonable?

How could the requirements placed on businesses be improved while still protecting public health and the environment?

## 6.3 Boating infrastructure

The South Australian Government owns a significant amount of boating infrastructure which is used by both commercial and recreational vessels. This includes infrastructure owned and operated by DIT as well as that leased to local governments or community organisations. The use of this infrastructure is important to many marine and river-based tourism businesses.

The use of public jetties is governed by the *Harbours and Navigation Regulations 2009*. In general, public jetties and wharves are available to use for free, including by commercial vessels for tourism purposes. However, a vessel cannot be moored for more than four hours per day unless authorised by the Chief Executive of DIT.<sup>99</sup>

Launching fees are charged at a number of public boat ramps. These fees are not levied by the Government but are set at the discretion of the ramp operator.<sup>100</sup>

The development or upgrade of boating infrastructure that is relevant to tourism businesses is governed by a mix of legislation including:

- *Planning, Development & Infrastructure Act 2016*;
- *Coast Protection Act 1972*; and
- *Harbours and Navigation Act 1993*.

The state, through DIT, has ownership of the seabed in South Australia.<sup>101</sup> As a result, anyone seeking to develop new boating infrastructure must secure a seabed lease from DIT. Crown land is administered under the *Crown Land Management Act 2009* and is discussed in Chapter 4.

Once a lease has been established, the process for approving the development of new boating infrastructure is governed by the *Planning, Development & Infrastructure Act 2016*.

<sup>99</sup> *Harbours and Navigation Regulations 2009* s 15 and s 30.

<sup>100</sup> Department for Infrastructure and Transport, *Boating Facilities – Frequently Asked Questions* <<https://dit.sa.gov.au/recboatingfacilities/faqs>>.

<sup>101</sup> As per the *Coastal Waters (State Title) Act 1980* (Cth)

Local governments are typically the approval authority; however, coastal developments require referral to the Coastal Protection Board under the *Coast Protection Act 1972*. As the new planning system has only recently fully commenced, the Commission has not sought to examine issues related to the planning system.

Under section 90AA of the *Harbors and Navigation Act 1993* a levy is imposed on holders of recreational boat licences for the purpose of providing a source of revenue to establish, maintain and improve facilities used by vessels in the state.

Levy monies are used for establishing and improving boating facilities in South Australia's coastal and inland waters including:

- boat ramps;
- temporary mooring facilities or wharves;
- channel improvements;
- aids to navigation; and
- 24/7 emergency VHF marine radio services.

Local councils and large community organisations can apply for funding contributions from the fund towards eligible projects, provided a commitment is given to accept on-going ownership, operation and maintenance of the facility. Applications are assessed by the SA Boating Facilities Advisory Committee, made up of members nominated by key boating and local government organisations and appointed by the Minister. The final approval of funding is given by the Minister.<sup>102</sup>

### Information request 6.3

Is the Commission's characterisation of the requirements for use of, upgrades and development of boating infrastructure for tourism activities accurate?

Are there any barriers to the use of, upgrading or developing new boating infrastructure for tourism activities that the Commission has not discussed? How can these barriers be evaluated?

## 6.4 Conclusion

Tourism businesses benefit from public infrastructure including roads, water and sewerage and boating infrastructure. The processes for access to these are set out in a range of Acts and departmental guidelines. To date, the Commission has not identified any significant barriers to accessing public infrastructure, although delays in approval can have costs for businesses. Similarly, if upgrades or extensions to infrastructure are required this can add significant costs to tourism businesses. No assessment of this has been made to date, but the Commission will seek to investigate this for the final report.

<sup>102</sup> Department of Planning, Transport and Infrastructure, *SA Boating Facilities Strategic Plan* <[https://dit.sa.gov.au/\\_\\_data/assets/pdf\\_file/0005/327956/SA\\_Boating\\_Facilities\\_Strategic\\_Plan.pdf](https://dit.sa.gov.au/__data/assets/pdf_file/0005/327956/SA_Boating_Facilities_Strategic_Plan.pdf)> p. 13.

## 7. Transport and Accommodation

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Transport and accommodation are key aspects of most tourism activities. By most definitions of tourism, travel of over 40 km (round-trip) is required for a day trip and three quarters of tourism in South Australia involves an overnight stay. This chapter examines regulatory issues faced both by transport and accommodation providers as well as other businesses in linking to transport and accommodation. This includes both transport and accommodation provided by agritourism and nature-based tourism operators, as well as general transport and accommodation which supports agritourism and nature-based tourism operators indirectly.

The main issues raised by tourism businesses include:

- processes and requirements for vehicle registration;
- different requirements for regional and non-regional businesses;
- barriers to ridesharing in the regions (especially the Adelaide Hills); and
- planning and building issues for accommodation development.

To date, the Commission has heard few concerns from tourist accommodation businesses about operational requirements, such as inspections, reporting and ongoing compliance.

### 7.1 Transport

While transport is important for all tourism businesses, it is particularly important to agritourism and nature-based tourism providers. This includes the transportation of customers as part of a tour as well as simply facilitating access to businesses. The Commission has primarily investigated on-road transport as the South Australian Government is the main regulator. While air transport is also important, it is primarily regulated at a national level. At the state level, there is the *Air Transport Act 2002*; however, the legislation focusses mainly on the delivery of essential services and is not intended to address tourism-focussed issues.

Businesses providing on-road transport services to tourists are governed by the *Passenger Transport Act 1994* and the *Passenger Transport Regulations 2009*. The *Passenger Transport Act 1994* covers any on-road transport for a fee (or in kind) and covers both tour providers as well as point-to-point transport providers including taxis and ridesharing services. The Department for Infrastructure and Transport (DIT) is responsible for administering this Act and its requirements include accreditation of operators and drivers and ensuring vehicle standards.

Accreditation of passenger transport services is provided by DIT, through the Accreditation and Licencing Centre. There are different standards and requirements for operators, drivers and vehicles depending on the type of passenger transport service being provided. In some cases, an operator may need accreditation as both an operator and a driver. In all instances, the operator is responsible for the vehicle or vehicles used for a passenger transport service. This includes arranging vehicle inspections and insuring the vehicle for passenger transport.

All vehicles used for a passenger transport service in South Australia must meet road safety and basic amenity standards. Vehicles must be checked at approved vehicle inspection stations prior to being used as passenger transport vehicles.<sup>103</sup> To ensure they continue to meet the required standards, taxis must have six-monthly inspections, and chauffeur, special purpose and rideshare vehicles must have annual inspections.

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<sup>103</sup> There are exemptions for new, unmodified small passenger transport vehicles.

Drivers of passenger vehicles in South Australia must have South Australian driver accreditation. Requirements for drivers include that they:

- hold a current full South Australian driver's licence, not subject to any conditions such as provisional, probationary or suspended;
- have held a full Australian driver's licence for a minimum of six months;
- have a valid Working with Children Check issued by the South Australian Department of Human Services;
- have a National Criminal History Check issued by SA Police or an Australian Criminal Intelligence Commission accredited body;
- meet minimum requirements for fitness, medical and eyesight assessed by a medical practitioner in accordance with the National Assessing Fitness to Drive guidelines for commercial vehicle drivers;
- be eligible to work within Australia; and
- be sufficiently competent in speaking, reading and writing English.<sup>104</sup>

From 1 July 2016, any person who operates a centralised booking service for a chauffeured vehicle service, including all classes of small passenger vehicles operating as plated chauffeured vehicles or plain plated point-to-point vehicles, must be accredited under the *Passenger Transport Act 1994*.

A centralised booking service is described as: a service where more than one vehicle is participating in the booking service: and bookings for a chauffeured vehicle service are accepted from members of the public and are assigned to drivers.

Chauffeured vehicles may take bookings directly from the public without a centralised booking service, but ridesharing vehicles may not.

### 7.1.1 Commercial tour operators

Commercial tour operators are regulated under the *Passenger Transport Act 1994*. Commercial tour operators who seek to access or provide services in national parks in South Australia are also required to obtain a commercial tour operator licence, pursuant to regulation 36(b) of the *National Parks and Wildlife (National Parks) Regulations 2016* and the Department for Environment and Water's *Commercial Tour Operator Licencing and Permitting Policy*. A Commercial Tour Operator Licence is not required if the business is offering a public transport service, charter bus service or taxi service (and do not market their service as a tour); or if they are only traversing a reserve using a 'public access route' and not deviating from it. The Commercial Tour Operator licence is considered in Chapter 4.

A tourism business that uses vehicles to transport customers on roads must obtain operator accreditation. Operator accreditation is valid for five years, subject to annual instalment payments and is required by the registered owner of the vehicle used for passenger transport; or, in the case of a company, each director and other interested persons. The objectives of operator accreditation are to consider the safety of passengers and the public; service to passengers; and the condition of vehicles and equipment.

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<sup>104</sup> DIT, *Driver accreditation for large or small passenger vehicles* (10 January 2020) <<https://www.sa.gov.au/topics/driving-and-transport/industry-services/taxi-and-passenger-transport/driving-a-passenger-vehicle>>.

There are nine classes of operator accreditation, which depend on the type of activity being conducted and the location of operations (whether it is within the 'Metropolitan Adelaide Boundary' under the *Passenger Transport Act 1994*). To conduct tours, an operator needs an operator accreditation for one or more of:

- large passenger vehicles (seating capacity of 13 or more);
- small passenger vehicles – chauffeur metropolitan;
- small passenger vehicles – chauffeur non-metropolitan; or
- small passenger vehicles – chauffeur special purpose.<sup>105</sup>

An operator may obtain accreditation for multiple categories with a single application and fee, but each type of activity must be included in a plan of operations.

To obtain accreditation, operators must provide an application for operator accreditation form (MR311) together with a plan of operation (MR325) and a National Criminal History Check. Operators must also prove they have a minimum of \$5 million public liability insurance and third-party property or comprehensive insurance and compulsory third-party insurance (CTP) for each vehicle, issued by an insurance company incorporated in Australia.

DIT provide guidance material as to what is required for accreditation for each type of passenger transport on their website and will provide feedback if the types of accreditation an operator is seeking are inconsistent with their plan of operation.

### ***Issues raised by stakeholders***

To date, the Commission has not heard concerns from businesses about the process for accrediting operators. Most issues raised by businesses related to requirements on vehicle renewal processes or differences in regulation for metropolitan and non-metropolitan operators.

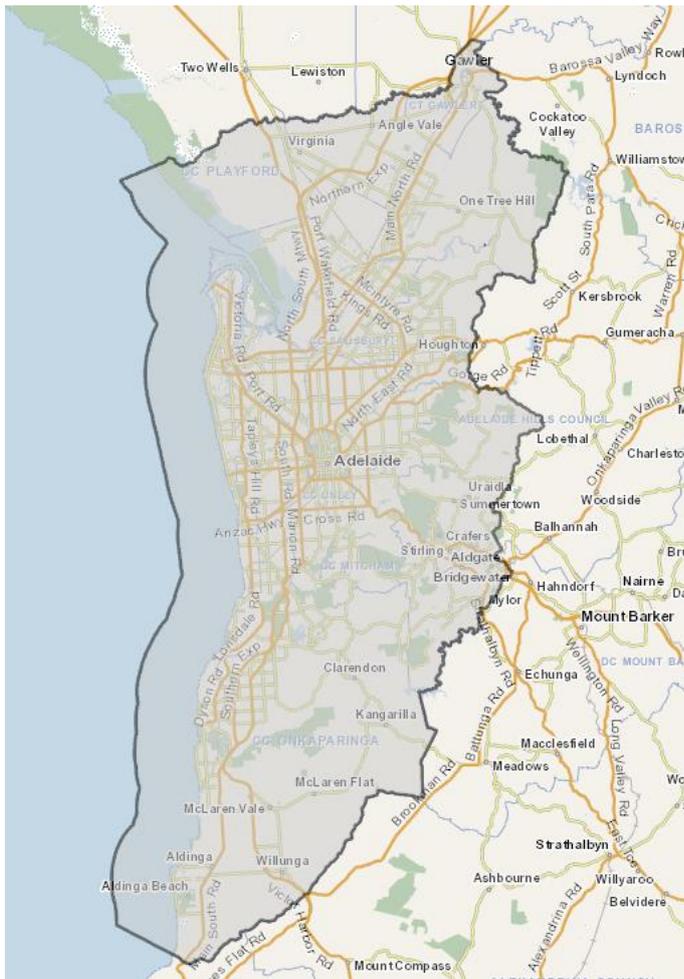
Tour operators expressed frustration with the definition of the Adelaide metropolitan area used by the *Passenger Transport Act 1994*.

*Why does the PT Act's definition of 'Adelaide metropolitan area' differ from the Road Traffic Act definition? This affects vehicle registration, allowable travel distance per year, vehicle retirement age, and where we're actually allowed to drive our passengers. It also fails the pub test: Mt Barker (population ≈ 18,000) is deemed 'non-metropolitan' whereas Willunga (population ≈ 2400 and further from Adelaide city) is 'metropolitan'. (The Backyard Universe submission, DR6, p. 1)*

The Adelaide metropolitan area definition used in the *Passenger Transport Act 1994* is the same as the *Development Act 1993* and the area boundary is shown in Figure 7.1.

<sup>105</sup> Department for Infrastructure and Transport, *Operating a passenger transport business* (16 July 2021) <<https://www.sa.gov.au/topics/driving-and-transport/industry-services/taxi-and-passenger-transport/operator-accreditation>>.

Figure 7.1: Adelaide metropolitan area boundary



Source: Location SA Map Viewer

The definition of the metropolitan area affects operators, with small passenger vehicles (12 seats or less) operating in the metropolitan area being unable to operate vehicles over 8 years old, while operators outside the metropolitan area may use a vehicle up to 15 years old. Some exceptions are available for special purpose vehicles such as classic cars. Vehicle standards for small passenger vehicles are presented in Figure 7.2. The age limit for large passenger vehicles is 25 years.

Figure 7.2 Small Passenger Vehicle Standards Chart

		METROPOLITAN		SPECIAL PURPOSE					NON METRO	NON METRO RIDESHARE
		RIDESHARE	CHAUFFEUR	4WD OFF ROAD	MOTOR CYCLE	VETERAN, VINTAGE, CLASSIC	NOVELTY	TRADITIONAL		
CATEGORY		MV	MV	SV1	SV2	SV3	SV4	TV	NV	NV
1	PASSENGERS	4-11 plus driver	4-11 plus driver	-	-	-	-	4-11 plus driver	4-11 plus driver	4-11 plus driver
2	AGE LIMIT (Years)	0-8	0-8	0-15 (E)	0-15 (E)	0-15 (E)	0-15 (E)	0-15 (E)	0-15	0-15
3	ENGINE CAPACITY	Min 3 Cyl (E)	Min 3 Cyl (E)	-	-	-	-	Min 3 Cyl (E)	Min 3 Cyl (E)	Min 3 Cyl (E)
4	MAX KILOMETRES (PA)	-	-	40,000 (E)	-	-	40,000 (E)	40,000 (E)	-	-
5	MAX KILOMETRES	-	-	320,000	320,000	320,000	320,000	320,000	-	-

(E) = The Accreditation and Licensing Centre may grant approval to operate outside of the prescribed standard  
 Source: MR311 Application for operator accreditation

The Commission heard some businesses consider that the requirements for inspections of passenger vehicles and the inspection process can be a burden (both cost and time). For operators based in the metropolitan area, there are currently only two accredited inspectors for small passenger vehicles and one for large vehicles. Vehicles must be inspected on site at these facilities which means operators face time costs in travelling to these locations and are unable to use the vehicle that day. Regionally based operators can arrange for departmental inspectors to travel to them and conduct inspections on-site. Some stakeholders have also expressed a view that the inspectors can be quite risk averse and that they can require expenditure, such as replacing tires, earlier than necessary.

An exemption from initial inspection is available for new, unmodified small passenger vehicles, as they must meet national standards placed on manufacturers. Large passenger vehicles (13+ seats) are not exempt from initial inspection. Some stakeholders have stated that in some cases they had to get a trade plate to drive the vehicle to be inspected before they can register it, when purchasing a second-hand vehicle. Vehicles purchased from interstate are required to have a vehicle identity inspection before they can be registered.

The Commission heard that many tour operators are frustrated with the definition of a small passenger vehicle. A small passenger vehicle is currently defined as having fewer than 13 seats, while many commonly available minibuses come fitted with 14 seats. Simply removing the extra seat is sufficient to meet the definition of a small passenger vehicle and generally doesn't count as an alteration which would require an initial inspection.

*We have a minibus which came with 14 factory-fitted seats. We've had to remove two of them to register as a 'small passenger vehicle' and legally be able to drive it without a truck licence, even though it would still weigh less than 4.5 tonnes with all 14 seats occupied. (The Backyard Universe submission, DR6, p. 1)*

The application process for accreditation relies on filling out paper forms. Some stakeholders have said they are required to provide the same information on multiple forms such as operator accreditation, driver accreditation and adding a vehicle.

The Commission also heard that regional operators are required to travel to Adelaide for certain tasks such as to renew passenger vehicle registration.

*Why can't we renew our passenger vehicle registration locally? We can renew our private car registration — and driving licences — at our local post office. The official reason, we're told, is that our copy of the vehicle's mechanical inspection certificate needs to be sighted. The Dept of Transport already has the original of this certificate because their inspector retains it! Why do they need our copy? And why can't our local postmaster 'sight' it? They're already accredited to*

*process passports and other official documentations. (The Backyard Universe submission, DR6, p. 1)*

### **7.1.2 Taxis and ridesharing**

Taxis and other on-demand transport options such as ridesharing provide a means of access between major tourism facilities, attractions and accommodation. These services are even more crucial to the tourism sub-sectors of agritourism and nature-based tourism as frequently attractions are located outside of populated areas and not easily accessible by public transport. Furthermore, many of South Australia's agritourism businesses involve the consumption of alcohol, such as cellar door tourism, so private transport is not always advised or convenient.

Taxis and ridesharing services are regulated under the *Passenger Transport Act 1994*, with different systems in place for metropolitan and non-metropolitan areas. There are no government-imposed restrictions on the number of ridesharing vehicles or country taxis.

Ridesharing was introduced in South Australia on 1 July 2016, allowing private vehicles to be used to provide a transport service, offered to passengers through an accredited booking service, generally through a smartphone application. Any person who has a full South Australian driver's licence, relevant police clearances and meets the minimum fitness requirements can apply to become a rideshare driver.

Rideshare vehicles with private number plates must be booked through an accredited booking service and cannot take bookings direct from the public or hailed from the side of the road.

#### ***Issues raised by stakeholders***

The Commission heard from many businesses operating outside the metropolitan area (see Figure 7.1), especially in the Adelaide Hills, that the current rules for ridesharing mean that some Hills' residents are not serviced by ridesharing operators. This is highly relevant to businesses that sell or serve alcohol as part of their business, such as cellar doors, breweries and distilleries. This also affects businesses differently depending on their location. For instance, a cellar door in McLaren Vale is able to have customers picked up by ridesharing services, while a cellar door in the Adelaide Hills may not be despite being similar distances from the Adelaide central business district.

DIT advised that under the current legislation, it is possible for ridesharing operators to operate outside the metropolitan area. The 'non-metropolitan (NV) rideshare' category of operator accreditation allows for the operation of ridesharing services outside the metropolitan area. An existing rideshare operator primarily operating in the metropolitan area can also apply for multiple categories of operator accreditation to allow them to operate in both the metropolitan and non-metropolitan area, if it is included in their plan of operations.

That said, a ridesharing operator may not take direct bookings from the public and must go through a centralised booking service. To date, the Commission understands that existing booking services are not operating outside the metropolitan area, with none operating in the Adelaide Hills. As there are no booking services operating in the area, a driver is unable to detail their operation in the Adelaide Hills as part of their plan of operations, which must include the booking service.

Based on discussions with DIT, the Commission understands that the lack of booking services outside the metropolitan area has likely been an economic decision on the part of the centralised booking services, likely owing to different requirements faced inside and outside the metropolitan area. These include differences in CTP insurance and the levy on

metropolitan services, as well as having to track which drivers have non-metropolitan accreditations.

A one-dollar levy is charged on all chauffeur and taxi trips conducted within the metropolitan area. Trips outside the metropolitan area, and trips starting inside but travelling outside the metropolitan area (and vice versa) are exempt from this levy.

Compulsory third-party insurance for ridesharing or chauffeur operators, unlike for private vehicles, must be paid depending on their area of operations rather than where they are garaged.

These requirements increase costs on centralised booking services operating both inside and outside the metropolitan area as they have to 'ring fence' the metropolitan area, collect additional data and have different rules for their drivers depending on which accreditation they have.

On 10 July 2021, the South Australian Government announced that it was extending the definition of the Adelaide metropolitan area boundary to include the Adelaide Hills and Mount Barker council areas.<sup>106</sup> These changes are unlikely to take effect until December 2021 but may address these issues.

### Information request 7.1

Is the Commission's characterisation of requirements for road transport services accurate? Are there any other regulatory issues affecting road transport for tourism?

How can the regulatory requirements for road transport services be improved? Relevant matters include:

- differences in regulation faced by businesses in the regions compared to metropolitan Adelaide;
- how to reduce barriers faced by businesses near the boundaries of the metropolitan area;
- the appropriateness of the metropolitan area definition and alternate definitions;
- whether accreditation and renewal processes can be improved; and
- whether any regulatory functions can be delegated to qualified individuals or organisations, especially in the regions.

### 7.1.3 Boat and ferry services

The licensing and operation of commercial boat services such as ferries and boat tours are regulated at the national level by the Australian Maritime Safety Authority.

Although the South Australian Government does not regulate commercial boats and ferries, it does own a significant amount of infrastructure such as jetties and harbours, the use of which

<sup>106</sup> Kathryn Bermingham, 'Adelaide Hills residents to have access to metro-based taxis and rideshare services', *The Advertiser* (online), (10 July 2021) <<https://www.adelaidenow.com.au/news/south-australia/adelaide-hills-residents-to-have-access-to-metrobased-taxis-and-rideshare-services/news-story/22577a389361bf2f1ed8be1039379cba>>.

is crucial for many marine tourism operators. The process for obtaining access and rules governing its use are discussed in Chapter 6.

## 7.2 Accommodation

Short-term visitor accommodation businesses are a key facilitator of tourism activity, with 79 per cent of tourism expenditure in South Australia in 2019 including an overnight stay. Furthermore, Tourism Research Australia estimate that accommodation businesses represent 4.5 per cent of total tourism businesses in South Australia.<sup>107</sup>

In general, the South Australian Government does not directly regulate the operations of short-term visitor accommodation businesses. Instead, certain activities common to accommodation businesses are regulated, such as food, liquor service and laundry.

An accommodation business's main interactions with state regulations are likely to be through the process of gaining a development approval when establishing or expanding. Other interactions will be through the relevant local government's environmental health officers while the business is in operation.

To date, the Commission has heard mostly of planning and building issues impacting on the establishment of new accommodation businesses, or expansion of existing businesses. Few issues have been raised by businesses about general operating requirements for accommodation businesses.

### 7.2.1 Establishing an accommodation business

To obtain a development approval, the accommodation business must meet requirements under the *Planning, Development and Infrastructure Act 2016* and the National Construction Code (NCC). This includes being compatible with the designated land use, meet building standards (including accessibility requirements), meet fire safety requirements and other requirements assessed as part of a development approval. A development approval is needed prior to construction of a new building, when altering an existing building or changing the land use.

The Planning and Design Code came fully into effect very recently, in March 2021. As a result, while the planning system plays a significant role in tourism accommodation development, it is too early to assess the recent changes.

As part of the development application process, referrals to other parts of government for advice or approval are often required. For tourism businesses these can include, among others, referrals to the Native Vegetation Council, Environmental Protection Authority and the Commissioner of Highways to determine its effect on native vegetation, the environment/waterways and the state's road network. The Commission is separately reviewing these referrals as part of the Development Referrals Regulatory Review.

The Building Code of Australia (BCA) provides the minimum necessary requirements for safety and health; amenity and accessibility, and sustainability in the design, construction, performance and liveability of new buildings (and new building work in existing buildings) throughout Australia. It is a uniform set of technical provisions for building work and plumbing and drainage installations throughout Australia. The BCA is produced and maintained by the Australian Building Codes Board and is given effect by legislation in each state and territory.

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<sup>107</sup> Tourism Research Australia, *TBIA employment size data tables*, (2019) <<https://www.tra.gov.au/data-and-research/reports/tourism-businesses-in-australia-june-2014-to-2019/tourism-businesses-in-australia-june-2014-to-2019>>.

As a result, while it is a national code, any provision can be overridden by, or subject to state legislation.

A tourist accommodation business must be classified as either a class 1(b) or class 3 building under the BCA. For new developments, this will be a part of the building approval; however, to repurpose an existing building for tourist accommodation, a building approval will still be needed even if no building activity is required.

A development for a tourist accommodation business may require a referral to the Commissioner of Highways to approve entrances and exits to roads, which may require traffic surveys and consultants. This process is being separately considered by the South Australian Productivity Commission's Development Referrals Review.

### ***Bed and Breakfast venues***

To establish an accommodation business on an existing residential property, a change of land use is usually required. For small scale businesses, such as bed and breakfasts, in existing residential properties a change of building classification is often also required. Most residential dwellings are classified as class 1(a) buildings. To operate such a building as an accommodation business it must be reclassified as a class 1(b) building — which allows short-term holiday accommodation for up to 12 people or a floor area of 300 m<sup>2</sup>. A class 1(b) building can also be four or more single dwellings located on one allotment which are used for short-term holiday accommodation.<sup>108</sup> The conversion of a dwelling to class 1(b) requires a building approval.

The *Commonwealth Disability (Access to Premises – Buildings) Standards 2010* apply to new class 1(b) buildings and existing class 1(b) buildings being altered. Buildings currently classified as 1(a) that are reclassified to 1(b) are not subject to this requirement provided that they have no more than three bedrooms. The Commission has heard from some accommodation providers that the cost of meeting this requirement in some heritage buildings can be a barrier to expanding their business as facilitating access may not be possible while protecting heritage.

While there is provision for an exemption from these requirements if compliance would impose unjustifiable hardship, compliance is required to the maximum extent not involving unjustifiable hardship.<sup>109</sup> The standards set out the circumstances which would be taken into account in determining unjustifiable hardship, including financial circumstances. It is unclear how they are interpreted in practice.

Buildings greater than 300 m<sup>2</sup> in area or accommodating more than 12 persons are classified as class 3 buildings which are subject to a greater degree of fire safety, and access requirements.

### ***Home sharing***

Home sharing may facilitate tourism by providing additional capacity, especially during peak periods in regions with limited accommodation providers.

Home sharing services such as Airbnb currently may operate in South Australia without the types of regulations that apply to similar accommodation such as traditional bed and

<sup>108</sup> Australian Building Codes Board, *Understanding the NCC – Building Classifications* (July 2020) <[https://www.abcb.gov.au/-/media/Files/Resources/Education-Training/UTNCC\\_Building\\_Classifications.PDF](https://www.abcb.gov.au/-/media/Files/Resources/Education-Training/UTNCC_Building_Classifications.PDF)>.

<sup>109</sup> *Disability (Access to Premises — Buildings) Standards 2010* (Cth) Part 4.

breakfasts. This is because there is no clear legal position on the need for planning approval to lease a property or room through a home sharing service.

As an activity, home sharing mostly represents short-term leasing of property which does not require planning approval. However, the distinction between larger-scale home sharing and a commercial tourist accommodation business, which would require planning approval, can be difficult to determine. Some local governments in South Australia have by-laws which require permits to operate a 'lodging house'. That said, the majority of home sharing in South Australia is unregulated.<sup>110</sup>

Accommodation providers have expressed concern that they face competition from similar businesses that face lower regulations and, as a result, lower compliance costs. South Australia does not impose any requirements on home sharing unlike other Australian jurisdictions. New South Wales, Victoria and Tasmania all require registration of homes, while New South Wales also has a code of conduct and a cap on the number of days per year a property can be rented out.

### **Caravan parks**

Caravan parks face similar issues related to the planning system and building codes as other accommodation businesses. Under the *Planning, Development and Infrastructure Act 2016*, a development approval is required for the layouts of new caravan parks, alteration to site layouts, extensions to existing parks and any building work or alterations to fire services and equipment.

Caravan parks can only be established on land zoned for use as a caravan or residential park. Stakeholders have suggested that the process for getting land rezoned can be lengthy.

*Caravan Parks that need to acquire land in order to expand or build new parks have experienced lengthy timeframes in order to get land rezoned for use as a caravan or residential park. This can delay developments and increase costs significantly and is a deterrent to the development and expansion of parks. (SA Parks submission, DR 3, p. 2)*

Specific fire safety standards for caravan parks are set out in *Ministerial Building Standard MBS003 – Fire safety in caravan parks and residential parks*. These standards include requirements for separation distances between caravans and adjacent caravans, tents and buildings. They also specify requirements for providing access, water and equipment for fire-fighting purposes and reducing potential fire hazards.

The standards were introduced in July 2019 and are not retrospective and apply only where a new development approval is required. The Commission has heard that, while the sector supports the requirements, the standards have been inconsistently applied across the state and that it has been retrospectively applied to some parks.

*The management of compliance falls on local government authorities via their fire safety committees. At present there is a great deal of variation between local governments as to how their committees discharge their obligations. While SA Parks have received correspondence from the Minister to state that compliance is not retrospective, there are fire safety committees that have been seeking retrospective compliance from parks. We have some members who operate more than one park in different local government zones with greatly different obligations imposed on them.*

*SA Parks have sought support from the Department to disseminate guidelines to local government as to the general parameters that fires safety committees must work within, in an*

<sup>110</sup> Alex Lazar, 'Home-sharing in South Australia: Protecting the rights of hosts, guests and neighbours' (2018) 3 *UniSA Student Law Review*.

*effort to get some state consistency on this. At this time, we are unaware whether any such guidelines have been created. (SA Parks submission, DR3, p. 2)*

### **Tiny cabins**

The installation of tiny cabins and tourist pods in areas of natural beauty such as vineyards, forests and national parks is an emerging tourism product globally. The Commission understands that under the previous planning system, these developments were considered non-complying in every zone. As a result, these developments were required to go through a non-complying development process under which proponents had no rights to appeal a council's decision and the requirements could vary across councils.

The Commission heard that the new planning system expands the number of zones that tourism accommodation is allowed in and that this type of accommodation would now likely be performance assessed.

Because these cabins are usually installed in remote areas, they often face issues with not being connected to public infrastructure. This means that they must be able to store and remove their grey water and effluent, thus likely to require approval from the Environment Protection Authority (EPA), which is discussed in Chapter 6. Their location also means that they may require clearing of native vegetation. In order to do this, they require referral to the Native Vegetation Council (NVC) and/or the EPA in order to obtain a development approval. The Commission is examining the referral process to both the EPA and NVC separately as part of the Development Referrals Review.

### **7.2.2 General operating requirements**

Accommodation businesses are subject to the general hygiene principles set out in the *South Australian Public Health Act 2011*. In addition, many activities or infrastructure offered by accommodation providers can have public health risks and therefore face government regulations. There is a focus on food safety, legionella bacteria and bed bug prevention, as well as laundry, swimming pool and spa operations. The relevant authority for enforcement of these regulations is usually the local government's environmental health officer.

Many accommodation businesses also serve food and/or alcohol to guests. The processes and requirements surrounding the service of food were examined previously in Chapter 5, as was the service of alcohol.

Accommodation businesses with air-conditioning systems that include cooling towers are considered high-risk and must be operated in accordance with the *SA Public Health (Legionella) Regulations 2013*. These systems are required to be registered with the relevant local council and owners are required to conduct monthly inspections of regulated systems and ensure periodic preventative maintenance is performed as prescribed. Environmental health officers from the relevant authority, such as a council, must ensure all regulated systems are inspected at least annually and may inspect systems at any time.

Many short-term visitor accommodation businesses also provide swimming pools or spas for the use of their guests. These pools and spas can become a source of harmful microorganisms that can cause illness to users. Also, incorrect chemical levels can cause problems such as skin rashes and irritated eyes. The *South Australian Public Health (General) Regulations 2013* and the Standard for the Operation of Swimming Pools and Spa Pools in South Australia prescribe specific requirements for owners and operators of public pools to ensure that water quality within a public pool is of a standard that protects public health. Local governments are responsible for administering the requirements of the regulations and standards, with SA Health providing a Guideline for the Inspection and Maintenance of

Swimming Pools and Spa Pools in South Australia to assist and to ensure consistent requirements and standards across the state.

### **Camping**

Camping is an activity offered by many tourism businesses such as tour operators. Campsites also provide an alternative accommodation option to tourists that helps support nearby tourism businesses through greater patronage. The main issues relating to camping that the Commission has heard to date relate to administrative costs of booking and paying for campsites operated by the South Australian Government.

Camping is generally legal in South Australia with the permission of the land holder, although the requirements for camping will in practice vary depending on the type and location of the land. For instance a change of land use may be required if the land is designated for another purpose (such as agricultural production).<sup>111</sup>

For Crown land, permission must be given by the agency responsible for the care and control of the land. Camping is generally not allowed on the roadside and permits are required to camp within a forest or national park under the relevant Acts. Local governments frequently adopt their own by-laws governing camping within their council area<sup>112</sup>.

### National Parks

Camping in national parks is managed by the National Parks and Wildlife Service South Australia, governed by the *National Parks and Wildlife Act 1972* and the *National Parks and Wildlife (National Parks) Regulations 2016*. Camping is not allowed in any national park, without the permission of the relevant authority, typically the park ranger.<sup>113</sup> Campsites in national parks can be booked and paid for online.

Many national parks do not allow solid fuel fires (wood and charcoal) at any time. In parks where fires are permitted, they are only allowed outside of the Fire Danger Season for that region. Each park is unique and the rules for each park are available on the National Parks and Wildlife Service website.<sup>114</sup>

National Parks in South Australia are closed on days of Catastrophic Fire Danger, as forecast by the Bureau of Meteorology, but may also be closed on days of Extreme Fire Danger.

The Commission has heard that for commercial tour operators, the invoicing system is inconsistent across national parks which can result in additional expenses for operators in reconciling expenses. However, this relates to park fees in general rather than being specific to camping.

*The invoicing for park fees for Commercial Tour Operators (CTO)s is haphazard, with various practices in place which results in delayed invoices, lack of consistent information and detail on invoices, which makes it very difficult for a small operator to keep track of, reconcile against individual booking expenses and to pay. A complete overhaul of the system should be undertaken to streamline and automate the process from a central source. (Wilderness Escape Outdoor Adventures submission, DR7, p. 2)*

<sup>111</sup> Pitchup, *How to set up a campground, glamping park or caravan park in Australia* <<https://www.pitchup.com/en-au/how-start-campsite-caravan-park/>>.

<sup>112</sup> For instance see Yorke Peninsula Council's Local Government Land By-Law 2020 – By-Law No 2 <<https://yorke.sa.gov.au/content/uploads/2020/11/By-Law-No-2-Local-Government-Land-Bush-Camping-Authorisations-2020....pdf>>.

<sup>113</sup> *National Parks and Wildlife (National Parks) Regulations 2016*, s 14

<sup>114</sup> National Parks and Wildlife Service South Australia, *Know before you go: Fires and BBQs* (2021) <<https://www.parks.sa.gov.au/know-before-you-go/fires-and-bbqs>>.

As schools are exempt from paying visitor fees in national parks, the Commission has heard that as a result they do not always pre-book campsites, which can result in overcrowding and affect visitor experiences.

*Fees for children to visit National Parks are charged to a CTO but not to a school if they visit directly. Parks could support CTO's by encouraging schools to utilise a CTO for their excursion. It has been our first-hand experience in parks that schools frequently do not pre-book their visits or their camping stays with National Parks which can cause overcrowding and unexpected, unmanageable visitation. CTO's are required to book in advance and pay for each person. (Wilderness Escape Outdoor Adventures submission, DR7, p. 2)*

### Forest Reserves

Under the *Forestry Regulations 2013* a person must not, without lawful authority camp in a forest reserve overnight; enter a forest reserve before sunrise on any day; or enter or remain in a forest reserve after sunset on any day.<sup>115</sup> Forestry SA is generally supportive of camping but due to the nature of forestry and its obligations to provide a safe experience for campers, only allow camping at designated camp sites. Camping fees are regulated under the *Forestry Regulations 2013* and campsites can be booked and paid for online.

Due to fire risks, camping in forest reserves is permitted only from 1 April to 30 November annually and forests are closed to the public on Total Fire Ban days.

### **Houseboats**

The commercial operation of leasing houseboats is regulated nationally by the Australian Maritime Safety Authority, under the *Marine Safety (Domestic Commercial Vessel) National Law (Application) Act 2013*. The Department for Infrastructure and Transport retained a regulatory role for a transition period of five years until 2018. Because they are regulated at the national level, the Commission has not investigated regulatory barriers to houseboat rentals.

#### **Information request 7.2**

Is the Commission's characterisation of the requirements for accommodation businesses accurate? Are there any other regulatory issues accommodation businesses face?

Is there consistency across local governments in enforcing operational requirements on accommodation businesses? How is this consistency monitored? What reporting requirements are in place?

How can the regulatory requirements for tourist accommodation businesses be improved?

## **7.3 Conclusion**

Transport services for tourism are regulated under the *Passenger Transport Act 1994* and have relatively easily understood requirements placed upon them. The DIT website provides guidance to operators and prospective operators on what is required. However, there are potentially some issues in practice related to processes which warrant further investigation. These include processes for applying such as for regional operators in renewing their registration, but also the general application process when it comes to minimising information

<sup>115</sup> *Forestry Regulations 2013* s 7

requirements on businesses and increasing the use of technology such as allowing for online applications.

The current regulations also, while not technically restricting ridesharing outside the metropolitan area, in effect have restricted operations to date. The Commission notes that the South Australian Government has committed to expanding the boundaries of the Adelaide metropolitan area which may solve some of these issues.

Accommodation services face a more complex regulatory environment, with the regulatory issues ranging from planning and development to public health and environmental protection. To date the Commission has heard mainly about issues related to planning and the development of new accommodation. The Commission is unable to evaluate the current planning system as it has only recently fully commenced. In a related activity the Commission is examining the referral processes to the Commission for Highways, the Environmental Protection Authority and the Native Vegetation Council in its Development Referrals Review.

The Commission has heard few concerns about operational requirements for tourist accommodation businesses. Concerns businesses raised related mainly to consistency between local governments, as enforcement and compliance of the relevant regulations is typically delegated to local government.

In both areas, regulations could be seen to place restrictions on businesses that might have the effect of limiting the size of their business or reducing growth. These include limiting their areas of operation (such as for ridesharing) or limiting patronage (such as through vehicle size limits and requirements of the BCA on heritage buildings). There are also differences across the state through either separate regulatory frameworks (such as for passenger transport) or possible inconsistencies in application (such as those delegated to local governments). While many of these requirements are in place for sound public policy reasons, the Commission is interested in alternate approaches that might reduce restrictions that limit business size while protecting the objectives of the policy.

## 8. Conclusion

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As detailed in the tourism review terms of reference, the Commission is asked to recommend actions for the South Australian Government to consider that would:

- improve the efficiency of the operations and the performance of the relevant state agencies;
- improve the adaptability and resilience of the regulatory process; and
- encourage timely and effective outcomes including in relation to unusual or innovative development proposals of economic value to the state.

In addition, the review is to focus on practical matters of South Australia regulatory practice relating to the regulations affecting the nature-based and agritourism sector.

### 8.1 Common Issues

As discussed in the Introduction, tourism is typically defined from the perspective of the consumer. As a result, the nature of activities undertaken by tourism businesses in South Australia is highly variable, with the regulations relevant to each business being similarly varied. In addition, from a regulatory perspective, tourism is a relatively new and growing economic focus for South Australia. This means that many of the regulations that affect tourism businesses were not developed in the context of tourism-oriented businesses. This has significant implications for the sector as some businesses struggle to understand how the older regulations apply in the tourism sector and regulators apply standards that are more suited to larger and more established businesses.

Based on the feedback received to date, the agencies most involved in regulating the tourism sector include:

- Attorney Generals Department – Consumer and Business Services (CBS);
- Primary Industries and Regions South Australia (PIRSA) – charter boats, fishing and meat processing;
- Department for Environment and Water (DEW) – Crown lands, national parks, pastoral lands and native vegetation;
- Environment Protection Authority (EPA)
- SA Health – food safety;
- Department for Infrastructure and Transport (DIT) – Commissioner for Highways (CoH) access to roads and road signage; and
- SafeWork SA - workplace health and safety.

#### 8.1.1 Developing a proactive culture in regulators

Stakeholders from both agritourism and nature-based tourism businesses flagged a desire for regulators to adopt a more flexible and proactive approach to assessing applications. That is, the businesses would like the regulators to look at how the application might be improved rather than focussing on why it cannot be approved. This is particularly important to applicants proposing to provide new or different services. The Commission discussed this issue with a number of regulators that all indicated a willingness to work with businesses; however, to date,

in the information received from businesses or regulators, the Commission has found little evidence of a proactive culture in regulators that interact with agritourism and nature-based tourism businesses.

The most positive examples relate to interactions with some regulators during the COVID-19 pandemic. As discussed in Chapter 5, there was positive feedback on the responsiveness and attitude of CBS in relation to licensing as well as assistance provided in navigating the COVID-19 pandemic restrictions.

*During the COVID-19 pandemic, Consumer and Business Services (CBS) has been accommodating and responsive. For example, CBS has been willing to grant short-term licences in order to temporarily expand a licensing area by including an outdoor area or different building to enable the industry to manage the impact of capacity limitations, social distancing requirements and other restrictions. (South Australian Wine Industry submission, p. 8)*

The Commission considers this is evidence that regulators can work proactively with businesses when they believe there is support for a proactive approach. That said, the majority of the feedback from businesses suggests that agencies view regulations as a set of hard and fast rules that have little flexibility. Further, the Commission has not been provided with any guidance material from regulators that suggests its employees are encouraged or trained to work proactively with businesses.

#### **Information request 8.1**

The Commission requests that regulators provide documentation of training programs or guidance material that is used to train or coach employees on working with businesses proactively to help develop applications.

The Commission also requests additional feedback from businesses on their experiences in working with regulators on innovative proposals both from a positive and negative perspective.

The Commission considers that interaction between regulators and regulated businesses is key to the development and maintenance of an effective regulatory framework. It also helps with the development of positive relationships.

#### **Draft Recommendation 8.1**

The Commission recommends that regulators relevant to nature-based tourism and agritourism have mechanisms, such as external reference groups, for consulting with stakeholders on regulatory matters and practice.

### **8.1.2 More timely government decisions**

The length of time required to respond to development applications, or issue licences was a consistent theme in discussion with all businesses and other stakeholders. Businesses did not believe that regulators understood the importance of quick decisions (whether positive or negative). The following example comes from the SA Parks submission.

*Caravan Parks that need to acquire land in order to expand or build new parks have experienced lengthy timeframes in order to get land rezoned for use as a caravan or residential*

*park. This can delay developments and increase costs significantly and is a deterrent to the development and expansion of parks. (SA Parks submission, p. 2)*

The Commission's research to date has found very few identifiable targets for the processing of applications or issuing of licences for tourism-oriented businesses. SA water has a number of targets for its services, but the Commission has found little evidence of clear and publicly available targets in the rest of government. In addition, the Commission has found little evidence of public reporting on the performance of regulators in processing applications or issuing licences.

### **Draft Recommendation 8.2**

The Commission recommends that regulators relevant to nature-based tourism and agritourism, in conjunction with their regulated businesses:

- develop target timeframes for approvals and measures for efficient processes; and
- publicly report their performance against these targets

In addition, the Commission considers it important that regulators regularly review applications that were both approved and not approved to ensure the effectiveness of its regulations.

### **Draft Recommendation 8.3**

The Commission recommends that regulators relevant to nature-based tourism and agritourism undertake periodic reviews of past approval applications, including unsuccessful applications, to identify possible changes to regulatory practice to improve success rates and reduce early cessation of unviable applications.

## **8.1.3 Government regulators working together**

Business stakeholders expressed frustration in providing the same information to different and, in some cases, the same regulators in relatively short periods of time. Businesses would like to see some sharing of common information between regulators to reduce the administrative burden on business. As illustrated by Table 3.1 in Chapter 3, the list of permit and licence required for nature-based tourism or agritourism activities can be extensive. Given the typical size of tourism-oriented businesses, responding to this situation can be both intimidating and confusing. This list was generated using the Australian Business Licence Information System (ABLIS) which is an Australian Government platform. There is no SA equivalent.

There was also some concern that the regulators were only interested in their own processes which complicated getting all the necessary approvals for the activity in question. Businesses sought more coordination between regulators to ensure the overall approval process is as efficient as possible. While the Commission has found that regulators are willing to work together, this occurs on an ad hoc basis related to a specific issue or project. The lack of coordination exacerbates the entry cost for new businesses as the cost of collecting information is too high for most small businesses.

The Commission understands that there needs to be a balance between the business sector's responsibility to develop and maintain their own businesses and the state's desire to develop

and expand the economy. It concludes that better coordination between regulators is required and that there are several possible options for further development. To help focus consultation on this matter, the Commission sets out three options for consultation. It does not have a preference for any option and looks to consultation to refine the issues and options for better coordination.

### Information Request 8.2

The Commission requests feedback on the following option for improving coordination between regulators:

- **Option 1:** Designate a lead coordinator agency for nature-based tourism and a lead coordinator for agritourism initiatives whose role is to coordinate regulatory approvals. This role would be supported through a memorandum of understanding (MoU) between relevant regulators and senior committee of all relevant regulators and oversight of progress on applications.
- **Option 2:** Build on Option 1 by authorising Primary Industries and Regions South Australia (PIRSA), as part of its accountability for regional development, to facilitate regulatory coordination in its regions, incorporating local regulators and local government.
- **Option 3:** Establish a lead regulator model for nature-based tourism and agritourism, drawing on the experience of the Department for Energy and Mining (DEM) as lead regulator

### 8.1.4 Facilitating new or innovative proposals

There was consistent feedback that agencies were reluctant to consider or approve new or innovative proposals. In general, once the dialogue began, businesses found the communication with regulators to be helpful and constructive but finding the right person to provide feedback was difficult, particularly if the proponent was new to the regulatory process. The reluctance to consider new or engage on new proposals could be related to the level of resources available to the regulator, the tolerance for risk in the regulator's business culture or the difficulty of accommodating a proposal within current interpretations of regulations.

Some agency staff indicated that the issuing of licences or permits was only one of their responsibilities and not necessarily a high priority in the context of their other work. As a result, the reluctance to consider new or innovative proposals may be related to the time available to consider these proposals and their relative importance to the agency.

It is also possible that some agencies have a low risk tolerance. If the perception of staff is that mistakes are not tolerated, then staff may be reluctant to decide on non-standard projects.

Over time, regulators build up an understanding of appropriate practice in their areas of responsibility, and the manner in which current regulation is to be applied. By their nature, new and innovative proposals may lie outside this experience or it may not be immediately clear how current regulation is to be applied to the proposal. The risk is that the default response is to decline the application, losing opportunities for business and for tourism consumers as a result.

The Commission also recognises that new and innovative proposals are not necessarily sound business. The proposal may lack necessary details and, even when sufficient information is provided, substantial research may be required to determine the impact of the proposal on the public good being regulated. For example, allowing charter groups to catch and cook fish may have an impact on the stock of fish in the area and on the limits imposed on commercial fisherman. Businesses' primary purpose is to generate profits. To generate profit, businesses need to manage a certain level of risk and it is not the government's job to take on risks best managed by business. It is government's role to reduce risk from regulatory ambiguity, regulatory gaps, inappropriate/inflexible regulation or absent regulation.

To date, the Commission has not gathered sufficient evidence to assess the allocation of risks and will try to gather more information in the next stage of consultations.

### **Information request 8.3**

The Commission requests that agencies with regulations most affecting nature-based tourism, as identified at the beginning of this chapter, provide more feedback on their internal pathways and guidelines for reviewing non-standard proposals.

The Commission also requests additional feedback from businesses that have recently tried to develop new or innovative proposals regarding the feedback and guidance they received from South Australia agencies and their experience of decision-making by those agencies.

### **8.1.5 Greater clarity about approval guidelines**

It is always important to develop clear guidelines as to the necessary conditions for approving a development, licence or permit. Clear guidelines reduce the number of inquiries from business and allow for timely consideration of proposals by agency staff. This is even more important given the structure of the tourism industry in South Australia as most businesses are relatively small and do not have the same capacity as larger businesses to investigate guidelines and develop business proposals.

The Commission's initial review of the public material available to guide businesses in the development of proposals concludes that the guidelines could be improved by communicating the requirements for approval in a clearer and more concise manner. The requirements reviewed by the Commission, particularly regarding access to Crown or national park land, seem unnecessarily complex and, in some cases, vague. This may be a result of the regulations being designed in a context where appropriately sensitive and compatible economic development of the public asset was not considered a priority. As evidenced by the co-investment fund for nature-based tourism proposals, the government has identified the economic development of nature-based tourism businesses as a priority. As such, it is important that the regulations that govern activity in those areas be reviewed to ensure that objectives of the new program can be progressed in a reasonable timeframe.

The Commission notes that this is identified in Action 3 of DEW's Nature-based Tourism Action Plan but has not received any information regarding the agency's progress in reducing red tape.

**Draft Recommendation 8.4**

The Commission recommends that regulators relevant to nature-based tourism, in conjunction with their regulated businesses, review and improve the clarity and accessibility of their approval guidelines within 12 months.

**Draft Recommendation 8.5**

As the government has emphasised the development of nature-based tourism, the Commission recommends that

- the Department for Environment and Water (DEW) provide consolidated guidance to prospective nature-based tourism businesses covering all the relevant regulatory requirements, including those from regulators outside the portfolio, and evaluate delivering this guidance through a business concierge.
- Primary Industries and Regions South Australia (PIRSA) provides similar support to agritourism.

**8.1.6 More use of digital enhancement, including online applications**

Digitisation of government services is a priority for the current state government. The state's Digital Transformation Strategy outlines both the approach and benefits of that transformation. Some of the benefits that are most relevant to the Tourism Review include:

- reduced processing times for applications:
- reduced costs associated with doing business with government:
- increased community engagement: and
- reduced time spent on manual administration of processes.

The Commission agrees that this is an important initiative and emphasises that it is particularly important for regional businesses involved in nature-based tourism and agritourism as most are relatively small and have little time to deal with centralised or manual application processes.

While there has been some progress in developing online applications for the various development and licence approvals required to operate a business, both regulators and businesses have indicated that more progress can be made.

**Draft Recommendation 8.6**

The Commission recommends that the government's digital strategy incorporate the priorities of the tourism sector in regional South Australia by prioritising the roll-out of digital services in those agencies that are most involved with nature-based tourism and agritourism, and regional South Australia.

**Information request 8.4**

The Commission seeks clarity from nature-based tourism and agritourism businesses and their regulators regarding digitally enabled improvements to regulatory requirements and processes, especially those that make it easier to do business with the regulators.

**8.1.7 Local Government Regulatory Capability**

While the delegation of administrative responsibility to local government can be an effective means of developing local regulatory services that meet the needs of that particular region, it is important to ensure regulations and standards are applied in the same manner in each council area. The failure to do so adds to uncertainty in the application process for business and thereby to their costs. In the tourism sector, this is particularly relevant to food safety regulations. Coordinated efforts to build regulatory capability contributes to the alignment across regions of the delivery of advice. The Commission research indicates that SA Health provides guidance on the role requirements for environmental health officers; however, it does not seem to monitor the application of its guidelines.

**Draft Recommendation 8.7**

That the remit of the SA Health food safety regulation function be expanded to:

- build on the regulatory capability of local government, with specific attention to environmental health officers, by providing on-going professional development advice and support;
- establish a central and independent process for receiving feedback on, and reviewing, the enforcement of food safety regulations by local government, and responding to complaints from businesses; and
- provide advice to local government on improving their regulatory practice arising from analysis of the feedback.

**8.2 General Remarks**

In Chapter 1, the Commission offered a framework for the assessment of regulatory design and practice, which referred to costs to government, business and other economic effects.

With respect to economic effects, the Commission's most immediate concern is the implication of this package of regulation to competition in this sector. As noted, the design and practice of regulation can provide an advantage to incumbents and can add to the (unrecoverable) costs of entry. It can impede innovation. The Commission will continue to test these concerns in the consultations to follow. It will seek in particular to interact with businesses who have been discouraged from entering the tourism sector.

The Commission notes the extensive policy package the government has announced with respect to tourism and the ambitions expressed in those various policy documents, especially in relation to nature-based tourism. These include greater coordination, provision of information to business to support the development of proposals, streamlining application process, and removing unnecessary barriers. These topics are all emerging from this Review as items worthy of further attention and to which many of the draft Recommendations apply.

Finally, the Commission continues to consider the options for a new approach to regulation in this sector, including methods which involve more explicit cooperation of regulators and regulated entities.

## **8.2 Next Steps**

With the publication of this draft report, the Commission will now begin the next stage of consultation with stakeholders regarding the information requests identified in the draft report as well as the draft conclusions and recommendations.

This stage allows for formal submission to the Commission regarding the draft report as well as individual meetings with regulators and stakeholders on specific issues. This will also include roundtables on specific issues with regulators and businesses.

The Commission has also commissioned surveys of businesses and regulators as part of the South Australia Regulatory Framework inquiry that will provide additional data on the issues affecting tourism-oriented businesses. The Tourism Review team will consider this data in developing its final report.

# Appendices

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## Appendix 1: Terms of Reference

### SOUTH AUSTRALIAN PRODUCTIVITY COMMISSION REVIEW INTO MODERN REGULATION – TOURISM

I, Steven Marshall, Premier, hereby direct the South Australian Productivity Commission (the Commission) to undertake a review into tourism regulation.

#### Background

Tourism is an important contributor to the South Australian (SA) economy with total expenditure of \$5.6 billion in the year ending September 2020 (approximately 5% of GSP) and 40,500 direct jobs in the year ending June 2019. The development of the South Australian Growth State plan for the visitor economy (including tourism) sets a target to grow this portion of the economy to \$12.8 billion by 2030.

Businesses serving tourists, by the diverse nature, navigate several regulatory frameworks and may need to comply with various industry codes and standards. Those requirements can traverse consumer law, marine safety, food safety and environmental standards, among many others, depending on the nature of the business. Registration, licensing and permits to operate in specific locations or access places may also apply, as well as the normal requirements of running a small or medium business including industrial relations, work health and safety, taxation and insurance. Industry feedback indicates regulatory processes can result in unnecessary costs, delays and uncertainty, adversely impacting on investment, proposed business development projects and business sustainability.

Various other factors can also affect the growth and development of the industry and are important considerations in the design and management of regulation to which it is subject. These include the applications of digital technology, including for relationship management in the sector and marketing.

Like several other parts of the economy that rely on proximity and travel, the state's tourism industry has been disproportionately affected by the COVID-19 pandemic. Total expenditure declined by 29 per cent in the 12 months to September 2020 compared to the year ending September 2019. While the Australian and South Australian Governments have made available several support and stimulus packages that are applicable to the tourism industry in response to the pandemic, it is also timely to assess regulations applicable to the industry. Removing regulatory impediments will help support tourism businesses as they reopen in a COVID-safe way to the state, other Australian jurisdictions and the world. In addition, streamlining regulation has been identified as a critical enabler in the South Australian Visitor Economy Sector Plan 2030.

#### Terms of Reference

The government seeks advice from the Commission regarding the effect of application of regulations on the tourism industry. The Commission is to focus on short to medium term benefits to the state that can be realised through changes in regulator practices, processes and capability, the use of technology as well as culture and relationships between proponents and regulators.

The Commission is asked to recommend actions by the South Australian Government to:

- improve the efficiency of the operations and the performance of the relevant state agencies:
  - in ways that cut the costs of regulation on the regulated parties and make it easier to do business in the state; and
  - having regard to the regulating agencies' mandates and the associated public interests.
- improve the adaptability and resilience of the regulatory process and encourage timely and effective outcomes including in relation to unusual or innovative development proposals of economic value to the state.

While this review is to focus predominantly on regulator practice and policies, the Commission may make recommendations on amendments to regulations and legislation if relevant to these terms of reference.

The Commission is to have regard to (where applicable):

- Regulatory impediments, issues and reforms identified in contemporary reports, reviews and inquiries, and raised by public sector agencies and regulators, to determine their relevance to the challenges faced by tourism operators in South Australia.
- Regulation reforms specific to the tourism sub-sectors under review in other jurisdictions.
- Innovative and emerging technologies that would improve the efficiency and effectiveness of regulations applicable to tourism operators.
- Barriers to the entry of new businesses and investment in the tourism industry including international tourism services providers.
- The impacts of the COVID-19 pandemic, and in particular COVID-safe requirements and other potential limitations as the industry reopens.

The Commission is to give priority to high-value reforms to regulatory design and regulatory practice that do not require legislative change. In developing its recommendations, the Commission is expected to have regard to their resource implications and implementation timeframes.

### **Scope**

For the purpose of this inquiry, regulation is defined to include any principal legislation or statutory instruments made under an act, such as regulations, rules, by-laws or any instruments of a legislative character, that principally affect businesses. The inquiry will also consider, where appropriate, administrative instruments that have a quasi-legislative character and impose a regulatory burden on businesses.

To contain the scope of the review, it will initially focus on nature-based tourism and agriculture-based tourism (food, wine and other products and services).

National regulatory schemes of which South Australia is part and where change requires the agreement of other jurisdictions are excluded from this inquiry. State legislation and regulatory schemes which involve local government are in-scope. The Commission is to

have regard to SA's Growth State initiative and other relevant state and national policies, reviews and reforms.

### **Inquiry Process**

The Commission will consult with key industry organisations, including organisations representing regional South Australian tourism interests, business operators, the SATC, other relevant public sector agencies and regulators, and other key stakeholders.

The Commission is to publish an issues paper at the beginning of the review process and a draft report containing recommendations for consultative purposes. A final report is to be provided to me no later than 6 months from the date of the receipt of these terms of reference.



Hon Steven Marshall MP

**PREMIER OF SOUTH AUSTRALIA**

29/3 / 2021

## Appendix 2: Submissions in response to the issues paper

Organisation name	Submission Number
<u>Department for Environment and Water</u>	DR1
<u>Greg O'Grady</u>	DR2
<u>SA Parks</u>	DR3
<u>South Australian Tourism Commission</u>	DR4
<u>South Australian Wine Industry Association Incorporated</u>	DR5
<u>The Backyard Universe</u>	DR6
<u>Wilderness Escape Outdoor Adventures</u>	DR7

## For more information

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