South Australian Government submission to the Productivity Commission Review of Regulatory Burdens on Business and Consumer Services

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PREPARED BY:

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Contents

Acknowledgements

This submission has been developed in consultation with a range of State Government departments and agencies and industry associations. In particular, significant input or assistance was given by the following organisations.

- Department for Environment and Heritage
- Department of the Premier and Cabinet – State Library of South Australia and Public Library Services
- Department of Primary Industries and Resources SA – South Australian Research and Development Institute
- Recreation SA
- Sport SA
- Zoo and Aquarium Association
- Business SA

Executive Summary

The South Australian Government strongly supports the aim of the Productivity Commission's review to address Federal Government regulatory burdens for business and consumer services that are: unnecessarily burdensome, complex or redundant; poorly designed, implemented or reviewed; or duplicating regulations or the role of regulatory bodies, including in other jurisdictions.

The South Australian Government is committed to improving the regulatory environment for business, having signed up to the Council of Australian Governments (CoAG) *National Partnership Agreement to Deliver a Seamless National Economy*, and also undertaking a number of significant State-based initiatives in recent years. A Red Tape Reduction Program has been ongoing in South Australia since 2006 and an independent assessment by Deloitte found the first phase of this initiative had saved more than $170 million per year for South Australian businesses. The second phase is currently underway and is expected to create a further $150 million in red-tape savings to businesses over three years. A key factor in meeting this target will be a rolling five-year review of all State business regulation.

This submission was produced in consultation with various South Australian Government departments and agencies and industry associations. The submission focuses on regulatory burdens that mainly impact on business and consumer service industries, in line with the scope of the Productivity Commission review. However, a brief outline is given for broader economy-wide issues to assist ahead of the review of economy-wide regulation in 2011.

The submission raises issues for a subset of the industries within the scope of the 2010 review. Where no issues are raised for an industry, it is either because no significant issues were identified or because the regulations are predominantly State or local in nature.

In regards to the 'professional, scientific and technical services' industry, issues are raised and improvements suggested for the Australian Quarantine Inspection Service (AQIS) permitting process, which has caused delays and other difficulties when scientific institutions import plant material. There are also recommendations to remove the innovation patent exemption for plants and the biological processes for their generation, in order to allow plant subject matter to be protected by innovation patents and the easing of reporting requirements for foreign aid work funding.

In 'arts and recreation services', the submission discusses how the potential for new restrictions on advertising at sporting events of 'unhealthy' alcohol and food products would, if introduced, impose a regulatory cost for sporting associations that would need to be offset by new Federal funding or a reduction in sporting activities. Issues for recreation services included ensuring that small organisations are aware of their obligations under the Privacy Act when dealing with private health information, and the impacts of the lack of charitable status (as also felt by sporting organisations) or Public Benevolent Institution status for tax purposes. The latter limits the financial ability of sport and recreational associations to deliver services.

The submission discusses a number of issues relevant to zoos and aquariums, in particular the need for a streamlined process for importing species listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The current process contains doubling-up of requirements between the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and import risk analyses, and between different jurisdictions. The timeframes involved in obtaining permits sometimes exceed the practicalities of managing a species. The submission also advocates allowing zoos to import CITES species for non-commercial reasons besides conservation breeding, more clearly defining terms such as 'non-commercial' in the EPBC Act and Regulations, managing animal welfare as a separate issue from CITES species population sustainability, and addressing uncertainty about agency responsibilities when CITES fauna are confiscated.

In relation to arts, the submission discusses how film classification service costs can be prohibitive for niche market films with a small audience, and that the existing fee waiver mechanism designed to overcome this should be refined by publishing a predictable, discounted and known schedule of fees for classification of films which meet a 'low volume' test. Australia's Copyright Act is also said to benefit from a provision for dealing with works with missing 'owners' like that introduced in Canada.

In the 'financial and insurance services' industry, a key issue is seen as the need for continued improvement in product disclosure statements standards and practices and mechanisms through which customers can readily compare and evaluate different product offers. Protections for consumers against unfair or irresponsible lending practices is also considered a priority which should come from implementation and enforcement of the National Consumer Credit Protection Reform Package. Cumulative regulatory burdens are known to remain a primary concern for businesses and it is suggested that there may be benefit in a red-tape reduction process conducted in collaboration with industry.

In 'other services', questions are raised about the lack of specific deduction allowances in the income tax law for voluntary work expenses. Volunteers provide valuable community services and it may be appropriate to modify the tax system to allow tax deductions for voluntary work expenses to encourage greater levels of volunteering for small not-for-profit organisations.

Introduction

The South Australian Government welcomes the opportunity to provide a submission for the fourth year of the Productivity Commission's five-year cycle of annual reviews of regulatory burdens. This year's review will focus on those Federal regulatory burdens that are specific to the whole or any part of business and consumer service industries.

The South Australian Government strongly supports the aim of the Productivity Commission's review to address Federal Government regulatory burdens for business and consumer services that are: unnecessarily burdensome, complex or redundant; poorly designed, implemented or reviewed; or duplicating regulations or the role of regulatory bodies, including in other jurisdictions.

For the purpose of the review, business and consumer services covers the following industry categories from the Australian and New Zealand Standard Industrial Classification used by the Australian Bureau of Statistics (ABS):

- accommodation and food services including hotels, motels, caravan parks, cafes, restaurants, and takeaway services (Division H);
- financial and insurance services including banking, credit unions, life insurance, health insurance, and superannuation funds (Division K);
- rental, hiring and real estate services including motor vehicle rental, other transport equipment rental, heavy machinery rental, property operators, and real estate services (Division L);
- professional, scientific and technical services including scientific research services, architecture, engineering, and legal and accounting services (Division M);
- administrative and support services including employment services, travel agency and tour arrangement services, office administration, building cleaning, pest control, and gardening services (Division N);
- arts and recreation services including museums, zoological and botanical gardens, performing arts, sports and physical recreational activities, and gambling (Division R); and
- other services including repair and maintenance, hairdressing and beauty, funeral and cemetery services, and laundry and dry-cleaning services (Division S).

In previous years the focus of the reviews were: the primary sector (2007); manufacturing sector and distributive trades (2008); and social and economic infrastructure services (2009). Economy-wide generic regulation and regulation not addressed earlier in the cycle are to be covered in 2011.

This submission has been produced in consultation with various South Australian Government departments and agencies and industry associations. The submission focuses on regulatory burdens that mainly impact on business and consumer service industries, in line with the scope of the Productivity Commission review. However, a brief outline is given for broader economy-wide issues which have been consistently raised in the consultations undertaken for this submission and in other recent consultations. It is considered appropriate to provide this broader coverage to assist ahead of the review of economy-wide regulation in 2011.

The submission raises issues for a subset of the industries within the scope of the 2010 review. Where no issues are raised for an industry, it is either because no significant issues were identified or because the regulations are predominantly State or local in nature.

In recognition of the importance of improving the regulatory environment for businesses, the South Australian Government has committed to the Council of Australian Governments (CoAG) *National Partnership Agreement to Deliver a Seamless National Economy* which involves implementing many streams of business regulation and competition reform. South Australia has also undertaken a number of significant State-based initiatives in recent years.

In 2006, an initial Red Tape Reduction Program was launched and a Competitiveness Council established to oversee the program. Under the program, the red tape burden on seven key industries was reviewed while 16 government agencies developed and implemented their own reforms. The reviews at a Government level were driven by the Competitiveness Council and led at the agency level by a red tape champion in each agency and department, assisted by the Competitiveness Council Secretariat. The seven industries that were involved in the review process were:

- cafés and restaurants;
- building construction;
- heavy vehicle road transport;
- wine grape growing and wine manufacturing;
- metal manufacturing;
- motor vehicle retailing and services; and
- fishing and aquaculture.

The South Australian Government significantly reduced red tape in the two years to July 2008 as a result of this program. An independent assessment by Deloitte found that the State Government's red tape reduction initiatives will save South Australian businesses more than $170 million per year going forward.

In April 2009, a second phase of the Red Tape Reduction Program was announced in which the Local Government Association and councils would contribute to a further $150 million in red-tape savings to businesses over three years. A key factor in meeting this target will be a rolling five-year review of all State business regulation.

In 2009, the South Australian Government released a Small Business Statement to help build awareness of the Government's services and recent initiatives to assist small business. These include red-tape reduction initiatives such as:

- providing a number of forums that enable the concerns and ideas of business to feed into its policy formation processes;
- responding to the GFC by fast-tracking a range of infrastructure projects and setting up a free hotline to help small businesses access information and advice;
- simplifying and harmonising payroll tax;
- simplifying and reducing the number of forms and licences associated with establishing and operating a café or restaurant; and
- producing a Step-by-Step Guide to starting a restaurant, café and take-away business.

The State Government is also developing a single entry point website – www.sa.gov.au. The initiative is focused on better delivering information and helping businesses use online, self-service and lower-cost service delivery modes wherever practical. A team has been established to work with all government agencies and consult widely with business representatives to deliver business related information and services in a coordinated and logical way on the new website.

Economy-wide regulation

Industry reviews undertaken as part of the South Australian Government's Red Tape Reduction Program, as well as the consultation undertaken for this submission, have revealed a number of concerns about Federal red-tape that are not necessarily concentrated in the business and consumer service industries. While not strictly fitting within the scope of the 2010 review, it is considered appropriate to provide a brief outline of the key economy-wide regulatory issues that are regularly raised by businesses to assist the Productivity Commission ahead of the review of economy-wide regulation in 2011.

Uniform legislation and standards – Business groups support the move towards nationally consistent legislation and standards in Occupational, Health, Safety and Welfare (OHSW) and would also like nationally consistent Workers' Rehabilitation and Compensation legislation. This is so that businesses which operate across jurisdictions have consistency, certainty and lower compliance costs.

Government forms and other requirements – Understanding and meeting government requirements can be unnecessarily difficult. Great time and effort can be expended trying to find the specific form that must be completed in a particular situation, understand the often complex language describing what must be done to meet the government's requirements, or even at times to determine the appropriate department to deal with. This can be particularly difficult for smaller businesses and community organisations who lack the dedicated resources needed to do significant administration work.

Procurement processes and grant funding applications – Firms that seek to tender for Government contracts or participate in Government grant programs are often required to go through a lengthy and onerous application and assessment process. The level of red-tape to prepare and lodge applications can make it impractical for smaller organisations to participate, particularly when seeking smaller contracts or smaller amounts of grant assistance.

Government surveys – Many businesses and Government bodies are called on to participate in Government surveys, particularly ABS surveys covering topics such as Research and Development Expenditures, Motor Vehicles, and Staff Training and Development. Surveys are generally considered to be time consuming and the questions at times unnecessarily creating 'double reporting' whereby two or more surveys ask for the same profile information from the one organisation. Occasional changes in the formats of surveys further increases time burdens.

Issues specific to business and consumer services

1. Professional, scientific and technical services

Research and Development

Reports for foreign aid work funding – The South Australian Research and Development Institute (SARDI) receives funding in relation to joint foreign aid work under the Australian Centre for International Agricultural Research (ACIAR). Six-monthly return reports are required to account for in-kind contributions. These reports are costly to organisations due to the significant time required to prepare them. In order to address this time cost to organisations, it is recommended that the government review the format and regularity of the reports.

Requirements for Australian Quarantine and Inspection Service (AQIS) – AQIS compliance requirements are complex, expensive and often require multiple processing and authorisation steps (for example, for seed treatment and planting authorisations). SARDI currently employs more than two full-time equivalent staff to manage AQIS permits and Post Entry Plant Quarantine processes. There is also an issue relating to the cumulative cost of short term (1-2 year) permit applications, which cost $185 each and add up to a large ongoing cost for SARDI and SARDI's external clients. It is suggested that the AQIS processing and authorisation steps be combined and rendered electronic such that paper signatures and facsimiles could be replaced with electronic signatures and email. The scope and duration of the short term permits should also be extended and the monetary costs reduced. In particular it is recommended that the duration of *in vitro*-only permits, currently two years, is extended to five years.

Innovation Patents for plants and the biological processes for the generation of plants - The Intellectual Property rights available in Australia do not provide adequate protection for the complete range of innovations that result from the activities of plant breeders. This incomplete protection puts plant breeders at risk of not being able to make a return on their investment in plant breeding activities.

There are many new and economically valuable plant varieties and processes which lead to new plant genotypes which are not protectable under any intellectual property rights. For example, if a new plant variety does not meet one or more of the 'distinctness', 'uniformity' or 'stability' requirements stipulated by the *Plant Breeder's Rights Act 1994* because of the inherent nature of the plant, it can not be protected under that Act. If the plant subject matter does not meet the requirements of 'inventive step' because the innovation is a small incremental improvement, even if it is a valuable improvement, it cannot be protected under a standard patent. Innovation patents were developed to provide protection for more incremental innovations but plants and the biological processes for the generation of plants is specifically excluded from the allowable subject matter.

The simplest way in which this gap in design of the available Intellectual Property rights can be addressed is to remove the exemption of subject matter relating to plants and the biological processes for the generation of plants, as it relates to innovation patents (subsection 18(3), *Patents Act* 1990). Plant breeders will then be provided with the capacity to obtain protection for plant varieties and processes which lead to new plant genotypes under innovation patents for plant subject matter that could not otherwise be afforded intellectual property rights. Allowing innovation patents for plant subject matter would be of benefit to the plant breeding activities conducted by SARDI and its partners.

2. Arts and recreation services

Parks and Gardens

Importation of Plant Material – The role of the Botanic Gardens of Adelaide in cultivating plant material has seen the importation of plants for conservation, ornamental and commercial purposes. The results of these imports have varied from successful weed species to successful crops and ornamentals. Both the Botanic Gardens and the commercial plant nursery industry have a critical interest in seeing plant material assessed appropriately in relation to potential threats while ensuring that a rapid pathway is available for plants that are not considered to be a threat. The Botanic Gardens have supported AQIS by identifying illegally imported plants and providing 'Statements of Identification'.

Concerns with AQIS originate from the introduction of the Import Conditions database (ICON) in the late 1990s and the need to apply for unlisted taxa (i.e. groups of organisms) to be imported by means of Weed Risk Assessments. Initially there was a significant delay in the turnaround of applications due to inadequate resource allocations AQIS applied to the process. Also, if little information is found about the new species in cultivation when carrying out these assessments, by default it leads to a failed application.

There is an opportunity for a more collaborative approach where Botanic Gardens and AQIS could work together to develop a better understanding of any new species being introduced. Recent experiences with the process has shown it to be more responsive but in a recent example, the application to bring Brocchinia micrantha to the Gardens was only listed as an acceptable taxa for import on ICON four months from the initial application. The system still makes it impossible to import any unidentified species that could be collected on a botanical expedition. The only option at this time is if the species can be quickly identified in the field and be held in any life form (preferably seed) for the approval period in its country of origin. The delays and losses in AQIS for living plant material are fatal for seed material with limited viability.

Sport and Recreation Services

Alcohol and food sponsorship – In the event that advertising of 'unhealthy' alcohol and food products is restricted at sporting events, federal financial support will be needed to offset the regulatory costs for sporting associations in terms of loss in revenue from the alcohol and food industries. A removal of alcohol and fast-food sponsorships will result in fewer sporting activities available at every level.

Privacy of health information – Many people are required to fill in health information prior to engaging in recreation activities. On a daily basis, small organisations are documenting individual health information about clients and are unaware how to monitor and store this information in compliance with the Privacy Act. There is a need for greater awareness raising and assistance for small organisations to help ensure they meet the Privacy Act requirements.

Charitable and Public Benevolent Institution (PBI) status – Requirements for an organisation to receive Charitable status and PBI status impact on the financial capacity and viability of many sport and recreation based organisations. Tax deductible donations from the public can provide much needed assistance for recreational organisations to provide services such as horse riding, sailing or kayaking to people with disabilities, rather than having to rely on government funding. The ability to offer salary sacrifice has in the past – before many organisations had it taken away – enabled recreational organisations to entice people to work in the sector despite salaries in the not-for-profit sector being generally below rates in other sectors. Sports organisations are also looking for charitable status for the purpose of tax benefits such as FBT.

Zoos and Aquariums

Unregulated trade in wildlife has become a major factor in the decline of many species of animals and plants. In 1975, an international convention was established to prevent international trade from threatening species with extinction. This treaty is known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Australia is one of more than 150 countries that are a party to CITES. Each member country controls the import and export of an agreed list of species that are endangered, or at risk of becoming endangered, due to inadequate controls over trade in them or their products.

CITES became enforceable under Australian law on 27 October 1976. In Australia, CITES initially was enforced under the Customs (Endangered Species) Regulations and then by the Wildlife Protection (Regulation of Exports and Imports) Act 1982. Under amendments effective from 11 January 2002 the legislative basis for meeting Australia's responsibilities under CITES is now provided by Part 13A of the EPBC Act.

CITES Appendix I are species threatened with extinction and that are, or may be, affected by trade. Among the species listed are apes, lemurs, the giant panda, many South American monkeys, great whales, cheetah, leopards, tiger, elephants, all rhinoceroses, many birds of prey, cranes, pheasants, parrots, all sea turtles, some crocodiles and lizards, giant salamanders, some mussels, orchids, cycads and cacti.

CITES Appendix II are species that, although not threatened with extinction now, might become so unless trade in them is strictly controlled and monitored. CITES Appendix II also includes some non-threatened species, in order to prevent threatened species from being traded under the guise of non-threatened species that are similar in appearance.

CITES Appendix III are species that any CITES Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation and that require the cooperation of other countries in the control of trade.

Permitting process for importing CITES species - For a zoo to be able to import a species from overseas, the following requirements must be met:

- The species must be included on the 'List of Specimens taken to be Suitable for Live Import' consistent with the requirement of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) which is administered by the Department of the Environment, Water, Heritage and the Arts (DEWHA). In broad terms, any species imported since 1984 is included on the list. Any species that has not been imported since that time, even though it might be held by Australian zoos, is not on the list. In order to have the list amended a detailed application must be submitted to DEWHA. This application is required to include information regarding disease risk presented by the species, potential to establish a feral population, and any other risks to the Australian community, Australia's biodiversity and the Australian environment. Detailed applications need to be submitted for similar species, such as those that might belong to the same species (different subspecies) and occupy similar habitat and broadly similar geographic ranges.
- An import risk analysis must be completed to determine quarantine requirements for species being imported. The species needs to be approved for import by Biosecurity Australia within the Department of Agriculture, Fisheries and Forestry (DAFF) and is assessed on its biosecurity (pest and disease) risk to people, animals (both native and livestock), plants and other aspects of the environment.
- When progressing amendments to the 'List of Specimens taken to be Suitable for Live Import' and completing import risk analyses, both DEWHA and Biosecurity Australia seek input from the National Vertebrate Pest Committee which is managed by the Natural Resource Management Committee under the COAG framework. This committee is made up of state and territory representatives who make an assessment on the potential risks associated with the species becoming a pest, and determines security provisions according to the risk.
- Once a species is on the 'List of Specimens taken to be Suitable for Live Import' and has Biosecurity Australia approval for entry into Australia, each species needs to be approved by state and territory Vertebrate Pest Committees to determine if the species may enter individual states and territories. This follows state and

territory input into decisions made regarding DEWHA and DAFF approvals for entry of species into Australia.

This complex permit process is causing difficulties when importing CITES species. There is a doubling-up of requirements between the EPBC Act, CITES, and the import risk analysis. The process is also particularly time consuming and can take many years to complete; the time frames involved in obtaining permits sometimes exceed the practicalities of managing a species. For example, some short lived species die of old age while the permit is being processed. As permits are issued for specific specimens the process has to start from the beginning in these circumstances. This deters overseas zoos from swapping species with Australian zoos.

DEWHA requires a substantial amount of information and duplicates a great deal of the work carried out by the other CITES authority in their issuing of import/export permits.

- A detailed assessment of management practices of the 'sending institution/organisation' by DEWHA seems unnecessary, and is impacting on the ability of Australian zoos to acquire exotic species. This means that animals that could be valuable to Australian management programs are less likely to be sent to Australia if there is interest shown in the specimens by zoos in other countries with a less comprehensive and demanding application process.
- For the 'List of Specimens taken to be Suitable for Live Import', submissions required are lengthy and take considerable effort to produce. Duplicated assessment occurs around pest species potential (Vertebrate Pest Committee and assessment of potential impact on Australia's environment) and risk of introducing disease (import risk analysis by Biosecurity Australia and assessment of potential impact on Australia's environment). The process for review of these submissions can also be prolonged.
- When submitting applications for the purpose of making additions to the 'List of Specimens taken to be Suitable for Live Import', there is a concern regarding the need to submit detailed applications for similar species, such as those that might belong to the same species and occupy similar habitat and broadly similar geographic ranges. As an example, three species within the genus Saguinus are approved for import—namely the Cotton-top Tamarin (Saguinus oedipus), Emperor Tamarin (Saguinus imperator) and Red-handed Tamarin (Saguinus midas). Zoos have contemplated opportunities to participate in captive breeding programs for the Pied Tamarin (Saguinus bicolor) and Geoffroy's Tamarin (Saguinus geoffroyi) but because of the need to submit a number of detailed applications and the time associated with approvals, they have missed opportunities to become involved with such off-site conservation programs.

The zoo industry has experienced substantial delays in the import risk analysis process. Applications can remain outstanding with DAFF for a considerable period of time. Limited resourcing of DAFF appears to be an ongoing issue with a lack of staff available to progress matters due to staff being deployed to other issues. For example, when staff working on import risk analyses were required to attend to the equine influenza outbreak, this resulted in delays to progress on import risk analyses. An import risk analysis for primates has been under development since the early 1990s and during this time, it has still been possible to import primates to Australia.

However, the bovid import risk analysis was suspended to enable further review and since that time, it has not been possible to import bovids into Australia (except via New Zealand provided the specimen has been in New Zealand for 12 months with no signs of disease).

A single, coherent, and practical permitting process is needed, which is recognised by all governments and its departments and can be completed in a timely manner.

The process for listing of species suitable for live import could be refined and simplified. In order to import a species, it needs to be on the EPBC Act import list and the Biosecurity Australia import list. Whilst both lists serve different purposes there is scope to combine the processes so an organisation only needs to deal with a single point of contact. A combined process with identified sequential decision points for the different needs (biosecurity/EPBC) would ensure that industry is not investing in one of the processes when it will be rejected by the other.

The permitting requirements of the EPBC Act in relation to the international movement of wildlife can be simplified to include only the information the Australian Government needs as a CITES authority rather than seeking substantial amounts of information from overseas zoos. This approach implies an official recognition of the integrity of other CITES authorities in the provision of their permits (particularly in developed countries which have a professional zoo association and accreditation program such as the USA and Europe).

If an international CITES authority issues a permit enabling the export of a specimen into registered zoo facilities in Australia that meets appropriate standards and State licensing requirements (if existing), there should not be a further requirement for the sending institution or organisation to provide detailed information regarding management of species to the Australian CITES authority in relation to applications for Cooperative Conservation Programs.

Understanding the husbandry management practices of the institution that the animal is departing from should only be a minor consideration in a departmental importation assessment when the animals are coming to institutions that have demonstrated their proposed facilities and husbandry of the imported specimens in the import application. The main basis of the consideration must be that the specimens are going into facilities that have been assessed as suitable by the department or the relevant State authority (if appropriate). Where countries have a professional zoo association operating an accreditation program, accreditation by the sending institution should be recognised by DEWHA as demonstrating appropriate husbandry standards. DEWHA should also recognise the Zoo and Aquarium Association accreditation program, and assessment of member zoos by relevant state authorities in Australia, as demonstrating an appropriate animal management standard.

Non-commercial reasons for importing CITES I specimens – Under the EPBC Act, the import and export of live animals included in Appendix I of CITES generally may only be carried out for a small number of specified non-commercial purposes. Currently there is no provision for Australian zoos to be able to import a CITES I species for roles other than conservation breeding. A CITES I import/export permit for

the purpose of conservation breeding shall only be issued when the import/export is to an approved Cooperative Conservation Program.

Australian zoos contribute to conservation outcomes through community education and encouraging community actions. In 2005-06, nearly 36% of the population over 15 years of age visited a zoo at least once. According to the Zoo and Aquarium Association more Australians visit zoos each year than nearly any other form of cultural entertainment. Zoos have maintained this rate of visitation for over ten years. There are an estimated 12.7 million visits to zoos per annum, plus 3.5 million overseas visitors. Exotic species displayed may be regarded as 'ambassadors', and at times it may be appropriate to acquire species for purposes other than conservation breeding programs. The species would be acquired without detriment to wild populations and species would be maintained to provide for biological and psychological wellbeing, but there may not be an objective of establishing a viable captive breeding program.

Under the current interpretation of the EPBC Act, importing for educational purposes is confined only to those organisations having students enrolled. Zoos provide a valuable educational role, both to the community and through supporting formal education programs attended by students enrolled at schools, colleges or universities as part of course requirements. In 2007-08, a recent industry survey showed 19 zoos provided formal education to 612,877 students nationally. In many states zoo education programs are either integrated with or reflect state education curriculums. Zoos also serve to provide an educational role for interns such as veterinarians.

While Cooperative Conservation Programs provide a valuable contribution towards the conservation and sustainable use of wildlife, it is not always possible for zoos to establish and operate programs consistent with Cooperative Conservation Program requirements which is required for the importing of CITES I species for conservation breeding by Australian zoos. For example, only a small number of member zoos may seek to hold the species and a zoo may seek to acquire 'rescued' animals in the interests of contributing to animal welfare and community education rather than establishing a breeding program.

Currently, the EPBC Act non-commercial purposes categories under which institutions can import and export animals do not properly recognise the multiple ways in which the zoo industry contributes to the conservation of endangered species, specifically in relation to the extensive education programs zoos provide. Criteria other than conservation breeding programs should be recognised for the importation of CITES I species for Australian zoos. Due to the overlap between these research, education, exhibition and conservation outcomes from the care and display of wildlife, they should not be regarded as mutually exclusive. For example, the acquisition of captive-bred Komodo Dragons for display purposes by an Australian zoo might be associated with fund-raising to support on-site conservation or research programs for the species.

Large numbers of many CITES I species are held in international rescue centres and sanctuaries. Often these animals are unsuitable for release. Providing for the ongoing health and well-being of these animals stretches limited resources and may compromise the potential for these sanctuaries to acquire and rehabilitate specimens that could be released. Acquisition of 'non-releasable' animals by zoos may well serve

a valuable community education role as ‘ambassadors’. Typically such an acquisition would be in conjunction with a long-term partnership providing resources and support to the sanctuary/rescue centre.

An amendment to the Act is suggested to include a separate non-commercial import category specifically related to zoological parks and aquaria. Such a category would better recognise that zoos are involved in a range of positive conservation activities beyond just exhibition or breeding. The category could allow for the import/export of CITES I listed animals and native species for: conservation breeding (for either wild release and recovery programs or to maintain viable captive populations); establishment of captive populations for threatened species; public exhibition; education; and research. Qualification criteria for this category would relate to both the individual specimen being traded (currently applies) and also the recipient institution’s status and function. Suggested criteria include:

- the recipient organisation has statutory status or is licensed to hold and exhibit live animals by the relevant government authority (the requirements and conditions for such a licence include welfare standards, trading conditions and other matters related to animal keeping, holding and display);
- the recipient organisation is open to the public;
- the organisation has an active visitor education program; and
- the export/import is not primarily for commercial use.

Additional criteria could then apply if the program involves the import of wild sourced animals or the return and release of animals into the wild. In these cases the program would involve the input and views of the relevant home state and should demonstrate an on-site conservation gain. Such a requirement is however not necessary for all Cooperative Conservation Programs.

Definitions of ‘non-commercial’, ‘primarily non-commercial’ and ‘commercial’ – An import permit for CITES species shall only be granted when a Management Authority of the state of import is satisfied that the specimen is not to be used for primarily commercial purposes for the Cooperative Conservation Program. However, the Application Form for the approval of a Cooperative Conservation Program states the following at item 6.

> Under the EPBC Act, it is possible for an institution maintaining a CITES I species to charge admission, however the display of a CITES I species should not be primarily for commercial purposes. Revenue is typically used to finance the cost of the support of the animal, maintenance and upgrades to facilities or otherwise non-commercial activities.
>
> The DEWHA Supplementary D Form requires a declaration that animals (including progeny) will not be used for commercial purposes. This declaration will be required for any CITES I species being imported to Australia.

In the above, there appears to be inconsistencies between ‘the display of a CITES I species should not be primarily for commercial purposes’ and ‘Supplementary D Form requires a declaration that animals (including progeny) will not be used for commercial purposes’. This highlights a need for the EPBC Act and Regulations to more clearly define terms ‘non-commercial’, ‘primarily non-commercial’ and ‘commercial’ and acknowledge that whilst zoos may engage in commercial or revenue generating activities, the acquisition of CITES species is not primarily for commercial

reasons. Zoos are typically operated as ‘not-for-profit’ organisations with any revenue being directed towards the maintenance of species held and in many instances towards support of conservation programs.

Cooperative Conservation Programs welfare test – Australian law requires that CITES I specimens are moved only into an approved Cooperative Conservation Program that can demonstrate no detriment to wild populations; is primarily non-commercial; can demonstrate an on-site or off-site conservation benefit to the species; and can apply best practice to the management of husbandry, genetics, biology and behavioural needs of the species. The last of these requirements (that CITES species be moved to an approved Cooperative Conservation Program that can apply best practice to the management of husbandry etc) is an additional welfare test applied to CITES I animals that is not applied to any other species. This interpretation:

- is not consistent with the original intent of that section as discussed with the Zoo and Aquarium Association at the time of drafting and initial implementation;
- is not required by the wording of the Regulations with conservation, rather than welfare, being identified as an outcome; and
- is currently acting as an impediment to sustainability through the disruption of efforts to establish sustainable global programs for CITES I species.

The regulation and enforcement of high standards of animal welfare should be applied to all animals and not just CITES I species. Furthermore a one-off welfare assessment at point of export/import is not an effective way of achieving consistently high welfare standards because:

- of the lack of subsequent enforcement powers relating to the animals involved; and
- facilities and practices can change in a short space of time – only ongoing regulation and inspection addresses this.

The Federal Government should uncouple the generalised issue of welfare from the CITES-specific issue of sustainability, and use the CITES-related components of the EPBC Act to ensure sustainability as opposed to welfare. It should assess, through Cooperative Conservation Programs for CITES I species, only those aspects of behavioural and biological needs that impact on population sustainability (in keeping with the principles of CITES). The aspects of the Australian Animal Welfare Strategy concerning the welfare of native wildlife and exotic fauna should be incorporated in to the EPBC Act to meet welfare needs. The Government should also co-manage with industry an ongoing welfare accreditation system, based on existing industry accreditation programs, without duplicating existing state and territory licensing instruments.

Confiscated CITES fauna – There has been a number of instances where zoo personnel were required to identify or capture illegally held exotic specimens that had been confiscated by Customs, DEWHA, Federal Police or State wildlife agencies. The subsequent treatment and placement of confiscated CITES specimens is not necessarily dealt with consistently. There is often uncertainty about the responsibilities of the confiscating parties. It is recommended that the placement of

confiscated CITES fauna be coordinated and formalised between agencies and, where necessary, the temporary or permanent placement of such fauna be incorporated into Zoo and Aquarium Association zoo animal collections. Such a mechanism should be described in the EPBC legislation. The placement of these animals could include appropriate Australian zoos subject to those zoos meeting quarantine, biosecurity or other requirements for the holding of exotic species.

Library Services

Classification of low volume titles – The fee structure applicable to classification services provided by the Classification Board and the Classification Review Board applies to all products submitted for classification. Fees currently start at $510 for products with a run-time of 0-60 minutes and increase incrementally up to $3,160 for more than 800 minutes. Other flat fees apply in specific circumstances. These classification fees charged to retailers that are importing and selling items are reasonable when amortised across titles which will sell thousands of units in Australia. However, when an importer wants to sell niche market films with a small audience the cost per unit sold is prohibitive. For example, a three hour film from a country with a small migrant population in Australia may only sell 20 copies in Australia and the classification fee for the film would therefore be approximately $840 or $42 per unit sold. The fee applied in these circumstances makes it cost prohibitive for the importer/retailer to import the film.

The Classification (Publications, Films and Computer Games) Act 1995 subsection 91(1) includes provisions for the Director to waive all or part of the fee related to classification. However, this fee waiver is on a case-by-case basis and applicants must apply in writing, justifying their application for fee waiver. In 2008-09, only eight fee waivers were applied for and all were granted. However this is only 0.2 per cent of all 4,506 films classified during the year. It is suspected that there is very low awareness amongst distributors of the fee waiver provisions of the Act, and even where there is awareness the time costs involved in applying were seen as too high for some distributors.

In keeping with the Director's delegation under the Act to waive a portion of the fee, one solution could be that a predictable, discounted and known schedule of fees is published and applicable to films which meet the 'low volume' test. This would allow importers to use the normal lodgement process without seeking a case by case full or partial waiver. As part of the lodgement process importers would indicate that they had sought a partial fee waiver utilising the 'reduced fee' schedule. In seeking the classification for the reduced fee they may also have to identify the reason for utilising this 'reduced fee' schedule. This would allow low volume films to be dealt with by the Classification Board in a normal manner, maintaining the Board's efficiency and integrity. It would also allow the importer to seek classification through a predictable and affordable process. The outcome of such an approval would be that culturally and linguistically diverse community groups and other interested parties could access classified films with certainty either through local DVD hire stores or their local public libraries.

Copyright Act and orphan works – The relevant section of the *Copyright Act 1968* that deals with the use of works and other subject-matter for libraries to make copies for some purposes is Section 200AB. As part of the process of making copies of items, collecting institutions need to locate copyright holders of the item of interest. An orphan work is a copyright work where it is difficult or impossible to contact the copyright holder.

As it currently stands, collecting institutions have to decide whether to devote considerable time and effort to locating copyright holders of orphan works (and this process is often unsuccessful) or to forgo digitising items from their collections and making them accessible online. The 'fair dealing' provisions of the Act give collecting institutions a certain amount of leeway to copy copyright collection materials for preservation purposes and for document delivery, but there is a concern that these provisions may be wound back in any revision of the Act. This would make it more difficult for libraries to preserve audio-visual material and further limit their capacity to make information available to remote clients.

Australia's Copyright Act would benefit from a provision for dealing with orphan works. An Australian Copyright Council paper suggests developing a scheme such as that introduced in Canada in 1988 where people can apply to the Copyright Board for a licence to use works whose owner they cannot find. Issues identified that might need to be addressed in relation to this include: ensuring the scheme only applies to works for which the copyright owner genuinely cannot be found (and is not misused to avoid paying licence fees); establishing what steps the user would need to take to be able to rely on an orphan works scheme; and deciding what should happen if the copyright owner becomes aware of the way his or her material has been used and wants to stop it or be paid compensation.

3. Financial and insurance services

From the South Australian Government's perspective, financial and insurance services generally are well regulated but there are opportunities for ongoing improvement, as has been articulated by industry and consumer groups in other submissions to government.

A key regulatory issue continues to be the need for industry to provide simple, clear and transparent information about products and services. Product disclosure statements have improved over time but in many cases remain complex and difficult to understand by the standards of an average consumer. In addition to improved standards and practices for product disclosure, consumers would benefit from improved mechanisms through which they can readily compare and evaluate different product offers.

Protections for consumers against unfair or irresponsible lending practices are also seen as a priority for ongoing improvement, particularly in terms of implementation and enforcement of the Federal Government's recent National Consumer Credit Protection Reform Package.

For businesses, cumulative regulatory burdens remain a primary concern. For example, according to Business SA, the peak industry body in South Australia, anecdotal information indicates there has been a dramatic increase in direct compliance costs in insurance services over the past five to ten years. It is estimated that larger insurers (over 500 employees) incur ongoing compliance costs in the range from $18 to $60 million per annum. Smaller insurers are estimated to have compliance costs of $5 million per year. A great deal of these regulatory burdens for general insurance are reported to be from requirements at the Federal level and a collaborative process with industry could assist in red-tape reduction.

4. Other Services

Reimbursements for volunteers – Volunteers often spend their own money for expenses necessarily incurred to deliver unpaid work for community organisations. For example, a volunteer collects a patient from Yankalilla and drives her 100 kilometres to a hospital for chemotherapy treatment then pays a four hour parking fee in addition to their petrol expenses. In such cases it may be appropriate to modify the tax system to allow tax deductions for the necessary expenses incurred by volunteers to perform their community services. Tax deductions would help volunteers and encourage greater levels of volunteering for small not-for-profit organisations that do not have the funds to pay out of pocket expenses.

Conclusions

The South Australian Government strongly supports the Productivity Commission's annual review of Federal Government regulatory burdens. This submission to the 2010 review has been produced in consultation with various South Australian Government departments and agencies and industry associations. The submission raises a variety of issues about regulatory burdens in the business and consumer service industries (the focus of the review in 2010), as well as economy-wide issues to assist ahead of the review of economy-wide regulation in 2011.

To summarise, the conclusions relating to professional, scientific and technical services were:

- the format and regularity of ACIAR foreign aid work reports should be reviewed;
- AQIS permit processing and authorisation steps should be combined and rendered electronic, and the scope and duration of the short term permits should be extended and the monetary costs reduced; and
- the exemption of plants and the biological processes for the generation of plants from innovation patents should be removed from the *Patents Act 1990* to allow for the protection of plant subject matter under the innovation patent system.

In arts and recreation services, the conclusions were:

- turnaround times and the disallowance of importing 'unidentified' species have been problematic in the AQIS application process to import plant material, but could be improved through increased AQIS staff resources and a more collaborative approach with Botanic Gardens;
- the potential for new restrictions on advertising at sporting events of 'unhealthy' alcohol and food products would, if introduced, impose a regulatory cost for sporting associations that would need to be offset by new Federal funding or a reduction in sporting activities;
- greater awareness raising and assistance is needed for small recreational organisations to help ensure they meet the Privacy Act requirements for health information;
- a lack of charitable or PBI status has impacts on the financial capacity of many recreation and sport based organisations to provide services;
- the permitting process for zoos to import CITES species is unnecessarily complex and lengthy, and contains doubling up. A single, coherent, and practical permitting process is needed, which is recognised by all governments and its departments and can be completed in a timely manner;
- an amendment to the EPBC Act is suggested to enable zoos and aquaria to import CITES I specimens for roles other than conservation breeding, to recognise the range of positive activities they provide;
- the EPBC Act and Regulations should more clearly define terms 'non-commercial', 'primarily non-commercial' and 'commercial' in relation to CITES species and acknowledge that whilst zoos may engage in commercial or revenue generating activities, the acquisition of CITES species is not primarily for commercial reasons;

- the animal welfare test currently applied to CITES species should be changed to an assessment of only those aspects of behavioural and biological needs that impact on CITES species population sustainability. Animal welfare should instead be co-managed with industry through an ongoing welfare accreditation system based on existing industry accreditation programs;
- uncertainty about the responsibilities of agencies involved in confiscating CITES fauna should be addressed by formalising a coordination mechanism in the EPBC legislation;
- film classification service costs can be prohibitive for niche market films with a small audience. The fee waiver mechanism designed to overcome this should be refined by publishing a predictable, discounted and known schedule of fees for classification of films which meet the 'low volume' test; and
- Australia's Copyright Act would benefit from a provision for dealing with works with missing 'owners' like that introduced in Canada.

For financial and insurance services, the key issues were seen as:

- the need for continued improvement in product disclosure statements standards and practices and mechanisms through which customers can readily compare and evaluate different product offers;
- protections for consumers against unfair or irresponsible lending practices via implementation and enforcement of the National Consumer Credit Protection Reform Package; and
- cumulative regulatory burdens remain a primary concern and there may be benefit in a red-tape reduction process conducted in collaboration with industry.

In other services, questions were raised about the lack of specific deduction allowances in the income tax law for voluntary work expenses. Volunteers provide valuable community services and it may be appropriate to modify the tax system to allow tax deductions for voluntary work expenses to encourage greater levels of volunteering for small not-for-profit organisations.

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