

11 August 2016

Premier Jay Weatherill
Government of South Australia
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Removing outdated legislation – Simplify Day


Dear Premier,

Thank you for the opportunity to provide comment on the State Government's undertaking to hold a red tape repeal day to remove outdated and redundant legislation in areas of the Government's 10 Economic Priorities.

The Property Council of Australia welcomes the approach undertaken to proactively address red tape that thwarts South Australia's ambition to become the best place in the nation to do business. The property sector views this initiative as an important economic priority.

We have a number of recommendations for your consideration, most notably around competitiveness and attractiveness. This includes prioritising the implementation of Harper Review recommendations around competitiveness and undertaking an audit of recent Productivity Commission recommendations that are responsibilities of the state to see where further economic gains can be made.

Specifically, in terms South Australia's largest private sector employer and biggest industry – property – there are a number of areas requiring significant reform, including:

- Strata titles
- Easements
- Registration of titles
- Adaptive reuse of existing building stock
- Trading hours
- Competitive utilities pricing

The Economic Priorities that will be addressed herein are as follows:

- ✓ 6. Growth through innovation.
- ✓ 7. South Australia – the best place to do business.
- ✓ 8. Adelaide: the heart of our state.

Strata Titles

The Property Council has long supported a reduction in the level of owner support needed to cancel a strata plan. Existing law demands all owners agree to amend or dissolve an existing scheme, as well as third parties such as lenders. The current model of resolution without dissent allows for a single vote against a sale or redevelopment proposal to stop it proceeding, regardless of the proposal's merits. Achieving a unanimous decision from all owners to cancel a strata plan is very difficult, if not impossible to achieve, and is placing financial and safety risks on owners.

To ensure a fair outcome for all owners, the Property Council recommends replacing the current requirement for a unanimous resolution to approve the cancellation of a strata plan, with a requirement that no more than 25 per cent of owners vote against the termination. We believe that a threshold of 25 per cent of owners voting against a proposal strikes a reasonable balance between protecting owners' rights and improving on the existing arrangements. Reducing the threshold from a unanimous decision is also consistent with international best practice.

Some best practice examples include:

- **New Zealand:** currently allows scheme termination with a 75 per cent voting threshold.
- **Japan:** has a termination threshold of 80 per cent.
- **Hong Kong:** has a termination threshold of 90 per cent; however, authorities have the discretion to stipulate a reduced threshold of 80 per cent.
- **United Kingdom:** the *Commonhold and Leasehold Reform Act* in the United Kingdom sets a termination threshold of 80 per cent.
- **Singapore:** employs a sliding scale for termination thresholds. Under this system, strata schemes that are less than 10 years old have a 90 per cent threshold, and schemes over 10 years old have an 80 per cent threshold.

Each of these jurisdictions recognises that a fair and sensible approach requires a majority decision – rather than a unanimous one – for the cancellation of a strata plan. There are also a number of other issues that are exacerbated by the status quo and have impacts on infill development, which are significant considering the density agenda being pursued by the property sector and State Government.

Furthermore, a threshold of no more than 25 per cent of owners against termination is a model based on the recent NSW precedent, and a similar model is in train for WA.

Easements

The Lands Titles Office will only extinguish non-contiguous easements by consent from all parties. We are advised that the Registrar also seeks evidence that the party has been compensated before considering extinguishment. Our members have examples of developments not going ahead due to this position.

Further, often land owners are not aware of the easement until they receive notification; despite this, the Registrar will not extinguish the easement. Our members can cite various

residential development sites (often infill opportunities) that cannot be developed because of old easements that are still in existence although in practical terms they are never used.

In short, the methodology to extinguish easements should be much easier.

Registration of titles – ridiculous and onerous fees

There are currently sliding scale fees associated with transferring property titles in South Australia. These fees need reform, as they are a disincentive to transacting in South Australia. A flat rate fee linked to the true administration cost of registering a change to title should be introduced. For instance, the lodgement fee for a \$1 million property is \$7,611.50, which is ridiculous when we're talking about a simple administrative process. The fee should reflect the administrative cost, which is minimal.

It must also be noted that this fee is in addition to stamp duty, which has increased by almost 550 per cent (on residential property transfers) since 1995.

Adaptive reuse of existing buildings – Minister's Specification

The Property Council commends the Government on the establishment of two working groups to consider the National Construction Code provisions as they relate to existing buildings and whether any concessions or exemptions are appropriate for inclusion in the Minister's Specification. A number of Property Council members were involved in the working groups and, as we understand it, the working groups have now disbanded; however, the Minister's Specification has not yet been released for public consultation.

We recommend that the Government releases the specification for public consultation as soon as possible in order to give the industry an opportunity to formally respond to this important regulation.

This regulation – coupled with the new Building Upgrade Finance mechanism – is significant not only for property owners to upgrade their buildings and attract tenants, but it also addresses the worthy ambition of increasing Adelaide's vibrancy through the activation of unused spaces.

Trading Hours

South Australia is recognised as over-regulated compared to other jurisdictions, with limitations to trading hours on Sundays and prohibition of trading on public holidays in most areas. Trading Hours in Victoria, Tasmania, the Northern Territory and the ACT and largely in New South Wales are effectively deregulated, whilst South Australia remains highly restricted and there has been a weak appetite for reform.

South Australia finds itself in the unique situation where many traders and retail employees are permitted to trade and work on public holidays while others are prevented from doing so by virtue of their geography and as a consequence of harsh regulation.

The current approach to regulating shop trading hours has created a complex web of regulations that prevent some operators from trading at certain times on particular days while permitting others to do so. In addition to the complexity of rules pertaining to opening hours, all retailers are forced to comply with a myriad of unnecessarily complex and technical regulations that add to the red tape cost of operating in South Australia.

The Productivity Commission, in its report on *Relative Costs of Doing Business in Australia: Retail Trade*, notes that “at a time when consumers are changing their shopping patterns towards smaller more frequent shopping trips and online purchasing, trading hours restrictions are increasingly out of step with community expectations and restrict the industry’s ability to adapt and compete with online competitors. As retail is a significant sector of the economy, the costs imposed on retail businesses and consumers from trading hours restrictions continue to increase over time.”¹

There is evidence of reform where relaxing retail trading restrictions has led to the capitalisation on latent consumer demand and allowed consumers to exercise choice in where and when to shop. Furthermore, the deregulation of trading hours is likely to increase economic activity and lower retailers’ cost of doing business.²

The Property Council is of the view that now is the time for this state to join the majority of the rest of the nation in providing consumers, traders and retail employees with the benefit of flexibility and implement a competitive retail environment through the deregulation of trading hours.

Competitive utilities pricing

In addition to the above, the Property Council recommends that the Government investigates the extremely high water and electricity prices in South Australia. This state has the least competitive water pricing in Australia.

We recognise that we have a geographically large state and a challenging climate; however, our water prices are higher than Western Australia and Los Angeles, as recently highlighted by the South Australian Centre for Economic Studies’ report: *The Regulatory Load in South Australia and Impact on Economic Activity*.³ Further, as explored in the SACES’ report, we have very high electricity pricing as well. This acts as a handbrake on the economy, as it creates an unattractive investment environment for business and means consumers have less disposable income to spend on retail, hospitality and so on.

Many of our growth industries, such as the food processing and beverage production industry, have a high dependence on these utilities. The high costs are a disincentive for new businesses and product and service innovation, and South Australia is potentially missing out on opportunities for growth.

¹ Productivity Commission, *Relative Costs of Doing Business in Australia: Retail Trade* Research Report, 2014. Page 104.

² Productivity Commission, *Relative Costs of Doing Business in Australia: Retail Trade* Research Report, 2014. Page 111.

³ South Australian Centre for Economic Studies, *Economic Issues No.46 The Regulatory Load in South Australia and Impact on Economic Activity*, 2016. Page 7.

Key recommendations:

- Implement prior recommendations of the Productivity Commission relating to South Australia's red-tape.
- Implement Harper competition policy reforms.
- Reform strata laws in line with NSW.
- Reform the methodology to extinguish easements.
- Reform the registration of change of titles fee.
- Release Minister's Specification to allow adaptive reuse of existing building stock.
- Implement a competitive retail environment through the deregulation of shop trading hours.
- Reform South Australia's utilities pricing regime to ensure our state's competitiveness.

Relevant State Government Economic Priorities

- ✓ 6. Growth through innovation.
- ✓ 7. South Australia – the best place to do business.
- ✓ 8. Adelaide: the heart of our state.

If you or your Departmental officials have any questions in relation to this submission, please don't hesitate to contact my office on 8236 0900.

Yours sincerely



Daniel Gannon | SA Executive Director