

Implementation of the AusLink National Land Transport Plan

BILATERAL AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA

AND

THE STATE OF SOUTH AUSTRALIA

2004 - 2009

BILATERAL AGREEMENT

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**AGREEMENT BETWEEN THE COMMONWEALTH OF AUSTRALIA
AND THE STATE OF SOUTH AUSTRALIA
RELATING TO THE IMPLEMENTATION OF THE AUSLINK
NATIONAL LAND TRANSPORT PLAN**

Preamble

- 1 The Australian Government's formal policy statement *AusLink White Paper: Building Our National Transport Future* released in June 2004:
 - a) introduced a new strategic framework for the planning and funding of Australia's key roads and railways to meet long term economic and social needs;
 - b) outlined a new National Land Transport Network which will be the focus of the Australian Government's future investment in land transport infrastructure;
 - c) set out a National Land Transport Plan including the first five year AusLink investment programme for the period 2004-05 to 2008-09; and
 - d) recorded the Australian Government's commitment to work with the States and Territories to deliver a better national transport system.
- 2 The objectives of this Agreement are to:
 - a) assist national economic and social development through the funding of projects aimed at improving the efficiency, safety and reliability of the National Land Transport Network; and
 - b) promote well based cross modal investment decisions through improved long term planning, project assessment and evaluation, and data sharing arrangements.
- 3 Measurement of the degree to which these objectives are being met will be made on a regular basis throughout the term of this Agreement using the performance indicators described in Clause 24 and the nationally consistent data collected in Clauses 73, 74 and 87 to 92.
- 4 Both parties intend that this Agreement provide a clear and effective framework for the shared planning, funding and development of the AusLink National Land Transport Network in South Australia and for implementation of the National Land Transport Plan.
- 5 Both parties are committed to working cooperatively and actively to implement this Agreement in a way which recognises their respective responsibilities and interests.

- 6 The Australian Government recognises that the South Australian Government has responsibility, within South Australia, for:
- a) administration of legislation governing land transport and land use planning throughout the State;
 - b) the operational effectiveness and maintenance of the road network which it controls and the legal obligations that entails;
 - c) managing the implementation of projects on that part of the network which it controls;
 - d) the primary development and administration of arrangements for private sector participation in the financing and / or operation of the network which it controls.
- 7 The South Australian Government recognises that the Australian Government:
- a) has national responsibilities for promotion of economic growth, international and interstate trade and connectivity;
 - b) in furtherance of this responsibility, has identified a network of nationally significant road and rail links and has offered to contribute full or partial funding for designated priority projects on that Network;
 - c) has a direct and legitimate interest in ensuring that future investment in the network is planned in a way which has regard for national, as well as State specific, considerations and maximises the potential of all transport modes; and
 - d) has accountability responsibilities in relation to the way in which Australian Government funding priorities are developed and determined and the way in which moneys are spent.
- 8 The parties jointly recognise that responsibility for the management of the rail links and intermodal facilities which form part of the National Land Transport Network within South Australia is vested in either the Australian Rail Track Corporation or the private sector.
- 9 Both parties recognise the importance of sustaining overall investment in more efficient and better integrated land transport linkages aimed at improving Australia's economic growth and international competitiveness.

10 The Australian Government has increased its expenditure in real terms on projects on the National Land Transport Network in South Australia during the five year period to 2008-09 as compared to the previous five year period. South Australia undertakes to maintain during the period to 2008-09 expenditure from its own source revenue on the National Land Transport Network at a level at least equal in real terms to expenditure from its own source revenue over the five years to 2003-04. (Details of past expenditure by the Australian Government and South Australia are set out in Schedule B.)

11 Both parties recognise the importance of funding the development of land transport linkages at the regional and local level. The Australian Government has committed to increase the financial assistance that it will provide for regional and local transport infrastructure between 2005-06 and 2008-09. South Australia undertakes that there will be no reduction in its financial assistance to local government for local transport infrastructure during the five year period to June 2009.

Land Transport System in South Australia

12 The land transport system in South Australia consists of road and rail networks and intermodal terminals, which provide transport services to the South Australian community and enable trade between regions, States and overseas.

13 Road Network

The South Australian road network comprises 12% of the total Australian road network. The State Government of South Australia directly maintains 23% of the total road network in South Australia, including all regional roads that connect centres of population greater than 200 people, all access roads to ports and intermodal terminals and all roads in the unincorporated areas of the State.

14 Rail Network and Intermodal Facilities

The South Australian rail network consists of the Commonwealth owned interstate rail network (DIRN), privately owned regional branch lines and the State owned metropolitan rail network. The network is a mixture of standard gauge, broad gauge and some isolated narrow gauge lines.

Major intermodal facilities in South Australia are largely owned or controlled by the private sector including all international Ports, Adelaide Airport and road/rail intermodal facilities.

Scope and Purpose

15 This Agreement sets out arrangements applying to funding made available by the Australian Government to the South Australian Government under the first five-year AusLink investment programme (2004-05 to 2008-09) and any subsequent changes to, and extensions of, the programme. It also sets out arrangements for infrastructure planning, identification of investment priorities, development and assessment of project proposals and evaluation of completed projects.

Commencement and Amendment

16 This Agreement commences upon signature by both parties. The parties may agree in writing to amend the Agreement.

Application of Commonwealth Legislation

17 Australian Government funding under this Agreement is provided by Section 96 grants and is subject to the provisions of the *AusLink (National Land Transport) Act* (once enacted) and the *Australian Land Transport Development Act 1988*.

Funding Purposes and Contributions

Australian Government Contribution

18 Subject to the remainder of this Agreement, the Australian Government agrees to make available to the South Australian Government a total provision of up to \$331.28 million for approved construction projects on the AusLink National Land Transport Network in South Australia in the five year period 2004-05 to 2008-09. The Australian Government may add to this amount at its discretion, with associated amendments to Schedule A.

19 Australian Government funding will be made available for:

- a) the construction projects described, and up to the amounts specified, in Schedule A; and
- b) road maintenance on the National Network in South Australia for the annual amounts specified in Schedule A, in accordance with the Australian Government's maintenance formula.

South Australian Government Contribution

20 The South Australian Government agrees to contribute funding from its own source revenue for the projects specified and on the terms specified in Schedule A. Own source revenue is defined as total South Australian Government general revenue (ABS uniform reporting basis) less Australian Government specific purpose payments to and through South Australia. On this basis, own source revenue would include all Australian Government general purpose grants including GST.

21 Where tolling is proposed for a project in Schedule A, arrangements will be agreed on a case by case basis and in writing between both parties.

Project Scope

22 The scope of each project in Schedule A will be agreed in writing by both parties in conjunction with a nationally agreed project submission and approval process, to be described in the Notes on Administration.

Project Timetable

23 Both parties will seek to ensure that projects are commenced and implemented in a timely way by working in good faith to establish and meet a project timetable agreed in writing by the parties.

Performance Indicators

24 Specific transport performance indicators for each project will be agreed in writing by the parties. The parties agree that, wherever appropriate and practical, specification of transport performance indicators for each project will have particular regard for the programme objectives (Clause 2) of improving the efficiency, safety and reliability of the National Land Transport Network. Performance indicators reflecting these objectives might typically be: changes in travel times and operating costs, accident statistics, and, where relevant to projects being sponsored by the South Australian Government, frequency of achievement of specified operating targets.

Phasing of Payments

25 Both Parties acknowledge that nothing in this Agreement obliges either party to make any payments on its contribution to a project in advance of the other or in advance of material progress. The objective is to ensure that project cash flows allow the most cost effective project delivery.

Eligible Project Costs

26 Project costs that may be included for “continuing projects” listed in Schedule A have been agreed outside this Agreement.

27 For new AusLink projects listed in Schedule A, Australian Government funding may only be directed towards meeting “eligible project costs” set out in this Agreement.

28 For projects to which the South Australian Government has agreed to make a financial contribution, only expenditure on “eligible project costs” will be recognised as counting towards the South Australian Government contribution to the project.

29 For purposes of this Agreement, and unless agreed otherwise in writing at the time of defining the project scope or subsequently, “eligible project costs” includes:

- a) direct costs of planning, public consultation, environmental assessment, and construction of the project;
- b) costs arising from any latent conditions associated with construction of the project;
- c) direct costs of the supervision of the project;
- d) costs of meeting any conditions imposed on the project in respect of matters of National Environmental Significance under Environment Protection and Biodiversity Conservation Act 1999;
- e) costs of meeting conditions imposed on the project by South Australian environment or planning agencies, as agreed on a case by case basis with the Australian Government;
- f) costs of reasonable landscaping;
- g) costs of project public recognition and publicity including any ceremonies connected to progress on the project;
- h) costs of necessary connections to the road network but limited to works within the road reserve or the limit of any access ramps;
- i) the costs of, or arising from, any legal action relating to projects in Schedule A that is not due to the South Australia Government failing to properly administer tender processes and supervise and manage relevant contracts; and
- j) costs of incorporating cost effective Intelligent Transport Systems (ITS) features within the project.

30 Unless agreed otherwise in writing, either at the time of defining the project scope or subsequently, “eligible project costs” does not include:

- a) any component of the oversight and network administration costs of any South Australian agency;

- b) the cost of artworks or elaborate aesthetic features associated with a project; or
- c) any costs associated with sections of road or rail that might be bypassed by a project and cease to be part of the AusLink National Network.

31 For purposes of projects listed in Schedule A at the time of signing this Agreement, land acquisition costs will be treated as an item of “eligible project costs” for purposes of Clauses 27 and 28 above.

32 For projects which may after the signing of this Agreement be added to Schedule A, the treatment of land acquisition costs as a possible item of “eligible project costs” will be considered by the Australian Government on a case by case basis.

- a) Where:
 - i) there has been a failure by the South Australian Government to take action to secure land for future transport needs well in advance of proposed construction works, including by identifying appropriate reservations in planning documents, retaining suitable land already in government ownership and acquiring additional land as appropriate; or
 - ii) land needed for the project is transferred between State Government agencies for purposes of the project other than at market value, as agreed by the South Australian Valuer General and an independent valuer of the Australian Government’s choosing,

the Australian Government reserves the right, after consultation, not to treat the cost as an “eligible project cost”. Where the Australian Government agrees the cost is an “eligible project cost”, the parties will reach agreement on the share of that cost to be borne by either party.

Processes for Programme and Cashflow Management

33 The parties will meet as necessary to review progress with the implementation of the projects covered by this Agreement.

34 To facilitate orderly management of the programme of projects and the associated annual cashflow requirements, the parties agree to the following processes:

- a) the South Australian Government will provide to the Australian Government, no later than 28 February each year, an expenditure budget for each project in Schedule A for each of the remaining years covered by Schedule A:

- b) the Australian Government will provide to the South Australian Government each year, at the time of the Australian Government Budget, an indicative AusLink Investment Programme setting out a budget for eligible expenditure by the South Australian Government on the projects listed at that time in Schedule A;
- c) the indicative AusLink Investment Programme will, to the extent possible within Australian Government Budget constraints, reflect the South Australian Government funding requirements for the projects listed in Schedule A and be in accordance with the agreed project timetables determined in accordance with Clause 23 (Project Timetable);
- d) the South Australian Government will, in light of the announced State Government budget, and on receipt of the annual advice of the indicative AusLink Investment Programme from the Australian Government, provide to the Australian Government an indicative funding commitment to individual approved projects on the AusLink Investment Programme within South Australia;
- e) the indicative funding commitment by the South Australian Government will reflect, to the extent possible, the funding requirements of the projects listed in Schedule A and the agreed project timetables determined under Clause 23.

Variations to Projects and Funding

35 Both parties recognise that there may be a need from time to time to vary some project particulars, as project proposals are further developed and refined or in response to circumstances that may potentially affect the scope, cost, respective funding contributions, and expected timelines of projects.

36 Any variations to a project as described in Schedule A, including scope, cost (and respective funding contributions) and timelines, will be agreed in writing by the parties.

37 The parties agree to the following principles and processes for dealing with possible variations.

Increases in Project Costs

38 In the event of an increase in the cost of a project listed in Schedule A, the parties acknowledge that there are a range of possible approaches which will be considered including those outlined in the following clauses:

39 Increased Australian Government contribution to the project

Where there is an increase in the cost of a project listed in Schedule A during the five year period 2004-05 to 2008-09, the Australian Government may increase its contribution to the project. However, where in such circumstances the Australian Government agrees to increase its funding contribution to a project during the five year period 2004-05 to 2008-09, this increased Australian Government funding will need to be provided from within the overall amount available to the South Australian Government under Clause 18 for approved construction projects in South Australia in the five year period 2004-05 to 2008-09.

40 South Australian Government contribution (or an increased South Australian contribution)

South Australia may contribute towards the project cost increase. Such a contribution may be greater than the percentage share being provided by South Australia towards the original cost estimate.

41 Changes to project scope

There may be reconsideration of the scope of, or the construction design being proposed for, a project. Such reconsideration will include in particular the likely implications of the proposed change in relation to the objectives identified for the project and the whole-of-life costs and benefits.

42 Withdrawal of funding

As a last resort, both parties reserve the right to withdraw financial assistance to the project prior to commencement of construction, where it becomes clear that the cost estimate for the project provided by any party in support of the project falls significantly short of the amount that will be required to complete the project.

In the case of the Australian Government, this may be to reallocate the funding to another AusLink project or projects in South Australia or in another State or Territory. In the case of South Australia, this may be to other projects that may not be on the AusLink National Land Transport Network.

Savings in Project Costs

43 Where the final project cost to government is less than the amount(s) which the Australian Government, or in the case of a jointly funded project the Australian Government and South Australia, has agreed to make available (as specified in Schedule A) , the savings (including savings resulting from private sector participation in the project) will be treated in the following way:

- a) for fully funded Australian Government projects the savings will be applied, as agreed between the parties, as an Australian Government contribution to another project or projects listed in Schedule A;
- b) for projects to which each party has committed a specified funding contribution, the savings will be divided on a pro-rata basis and be respectively applied, as agreed between the parties, to another project or projects included in Schedule A.

Project Delays

44 In the event that the parties are unable to agree on a timetable for a project; or if significant delays occur in progressing the project (to the construction stage) against a previously agreed project timetable, both parties reserve the right to review their funding contributions and to reallocate that funding:

- a) in the case of the Australian Government to another project or projects including in another State or Territory; and
- b) in the case of the South Australian Government to other projects that may not be on the AusLink National Land Transport Network.

Notice and Consultation

45 Where circumstances give rise to the possible need for action under any of the Clauses 39 to 44, 65 or 98, the parties agree to consult to ensure that alternative actions are explored and considered and that both parties are aware of any consequences resulting from particular courses of action.

46 If, after consultation, either party proposes to take action to withdraw its financial assistance from a project under Clauses 42 or 44, 65 or 98 the party concerned will formally advise the other in writing of its intention to take such action. The matter will then be subject to a 30 day period during which the other party can make further submissions or the parties can agree to reconvene discussions prior to the decision being formally advised in writing and/or publicly announced.

Processes for Dealing with Variations

47 The parties agree that the processes for the development, submission and refinement of project particulars and for dealing with any proposed variations will be as provided for in the Notes on Administration for the AusLink Programme, as amended from time to time after consultation between the parties.

Terms and Conditions of Australian Government Assistance for Approved Projects and Maintenance

48 In addition to the conditions attaching to the provision of Australian Government funding for approved projects under the AusLink (Land Transport Assistance) Act, when enacted, and the Australian Land Transport Development Act, the South Australian Government agrees that the provision of Australian Government funding for each project specified in Schedule A will also be conditional upon the South Australian Government complying with the following conditions.

Provision of South Australian Government Funding Contributions

49 The Australian Government's contribution to a project specified in Schedule A is conditional on the South Australian Government fully meeting the terms of any funding contribution to that project specified in Schedule A.

Conditions of Maintenance Funding

50 Australian Government road maintenance funding is conditional on the South Australian Government maintaining to agreed fit for purpose standards those parts of the National Land Transport Network for which it is responsible, and supplying data on the condition, usage and funding of the Network to enable the Australian Government to meet its accountability and reporting requirements.

51 The parties agree to determine through an all jurisdiction working group fit for purpose maintenance standards for links on the National Land Transport Network and a schedule of proposed maintenance data that will be used to monitor the condition over time of relevant sections of the Network. These standards and data requirements will be reviewed and amended from time to time by the agreement of the parties.

National Code of Practice for the Construction Industry

52 The Australian and South Australian Governments have developed Joint Guidelines ('the Joint Guidelines') for the application of the National Code of Practice for the Construction Industry ('the Code') to AusLink funded construction projects listed in Schedule A. The Joint Guidelines agreed by both parties are attached at Schedule D.

53 The Code and the Joint Guidelines will apply to all construction projects where:

- a) the Australian Government's contribution to an individual project is \$5 million or more and where that contribution represents at least 50 per cent of the total project value; or
- b) the Australian Government's contribution to an individual project is over \$10 million, irrespective of the proportion that represents of the total project cost.

54 The Code and Joint Guidelines apply to new projects approved by the Australian Government after 1 January 2004.

55 The parties note that the impacts of the application of the Code are being further addressed by Workplace Relations Ministers.

Recognition Arrangements

56 Australian Government funding for each project in Schedule A is conditional on South Australia providing the Australian Government with public recognition for its contribution to projects undertaken under the Programme.

57 The parties acknowledge that public recognition for all projects undertaken on the National Land Transport Network in South Australia should have regard to the respective contributions of the parties to the funding of the projects.

58 Where the Australian Government is fully funding all eligible project costs, it will receive major prominence in, and a determining say over the content and timing of, all public recognition.

59 Where a project is funded jointly, all public recognition for that project will be joint and agreed. Prima facie, each party will receive equal prominence in any public recognition.

60 Where any public recognition is proposed, the parties agree that they will provide the other party with adequate notice of the proposed public recognition and an appropriate opportunity to ensure that the proposed public recognition meets the other party's requirements.

61 The parties agree that they will not, without the prior agreement of the other party, provide public recognition for a project stating, requiring or implying a funding commitment to a project by the other party, by whatever means.

62 The parties agree that they will not, in the public recognition of their respective budgets or forward programmes for land transport infrastructure funding, include funding provided by the other party without a full acknowledgement of the other party's funding contribution in total and in respect of individual projects.

63 The definition of public recognition and the procedures for implementing this Agreement in respect of recognition for the Australian Government contribution are set out in Schedule C to this Agreement.

Conditions Relating to National Land Transport Network Connections

64 Australian Government funding for each approved project on the AusLink National Land Transport Network is conditional upon:

- a) clear identification of, and agreement between the parties on, the way in which the project will connect to, or intersect with, the remainder of the transport network at a specific location or locations. This agreement will be reflected in the defined project scope (as provided for in Clause 22) prior to the construction of the project; and
- b) the Australian Government's agreement to any subsequent change to agreed arrangements relating to the way in which the project connects to, or intersects with, the remainder of the transport network at a specific location or locations.

65 The parties will negotiate in good faith to resolve any issues with connections to, or intersections with, the AusLink National Land Transport Network arising from the approved project as defined. If the parties cannot reach agreement, then the following options are available to either or both parties:

- a) reconsider the project's priority, scope, design and costing with a view to resolving outstanding issues with connections and/or intersections;

or, if this is not possible, despite both parties' best endeavours:

- b) withdraw funding from that project and apply it (on a pro rata basis if appropriate) to another project or projects within Schedule A for South Australia;

or, if the parties cannot agree on another project or projects within Schedule A for South Australia, then:

- c) the Australian Government reserves the right to reallocate the surplus funding to a project or projects in another State; and
- d) South Australia reserves the right to reallocate the surplus funding to other projects not on the National Land Transport Network.

66 Any change to the way in which the project will connect to, or intersect with, the remainder of the transport network at a specific location, or locations, as defined in the agreed project scope, will form a variation to the project, and be dealt with by the provisions of Clause 36.

Other Project Specific Conditions

67 Both parties may agree, in writing, additional terms and conditions relating to individual projects.

Arrangements for Project Planning and Delivery

68 The Australian Government recognises that primary responsibility for project planning and delivery rests with the South Australian Government.

69 The South Australian Government acknowledges the Australian Government's right to participate in project planning and delivery or to review project planning or delivery to ensure that its policy objectives and accountability responsibilities are satisfied. The South Australian Government also acknowledges that the Australian Government may from time to time undertake reviews of the planning and delivery of projects. The South Australian Government will cooperate fully with the Australian Government and its agents in the conduct of such reviews. Unless otherwise agreed by both parties, the cost of such reviews will be carried by the Australian Government.

70 Both parties recognise that circumstances may arise where:

- a) the South Australian Government has chief responsibility for the planning and delivery of a project, but the project substantially affects the responsibilities or operations of a third party (or parties), such as another State(s) and/or rail track manager(s), or
- b) a third party, such as the Australian Rail Track Corporation and/or another rail track manager(s), has chief responsibility for the planning and delivery of a project in South Australia.

71 Both parties acknowledge that in such circumstances there may be a need to negotiate an additional agreement(s) related to the project to ensure that the interests of all parties are adequately recognised.

Arrangements for Infrastructure Planning, Identification of Investment Priorities and Development of Project Proposals

72 Both parties acknowledge the need for ongoing cooperation across a range of matters in order to ensure that future land transport infrastructure requirements are planned, prioritised and delivered in an orderly way.

Corridor Strategies

73 The parties will cooperate in assessing future priorities for the National Land Transport Network in South Australia by undertaking joint studies of individual corridors and developing a 20-year (or long-term) strategy for each corridor to guide future investment. The proposed approach and specific arrangements for the conduct of each corridor strategy will be jointly agreed between the parties in writing prior to the commencement of the study or studies.

74 In developing each corridor strategy, both parties will examine:

- a) transport projections, the condition and capacity of infrastructure, and land use plans along the corridor;
- b) the relationship between the National Network and its connections to the broader transport system; and
- c) a broad range of solutions to future transport needs, including those which might defer or limit the need to expand the physical capacity of the Network.

75 Both parties will meet their own costs of participating in meetings and consultations; and share funding of any consultancies or other developmental work they agree is required to undertake strategic planning and development of corridor strategies.

Broadening the Range of Solutions

76 The parties agree to consider, and where appropriate to trial and deploy, alternatives to built infrastructure, such as technology-based applications and urban travel demand management, which might limit or defer the need to extend the physical capacity of the Network and deliver transport safety, efficiency and environmental benefits.

Cross-border Cooperation

77 Where the planning and development of a corridor, transport link or project involves cross-border considerations, the Australian Government may convene discussions between the affected governments. Both parties agree to participate constructively in these discussions with the objective of achieving a positive joint outcome.

Transport and Land Use Planning Affecting the National Network

78 Both parties recognise that the effective and safe operation of the National Network serves both national and State objectives. Accordingly, both parties recognise the need to:

- a) integrate transport and land use planning at a network level to ensure the safe and effective operation of the AusLink National Land Transport Network, and appropriate interaction between this Network and State arterial road and local road networks;
- b) to the degree that it is within their control, avoid excessive additions to the traffic load on the AusLink National Land Transport Network from State arterial or local road systems.

79 Both parties will act in good faith within their respective authorities to facilitate balanced outcomes consistent with the objectives set out in Clause 78.

80 The South Australian Government agrees to:

- a) inform the Australian Government of any proposed projects or proposed changes to planning schemes (particularly for metropolitan areas and major regional centres) which might materially affect the operation of the National Network; and
- b) advise the Australian Government of the relevant Development Authority so it has an opportunity to express a view to the Development Authority on any such proposals; and
- c) use its best endeavours, including the appropriate use of the State Government powers under the Development Act 1993, the Highways Act 1926 and the Local Government Act 1999 to ensure the impact of any project or planning scheme on the National Network is minimised.

81 The Australian Government agrees to inform the South Australian Government of any proposed major development of Commonwealth owned land which might materially affect the operation of the National Network.

State Funded Projects on the National Network

82 The South Australian Government agrees to inform the Australian Government in a timely way of projects that it proposes to undertake on the National Land Transport Network which are additional to those listed at Schedule A.

Project Cost Estimation

83 Both parties will cooperate in the identification and implementation of 'best practice cost estimating' with a view to being able to derive reliable cost estimates for projects to be funded under this Agreement. Both parties will work with each other, and with other jurisdictions, to identify appropriate data, methodologies and processes to achieve this end.

Project Assessment

84 Both parties will progressively adopt a nationally consistent project assessment methodology drawing on the *National Guidelines for Transport System Management* developed by a Working Group including the Australian Government, States, Territories and the Australian Local Government Association.

85 The assessment methodology, as endorsed by SCOT, will be phased in as follows:

- a) formal project proposals for projects identified in Schedule A will be accompanied by the information and data required for purposes of relevant elements of the assessment methodology so as to provide a benchmark for evaluation of project outcomes;
- b) the assessment methodology will be applied in studies and analyses to support the development of corridor strategies to assist with identifying broad future investment priorities; and
- c) all future new projects (not listed in Schedule A) will be subjected to assessments undertaken fully in accordance with the national methodology.

Project Evaluation

86 The parties agree to cooperate in the joint evaluation of projects so as to facilitate both performance review of this Agreement and continuous improvement of investment decision making. Evaluation of projects completed under this Agreement will in particular focus on establishing the extent to which project performance indicators established under Clause 24 have been achieved, and reviewing the accuracy of demand forecasts and cost estimates used in the assessment of the project prior to its commencement.

Supporting Data

87 Both parties recognise the importance of improved data collection and sharing to support assessment and evaluation at National Network, corridor and project levels.

- 88 For purposes of:
- a) assessment of the performance of, and infrastructure investment requirements and priorities associated with, specific corridors forming part of the National Land Transport Network;
 - b) periodic assessment of the composition and performance of, and infrastructure investment requirements associated with, the National Land Transport Network as a whole;
 - c) assessing the effectiveness of maintenance activity in ensuring that the National Land Transport Network continues to be fit for purpose;
 - d) conduct of evaluations of completed projects in accordance with Clause 86 (evaluations) and having regard to project performance outcomes specified pursuant to Clause 24 (performance indicators); and
 - e) AusLink programme evaluation, including baseline assessment.

the South Australian Government agrees to:

- f) provide, in response to reasonable requests from the Australian Government, any relevant data available to South Australia;
- g) assist, subject to the negotiation of acceptable cost sharing arrangements, in arranging the collection of relevant data; and
- h) in conjunction with f) and g) above, work with the Australian Government as a matter of priority to ensure the availability of baseline data relevant to key performance indicators for projects, in particular those measuring changes in the efficiency, safety and reliability of transport operations on the National Land Transport Network.

89 The Australian Government undertakes to fully consult with the South Australian Government in relation to the purposes for which any requested data is being sought, the proposed methodology of any analysis for which the data will be used and the possible publication of any of the data.

90 The South Australian Government will provide data to the Australian Government by 31 August each year showing its direct and indirect land transport expenditure (including payments to local government) from its own source revenue in the preceding financial year, and budgeted expenditure for the current financial year, by category, in a form acceptable to the Australian Government.

91 The parties note that data and assessment requirements for projects submitted for consideration and possible approval under the AusLink (National Land Transport) Act (once enacted) will be separately specified in the AusLink Notes on Administration.

92 Both parties note that ATC Ministers have agreed to further develop approaches for appropriate data sharing and coordination. Both parties are committed to the process for development of a framework which will provide better and more accessible data for the purposes set out in Clause 88. Both parties will cooperate in the implementation of such a framework, subject to cost sharing arrangements that may be agreed at that time.

Encouragement of Private Sector Participation

93 Both parties acknowledge that the encouragement of increased funding from the private sector is important to meeting future land transport infrastructure requirements. The parties will work collaboratively to ensure that the potential for financial participation by the private sector in relation to projects on the National Land Transport Network is fully explored.

94 Both parties acknowledge that financial participation by the private sector may take a number of forms including ownership, financing and operation of a project; operation of business concessions associated with a project; or a financial contribution in recognition of specific benefits flowing from a project.

95 For future projects for which an Australian Government funding contribution is to be sought, the South Australian Government will provide an assessment of the potential scope for private sector participation to reduce the cost to government of the project together with a description of the process employed by the South Australian Government in making its assessment.

96 The extent of each assessment will depend on the size of the project. In the case of projects estimated to cost in excess of \$500 million the parties agree that formal expressions of interest will normally be sought from the private sector as part of the assessment.

Notification and Resolution of Issues

97 Should a matter arise which could jeopardise either party's adherence to this Agreement, the affected party will advise the other party as soon as practicable and both parties will attempt to resolve the matter in good faith.

Breach of Agreement

98 The Australian Government may withhold all or part of its funding to the South Australian Government under this Agreement, should there be a material breach of the Agreement or if its funding is not used for the intended purpose. This may involve reallocation of Australian Government funding to other projects, not necessarily in South Australia.

Review of Agreement

99 The parties agree to review this Agreement by 30 June 2008. The review will encompass the activities undertaken pursuant to the Agreement and may include other matters related to the performance of the National Land Transport Network in South Australia. The specifications for the review process will be agreed by both parties and confirmed in writing prior to the review process commencing. Both parties agree to pay their own costs incurred as a result of the conduct of the review.

Authorities to Act on Behalf of the Parties

100 In the interests of facilitating the expeditious handling of matters arising under this Agreement, the parties may authorise persons to act on their behalf in respect of particular matters and will notify each other in writing where they have done so.

101 The parties will each nominate a person or occupant of a specified position to be the contact point for issues relating to the Agreement.

SIGNED by the parties on the Day of 2005

SIGNED for and on behalf of the)
COMMONWEALTH OF AUSTRALIA)
by the Minister for Transport and)
Regional Services)
.....

in the presence of)
)

.....
Witness

SIGNED for and on behalf of the)
STATE OF SOUTH AUSTRALIA)
by the Minister for Transport,)
Minister for Infrastructure and)
Minister for Energy)
.....

in the presence of)
)

.....
Witness

SCHEDULE A – INVESTMENT PROGRAMME 2004-05 TO 2008-09

SCHEDULE B – HISTORICAL FUNDING CONTRIBUTIONS

Australian Government historical road construction funding for South Australia

	Grants					TOTAL
	99-00	00-01	01-02	02-03	03-04	
	\$m	\$m	\$m	\$m	\$m	
National Highways	45.39	18.58	23.19	23.48	20.02	130.66
Roads of National Importance	0.00	0.00	10.02	1.35	15.54	26.91
TOTAL	45.39	18.58	33.21	24.83	35.56	157.57
REAL TERM TOTAL	51.15	20.57	35.83	26.01	36.34	169.90

State historical expenditure on the National Land Transport Network

	Actual Expenditure					TOTAL
	99-00	00-01	01-02	02-03	03-04	
	\$m	\$m	\$m	\$m	\$m	
Port River Expressway Stage 1	0.00	0.00	8.44	9.39	12.48	30.31
Port River Expressway Stages 2 & 3	0.00	0.00	0.00	0.00	2.98	2.98
Sir Donald Bradman Drive (between Brooker Terrace & South Road)	1.33	1.77	0.50	0.00	0.00	3.60
Minor Works	0.00	0.02	0.01	0.00	0.6	0.09
SUB-TOTAL	1.33	1.79	8.95	9.39	15.52	36.98
Maintenance	0.58	0.42	0.37	0.77	1.65	3.79
TOTAL EXPENDITURE	1.91	2.21	9.32	10.16	17.17	40.77
REAL TERM TOTAL	2.15	2.45	10.06	10.64	17.55	42.85

State Government Assistance to Local Government for local transport infrastructure

	Actual Expenditure					TOTAL
	99-00	00-01	01-02	02-03	03-04	
	\$m	\$m	\$m	\$m	\$m	
State Black Spot Programme	0.00	0.00	0.00	0.77	1.72	2.49
Regional Roads Programme	0.00	1.63	1.98	0.66	0.70	4.97
TOTAL	0.00	1.63	1.98	1.43	2.42	7.46
REAL TERM TOTAL	0.00	1.80	2.14	1.50	2.47	7.91

SCHEDULE C – RECOGNITION ARRANGEMENTS

1 Definitions

‘public recognition’ includes issuing any media release, giving any media interview, erecting signs, publishing brochures or community consultation pamphlets, staging sod turning or opening ceremonies or similar ceremonies or any other form of communication with the public or a section of the public claiming or giving the impression of responsibility for providing a transport infrastructure project.

‘funding commitment’ means an agreement to accept some or all funding responsibility for a transport infrastructure project.

‘fully funded’ means the provision of all or substantially all expenditure in relation to a project. The parties recognise that provision of incidental expenditure or indirect project supervision does not constitute joint funding of a project.

2 Public Recognition Forms and Principles

Recognition of the Australian Government’s contribution is to be included in all means of dissemination, including, but not limited to:

- strategy documents, videos and electronic databases;
- advertisements relating to all elements of an Australian Government funded project, including those involving the calling of tenders and other aspects of a project;
- route selection reports, tender documents, maps, display material and other information products that relate to the project being funded or under investigation;
- media statements and electronic media 'grabs';
- publications associated with each project or groups of projects in a region or along a particular transport corridor;
- signs erected adjacent to projects, along transport corridors or on the project being funded, including traffic management signs where these include a logo or slogan of the South Australian Government or an authority of the South Australian Government;
- commemorative plaques and ribbons and temporary signs in prominent view at openings or during commemorative ceremonies; and
- invitations and order of proceedings associated with openings, launches, staged completions or other public activities.

3 Media Statements – Factual Information and Emergencies

Where information about a project or information concerning an emergency or other operational issue, such as unforeseen road closures due to flooding, accidents or similar events, concerning the sections of the National Land Transport Network need to be provided to the public, the relevant State officials may make public statements of a factual operational nature.

4 Brochures

When a brochure (whether for general information, a publication marking an official opening, information to affected households in surveyed areas) is prepared for any Australian Government funded or jointly funded works, it must acknowledge the Australian Government's contribution and objectives by:

- prominent wording stating that the project is funded (in the case of fully funded projects), or jointly funded (in the case of jointly funded projects) by the Australian Government;
- including wording provided by the Australian Government explaining the AusLink objectives for the corridor in which the works will be constructed; and
- featuring the Australian Government crest prominently.

Where a brochure is proposed, the Australian Government Minister will be given proper opportunity to include a message and, if required, a personal photograph. The brochure copy and layout must be submitted for Australian Government approval prior to printing.

5 Electronic Media Dissemination

The recognition criteria applying to brochures will also apply to television advertisements, video, Internet or other forms of electronic broadcast.

6 Route Markings, Signs, and Plaques

States are required to place permanent AusLink signs and route markers at agreed intervals on the National Land Transport Network. The form, size and positioning of signs is specified in Appendix 1.

7 Opening/Commemorative Ceremonies

The South Australian Government is responsible for organising opening or completion ceremonies for projects on the National Land Transport Network within South Australia. Wherever possible, these are to coincide with the date on which the project is opened to the public.

The South Australian Government will develop, in conjunction with the Australian Government, a forward programme of official ceremonies to mark the commencement and opening or completion of all Australian Government funded projects.

The Minister for Transport and Regional Services, or a representative, will be given the opportunity to open major projects funded by the Australian Government. The relevant Member and/or Senator(s) of the Australian Parliament will be invited to these ceremonies and other invitees nominated by the Minister. In addition, details of proposed arrangements, including invitations for ceremonies and the order of proceedings, should be forwarded to the Minister for consideration well before they are proposed for issue.

At opening ceremonies for projects fully funded by the Australian Government, the lectern signs and signs adjacent to the plaque will be those of the Australian Government. In the case of joint funded projects, the use of State or State agency signs is to be agreed with the Minister well before the ceremony is to take place.

8 Commemorative Ribbons

Commemorative ribbons may be used for major Australian Government funded projects. The use of logos and crests on the ribbon is to be consistent with that on plaques.

9 Public Information

Australian Government may, from time to time, liaise with stakeholders including local government authorities, industry groups and others to ensure the AusLink programme is delivering on its objectives and to identify improvements in delivering the programme.

The South Australian Government agrees that the Australian Government may publish the AusLink corridor strategies and other documents to inform and obtain the views of the public to ensure that the programme remains relevant and continues to provide the best returns on the Australian Government's investment.

APPENDIX 1 TO SCHEDULE C – SPECIFICATIONS FOR ROUTE MARKINGS, SIGNS AND PLAQUES

1 AusLink Network Route Marking

At regular intervals, not exceeding 50 km, and more frequently where State Highways or arterial roads join the National Land Transport Network, **network identification signs** (example in Appendix 2) shall be placed.

National Land Transport Network route marking (example in Appendix 2) should be in accordance with Australian Standard 1742, with the shield used being that designated for 'National Routes', with the word NATIONAL added at the top, above the route number. Colours are to be reflectorised yellow and reflectorised green background. There is no change from the existing national route – shield for the National Highway.

Wherever possible, the National Route number will be consistent within the National Land Transport Network grid, along sectors, and run across State borders.

An alpha numeric route numbering may be used on the National Land Transport Network, but the number will reflect the National Route number and not be replaced by another route numbering designation.

The National Land Transport Network will be clearly marked in urban areas. Green and gold shield route markers may be continued beyond the National Network delineation points, where considered desirable, to provide navigation assistance for road users.

National Land Transport Network route marker information and graphics (including colour where appropriate) should be used on Road Authority maps and information supplied to road user organisations and other map makers.

Green and gold **route destination countdown markers** (example in Appendix 2) depicting the word NATIONAL are to be placed on the National Land Transport Network at regular intervals agreed with the State. They should be placed at junctions of arterial road connections with the network.

2 Signs

On major construction projects, a **project specific sign** (example in Appendix 2) is to be placed at each end of the physical work, facing oncoming traffic. Signs are not to be obscured by roadside objects, including any other information signs and must be maintained for one year beyond the opening of the project.

Sign sizes, text sizes, style, colour and material will be in accordance with Drawing A.

The main sign can be in one of two sizes:

3000mm by 1600mm for major AusLink projects in open road locations; and
2000mm by 1400mm for locations where physical space is limited.

Where a project is fully Australian Government funded, there are to be no signs giving public recognition to the South Australian Government or an authority of the South Australian Government other than an auxiliary sign affixed below the main AusLink sign. The auxiliary sign will be of the same width and approximately 1/3 depth of the main panel. Text generally will be “Project managed by the South Australian Department of Transport and Urban Planning.

The South Australian Government will be required to submit a project signs plan for all major construction projects at the time Australian Government funding approval is sought.

Smaller project specific signs may be used for projects valued at \$5 million or less, or a **road safety project sign** (examples for both in Appendix 2) in the case of projects valued at less than \$2 million funded entirely by the Australian Government.

3 Signs for jointly funded projects

Where a project is jointly funded the parties agree to consult and agree on, before works commence, the sizes, text styles, colour, material and site display requirements of signs in relation to the project. Normally, this should be by way of a signage plan at the project approval stage.

The Australian Government is prepared to agree on a ‘themed’ set of signs for projects along a corridor as has been the practice on several Roads of National Importance projects.

Generally, **text will be in keeping with the examples in Appendix 2.**

Where applicable, National Land Transport Network **rail projects** shall be identified using signs in keeping with this style.

4 Tourist Signage

The Australian Government also wishes to explore options for promoting national tourism, particularly road-based tourism on the National Land Transport Network. It wishes to negotiate with the South Australian Government on the use of the stylised kangaroo logo on brown and white tourism information signs.

5 Commemorative Plaques

These specifications apply to plaques unveiled at ceremonies associated with Australian Government funded road and other projects, whether or not the Minister for Transport and Regional Services or the Minister’s representative attends the ceremony.

This specification also applies to plaques for projects jointly funded.

Illustrative examples are provided in Appendix 2.

The wording of the plaque will include:

- the name of the project;
- recognition that the project was delivered under the AusLink programme;
- the name of the Minister or Minister's representative officiating at the ceremony and the name of the State Minister or State Minister's representative in attendance; and
- the date of the ceremony.

6 Commonwealth and State Crest

For projects fully funded by the Australian Government, the Australian Government crest is to appear on the plaque at the top centre. No other coat of arms, logos or emblems are to appear.

For jointly funded projects where the State authority wishes the State crest to appear, the Australian Government crest is to be positioned at the top left-hand corner of the plaque and the State crest at the top right-hand corner.

The Australian Government crest appearing on the plaque should be in accordance with the "Stylised Arms No. 1 (Outline)" as depicted in *Style Manual for Authors, Editors and Printers of Australian Government Publications*.

7 Approval of Layout

In all cases where the Minister or the Minister's representative is to officiate at a commemorative ceremony, the relevant State authority will submit details of the proposed wording of the commemorative plaque to the Australian Government.

APPENDIX 2 TO SCHEDULE C – LAYOUTS FOR SIGNS

National Land Transport Network sign



Route marker



Route distance marker



Route destination countdown marker



National Land Transport Network project specific sign for major projects



National Land Transport Network project specific sign for smaller projects



National Land Transport Network specific sign for joint funded project



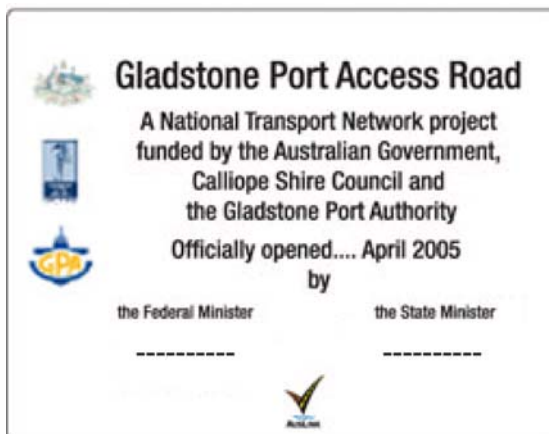
Commemorative plaque for Australian Government funded projects on the National Land Transport Network



Commemorative plaque for joint funded projects on the National Land Transport Network



Commemorative plaque for tripartite (including public private partnership) projects on the National Land Transport Network



**SCHEDULE D – JOINT GUIDELINES ON APPLICATION OF
NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION
INDUSTRY**

Joint Australian and South Australian Government Implementation Guidelines for AusLink projects in South Australia

December 2004

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Appendix A - Acronyms

The text in italics in section 6 of these Joint Guidelines is from the National Code of Practice for the Construction Industry.

SECTION 1

Application and scope

The National Code of Practice for the Construction Industry (the Code) is to be applied to the maximum practicable extent to all construction and building work undertaken for and on behalf of the Australian Government and to construction projects to which the Australian Government has contributed funding. These Joint Guidelines have been developed by the Commonwealth Government and the State Government of South Australia for the application of the Code to AusLink funded projects in South Australia. The following sections elaborate on the types of activities covered by the Code.

1.1 Construction activity covered by the Code and these Joint Guidelines

The Code defines construction as all organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining and heavy engineering.

Activity which falls within the scope of the Code includes building refurbishment or fit out, installation of building security systems, fire protection systems, air-conditioning systems, computer and communication cabling, building and construction of landscapes.

Activity which does not fall within the scope of the Code includes ongoing maintenance of building systems, such as fire protection and air-conditioning systems, and computer and communication cabling. The Code also does not cover landscaping such as lawn mowing, pruning and other horticultural activities, and cleaning buildings.

The Code covers material supply contracts where the supplied material is integral to the construction of the project and the prefabrication of made-to-order components to form part of any building, structure or works, whether carried out on-site or off-site.

1.2 Funding Thresholds and Delivery Mechanisms

The Code and these Joint Guidelines apply to all construction projects in South Australia indirectly funded by the Australian Government through AusLink where:

- (i) the value of Australian Government contribution to a project is at least \$5 million and represents at least 50 per cent of the total construction project value; or
- (ii) the Australian Government contribution to a project is \$10 million or more, irrespective of the proportion of Australian Government funding.

Subject to these financial thresholds, the Code applies to all jointly funded AusLink construction projects in South Australia including those delivered via Public Private Partnerships (PPPs), Private Finance Initiatives (PFIs), Build Own Operate Transfer (BOOT) and Build Own Operate (BOO) projects.

SECTION 2

Date of effect

All contracts, tendering processes, expressions of interest or market testing proposals associated with AusLink funded projects in South Australia must comply with all elements of the Code and these Joint Guidelines as detailed in those documents as at the date of issuing of these Joint Guidelines. Obligations of the parties under the Code and these Joint Guidelines will have effect to all decisions/actions taken from the date of issuance of these Joint Guidelines.

The Code and these Joint Guidelines will not apply to projects approved by the Australian Government prior to 1 January 2004.

To avoid any ambiguity, any advertisements placed or processes commenced prior to the issuance of these Joint Guidelines do not need to be re-advertised or re-processed.

However, all contracts for construction activity for projects within the scope of these Joint Guidelines, as defined in Section 1, must be structured to comply.

SECTION 3

Documentation

3.1 All parties to be advised of requirement to comply

All parties invited to express interest in the joint funded AusLink construction projects or projects to which the Australian and South Australian Governments contribute funding should be informed of the application of the Code and these Joint Guidelines to the project. Advertisements calling for expressions of interest, requests for tenders, submissions, invitations to join Common Use Arrangements etc, should incorporate the following statement:

The National Code of Practice for the Construction Industry, in accordance with the Joint Australian and South Australian Government Implementation Guidelines for AusLink projects in South Australia, applies to this project.

3.2 Tender documents to incorporate Code and requirement to comply

The Code and these Joint Guidelines must be included as an attachment to tender documents and should be made available on request to all interested parties. Alternatively, the conditions of tender may include advice on where those documents can be viewed at www.constructionsa.com.au .

Tenderers should also be advised that compliance with the Code and these Joint Guidelines is to extend to all subcontractors, consultants and material suppliers who may be engaged by the tenderer on the project. State and Commonwealth agencies are expected to actively assist parties to ensure they can readily access and understand the Code and these Joint Guidelines.

The Department of Transport and Regional Services (DOTARS) as an agency covered by the *Financial Management and Accountability Act 1997* (FMA Act) must undertake procurement in a manner consistent with the principles contained in the Commonwealth Procurement Guidelines. The procurement and tender methods adopted may vary according to the complexity of the procurement, the size of the expenditure and the requirements of the department or agency. The Department of Employment and Workplace Relations (DEWR) can provide advice to DOTARS on compliance with the Code and these Joint Guidelines in the context of the preferred tendering process.

It may be useful for the South Australian Department of Transport and Urban Planning (DTUP) to obtain a completed and signed undertaking to apply the Code and these Joint Guidelines at the assessment stage before a company can proceed to tender. Previous compliance performance in applying the Code to projects can be included in the weighted assessment of the tenderers satisfying the mandatory criteria.

In a single stage process where tender documents are issued to all companies responding to an advertisement, the advertisement must state that the project is covered by the Code and Joint Guidelines. Further information on tender procedures can be obtained from the Department of Finance and Administration (see section 9 of these Joint Guidelines for contact details).

3.3 Contract documents and project management procedures to incorporate requirement to comply

While the form of wording will vary according to the contract form and the type of service supplied, the contract must incorporate the requirement for the contractor to comply with all aspects of the Code and these Joint Guidelines, and for all subcontractors, material suppliers and consultants associated with the project to comply in turn.

Clauses to achieve compliance must be incorporated into the general or special conditions of the contract, associated statements of compliance, statutory declarations required of contractors or project procedures as appropriate.

3.4 Consultant contracts

The model clauses may be appropriate for consultant contracts for construction related activities. These include contract management contracts, project management contracts, and design and supervision contracts. Advertisements calling for expressions of interest from consultants may include the statement:

The National Code of Practice for the Construction Industry, in accordance with the Joint Australian and South Australian Government Implementation Guidelines for AusLink projects in South Australia, applies to this project.

3.5 Projects funded under AusLink

DOTARS acting as the funding administrator must ensure that DTUP as the funding recipient includes the requirement to apply the Code and these Joint Guidelines to their projects in their deeds of agreement, grant documents or other documentation. Model clauses for inclusion in deeds of agreement, grant documents and other legal instruments are also included at the Australian Workplace website. These model clauses can be used for projects where the Code and these Joint Guidelines apply, when affecting the transfer of funds from the Australian Government to South Australian Government for AusLink funded projects in South Australia. Advice should be sought from DEWR where significant modifications to these model clauses are proposed for particular projects.

DOTARS being responsible for managing the transfer of funds or grants should ensure that any guidelines or administrative procedures governing funding require funding recipients to include these model clauses, or a modified version of these model clauses, in all contracts relating to the construction projects concerned.

SECTION 4

Australian Government indirectly funded construction

This section applies to Australian Government departments and agencies which fund construction activity in relation to AusLink funding in South Australia through grants or program expenditure.

4.1 DOTARS as funding administrator

DOTARS is responsible for administering AusLink program expenditure involving construction and is responsible for ensuring the grantee or recipient of the Australian Government funding applies the Code and these Joint Guidelines to all AusLink related projects in South Australia, as per the thresholds described in section 1.2.

DOTARS acting as funding administrator is responsible for ensuring there is a provision in any relevant funding agreement with DTUP, as the recipient organisation, which requires DTUP ensure that all parties involved in the project comply with the Code and these Joint Guidelines.

DOTARS as funding administrator should consider the following points to assist funding recipients understand the requirements under the Code and these Joint Guidelines applying to contractors engaged by them.

DOTARS as funding administrator should ensure that:

- funding recipients developing proposals, tendering or undertaking work in relation to a project are informed of their responsibility to comply with the Code and these Joint Guidelines
- they obtain commitments from DTUP as the funding recipient that the Code and these Joint Guidelines will be complied with
- ensure that tenders and contractual documents include the requirement for the Code and these Joint Guidelines to apply
- adequate reporting arrangements are in place with DTUP as funding recipient for reporting on Code-related issues
- they respond to requests for information concerning Code-related matters made on behalf of the Code Monitoring Group (CMG) through the Project Joint Code Monitoring Group (PJCMG) and the South Australian Government Contract Superintendent
- DTUP will require alleged breaches of the Code and these Joint Guidelines to be reported to the South Australian Government Contract Superintendent within 28 days
- the PJCMG and CMG are promptly notified of all allegations of breaches of the Code and these Joint Guidelines by the South Australian Government Contract Superintendent
- sanctions applied under the Code are enforced, including the exclusion of identified parties from work opportunities in accordance with decisions advised by the CMG.

DOTARS as funding administrator should seek assurance from DTUP as funding recipient that they ensure/have ensured that:

- all advertisements, from the date of issuance of these Joint Guidelines calling for expressions of interest, tenders, submissions and invitations regarding applicable projects incorporate the obligation to apply the Code and these Joint Guidelines. The advertisement should include the words:

The National Code of Practice for the Construction Industry, in accordance with the Joint Australian and South Australian Government Implementation Guidelines for AusLink projects in South Australia, applies to this project.

- the Code and these Joint Guidelines extend through the contract chain to all subcontractors, consultants and material suppliers who may be engaged by the head contractor on the project
- tenderers are not currently included on the exclusion list due to previous breaches of the Code (this information is available from the CMG)
- the workplace relations arrangements proposed for the project by contractors are consistent with the Code and these Joint Guidelines with particular emphasis on freedom of association and freedom of choice in agreement making and do not require compliance with unregistered industry agreements
- there is a reporting mechanism in regard to the application of the Code and these Joint Guidelines on the project
- application of the Code and these Joint Guidelines is a standing item on the agenda for site/project meetings
- the head contractor has established appropriate processes to support freedom of association and right of entry provisions
- where threatened or actual industrial action occurs on a project, contractors, subcontractors, consultants or employees report such action in accordance with the appropriate compliance mechanism
- there are occupational health, safety and welfare and injury management and return to work arrangements in place that are consistent with the requirements under the relevant South Australian legislation
- the contractor initiates remedial action aimed at rectifying non-compliant behaviour when it is drawn to their attention
- all parties involved in the project, including the funding recipient, are aware of the requirement to report any alleged breaches or other Code-related matters to the South Australian Government Contract Superintendent within 28 days
- the South Australian Government Contract Superintendent will promptly refer all alleged breaches of the Code and these Joint Guidelines to the appropriate Government agency for investigation. This includes Workplace Services for OHS breaches and BIT, the PJCMG, the CMG or the Building Industry Branch of DEWR for other breaches.

4.2 Responsibilities of DTUP as AusLink funding recipient

DTUP as recipient of AusLink funds from DOTARS has a responsibility to ensure projects involving AusLink expenditure are bound by the Code and these Joint Guidelines. DTUP must ensure that:

- contractual documents concerning AusLink funded projects include an acknowledgement of the role of Workplace Services and the BIT in monitoring compliance with the Code and these Joint Guidelines, and accepting the right of Workplace Services and BIT officers in gaining access to sites to monitor compliance, where relevant
- they provide a commitment to DOTARS as the funding agency that the Code and these Joint Guidelines will be complied with and that tender and contractual documents include the requirement to comply with the Code and these Joint Guidelines
- they respond to requests for information concerning Code-related matters made on behalf of the South Australian Government, DOTARS as the funding agency, the CMG and the BIT
- advertisements, from the date of issuance of these Joint Guidelines calling for expressions of interest, tenders, submissions and invitations regarding projects incorporate the Code. The advertisement should include the words:

The National Code of Practice for the Construction Industry, in accordance with the Joint Australian and South Australian Government Implementation Guidelines for AusLink projects in South Australia, applies to this project.

- the Code and these Joint Guidelines extend through the contract chain to all subcontractors, consultants and material suppliers who may be engaged by the head contractor on the project
- they check tenderers are not currently included on the exclusion list due to previous breaches of the Code (this information is available from the CMG)
- the workplace relations arrangements proposed for the project are consistent with the Code and these Joint Guidelines with particular emphasis on freedom of association and freedom of choice in agreement making and do not require compliance with unregistered industry agreements
- there is a reporting mechanism on the project and that the Code is a standing item on the agenda for site/project meetings
- there is an adequate mechanism for consultation with the South Australian Government and DOTARS regarding the suitability of a project agreement on a particular project (project agreements are only appropriate for contracts valued above \$25 million).
- the head contractor has established appropriate processes to support freedom of association and right of entry provisions
- where threatened or actual industrial action occurs on a project, contractors, subcontractors, consultants or employees report such action in accordance with the appropriate compliance mechanism
- that arrangements for occupational health and rehabilitation and return to work are consistent with the requirements of the relevant South Australian legislation
- the contractor initiates remedial action aimed at rectifying non-compliant behaviour when it is drawn to their attention
- all parties involved in the project are aware of the requirement to report any alleged breaches or other Code-related matters to the South Australian Government Contract Superintendent within 28 days
- the South Australian Government Contract Superintendent will promptly refer alleged breaches of the Code and these Joint Guidelines to the appropriate Government agency for investigation. This includes Workplace Services for OHS breaches and BIT, the PJCMG, the CMG or the Building Industry Branch of DEWR for other breaches
- sanctions applied under the Code are enforced including the exclusion of identified parties from work opportunities in accordance with decisions advised by the CMG
- joint audits of compliance with the Code and these Joint Guidelines will be carried out by State and Commonwealth Government officials on a regular basis.

4.3 Contractors, subcontractors, consultants, and employees

Contractors, subcontractors, consultants and all employees undertaking work on the project must:

- comply with the Code and these Joint Guidelines
- require compliance with the Code and these Joint Guidelines from all subcontractors and material suppliers. All contracts should specifically require that the Code and these Joint Guidelines are complied with
- ensure that the workplace relations arrangements proposed for the project are consistent with the Code and these Joint Guidelines with particular emphasis on freedom of association and freedom of choice in agreement making and do not require compliance with unregistered industry agreements
- ensure that where threatened or actual industrial action occurs on a project, contractors, subcontractors, consultants or employees report such action in accordance with the appropriate compliance mechanism
- ensure that contractors initiate remedial action aimed at rectifying non-compliant behaviour when it is drawn to their attention

- ensure that all parties involved in the project are aware of the requirement to report any alleged breaches or other Code-related matters to the South Australian Government Contract Superintendent within 28 days. The South Australian Government Contract Superintendent will promptly refer all alleged breaches of the Code and these Joint Guidelines to the appropriate Government agency for investigation. This includes Workplace Services for OHS breaches and BIT, the PJCMG, the CMG or the Building Industry Branch of DEWR for other breaches
- ensure that sanctions applied under the Code are enforced including the exclusion of identified parties from work opportunities in accordance with decisions advised by the CMG
- ensure that a project agreement, if approved for the projects, is complied with
- note that joint audits of compliance with the Code and these Joint Guidelines will be carried out by State and Commonwealth Government officials on a regular basis.

SECTION 5

Australian Government administration of the Code and these Joint Guidelines

This section sets out some of the responsibilities of the CMG, the PJCMG, DEWR, the Department of Finance and Administration, DOTARS and DTUP in relation to the implementation of the Code and these Joint Guidelines.

5.1 CMG

The CMG deals with Code issues, including breaches, which have come to its attention. Following investigation, the CMG may impose a sanction against a party found to be in breach of the Code. The Secretariat of the CMG is drawn from the Workplace Relations Implementation Group of DEWR.

5.2 Project Joint Code Management Group

A PJCMG will be established to oversee Code compliance on AusLink funded projects in SA. The PJCMG will report to the CMG.

Membership will be drawn from:

- the Workplace Relations Implementation Group and BIT from DEWR;
- DOTARS;
- the South Australian Department of Administrative Services; and
- DTUP

5.3 Department of Finance and Administration

The Department of Finance and Administration is responsible for monitoring compliance with the non-workplace relations aspects of the Code on behalf of the Australian Government, including competitive behaviour, continuous improvement and best practice.

Finance is responsible for Australian Government procurement policy, including the Commonwealth Procurement Guidelines.

5.4 Department of Employment and Workplace Relations

DEWR has the following Code-related responsibilities:

- advising agencies, CAC Act bodies and other interested parties about the workplace relations and occupational health safety and rehabilitation (OHS&R) aspects of the Code; and
- monitoring and promoting compliance with the workplace relations aspects of the Code on behalf of the Australian Government.

The BIT has primary responsibility for investigating alleged breaches of the workplace relations provisions of the Code and these Joint Guidelines. The BIT will report the results of its investigations to the PJCMG.

5.5 Department of Transport and Regional Services

The responsibilities of DOTARS under the Code and these Joint Guidelines as funding administrator are set out at 4.1

5.6 Department of Transport and Urban Planning

The responsibilities of DTUP under the Code and these Joint Guidelines as AusLink funding recipient are set out at 4.2

SECTION 6

Workplace relations and occupational health and safety components

6.1 Awards and legal obligations relating to employment

All parties must comply with the provisions of applicable:

- *awards and workplace arrangements which have been certified, registered or otherwise approved under the relevant industrial relations legislation*
- *legislative requirements.*

Awards set out minimum conditions of employment and employers are obliged to comply with awards unless they have entered into certified agreements (CAs) or Australian Workplace Agreements (AWAs) that displace or vary the terms of awards. CAs and AWAs are also legally enforceable and must be complied with by all parties. This includes enterprise agreements approved under State legislation. The requirement to comply with legal obligations extends to orders and directions of tribunals and courts. This includes State Supreme Court and Federal Court injunctions, and orders issued by the Industrial Relations Commission of South Australia and the Australian Industrial Relations Commission such as those issued under section 127 of the Workplace Relations Act (the WR Act). It should be noted that State-registered project agreements cannot override federal awards (or AWAs or CAs). The Code does not require compliance with unregistered industry agreements.

Parties must comply with any obligations arising from legislation such as the WR Act and all other relevant laws governing employment conditions such as annual holidays, long service leave, workers compensation, rehabilitation, superannuation, taxation, industrial and commercial training.

Any situations that arise where award, agreement or legislative obligations have not been met are to be dealt with by Government agencies through existing compliance procedures and the compliance principles of the Code.

6.2 Workplace arrangements

Workplace arrangements which reflect the needs of the enterprise are important elements in achieving continuous improvement and best practice.

The contents of the workplace arrangements are a matter for the parties to those arrangements, subject to them meeting legislative requirements. However, they may encompass:

- *improved OHS and rehabilitation practices*
- *training and skill formation strategies*
- *multi skilling*
- *flexible work practices, for example in relation to working time.*

A party must not, directly or indirectly, pressure or coerce another party to enter into, or to vary or to terminate a workplace arrangement. Nor may they pressure or coerce them about the parties to, and/or the contents, or the form of their workplace arrangements. This does not prevent action sanctioned by relevant industrial relations legislation.

The Australian Government's workplace relations policies emphasise the importance of relationships at the workplace and enterprise level, with primary responsibility for workplace relations resting with employers and employees at the enterprise and workplace level. The WR Act provides a framework for cooperative workplace relations and enables employers and employees to choose the most appropriate form of agreement for their particular circumstances. AWAs and CAs are available under the WR Act and are designed to enable employers and employees to take responsibility for their own workplace arrangements and relations.

Parties should ensure that implementation of the Code supports a direct relationship between employees and employers and contractors/subcontractors.

Under the WR Act a party must not take or threaten to take any industrial action or other action, or refrain or threaten to refrain from taking any action with the intent to coerce another person to agree, or not to agree to the making, varying or extending of an agreement. An employer must not coerce or attempt to coerce an employee not to request the involvement of an industrial organisation in negotiations over a CA.

The Code prohibits head contractors or clients requiring (either through the tendering process or otherwise) that subcontractors or material suppliers have particular workplace arrangements in place, whether that be in the form of a CA, AWAs, or a State enterprise agreement. It is up to each employer to negotiate with their employees (and their employees' representatives where that is the employees' wish) what form of workplace arrangement, if any, should apply. It is up to employers and their employees to decide whether to have a CA (and if so what kind), AWAs, a State enterprise agreement, or to work under the terms of the relevant award (supplemented possibly by overaward payments).

Except where a project agreement has been agreed to by the client in accordance with the Code and these Joint Guidelines, a party must not require another party to agree to pay certain rates as a condition for the allocation of work or the awarding of a tender.

6.3 Overaward payments

Overaward payment is defined to mean any payment and/or benefit above that set out in the relevant award, registered agreement and/or legislation. This includes payments provided for in workplace arrangements.

Decisions on overaward payments, including superannuation, redundancy and workers' compensation insurance, shall be made by the individual employer to suit the needs of the enterprise. No employer may be compelled to pay benefits above that prescribed in the relevant workers' compensation legislation.

A party must not, directly or indirectly, coerce or pressure another party to make overaward payments. No employer may be compelled to contribute to any particular redundancy or superannuation fund, or similar body unless there is an award or legal requirement to do so. This does not prevent action sanctioned by relevant industrial relations legislation.

The Code prohibits direct or indirect coercion or pressure being applied by a contractor to another contractor, subcontractor, consultant or supplier to make overaward payments. This means that no contractor, subcontractor, consultant or supplier is allowed to enter into any agreement or issue a contract or subcontract or 'industrial instruction' that directly or indirectly binds or otherwise pressures or coerces another contractor, subcontractor, consultant or supplier into making overaward payments.

Payments to industry superannuation, redundancy and sick leave funds which provide for contributions in excess of award and legislative requirements are matters to be decided by each employer. No party may compel or attempt to compel another party into making such voluntary contributions into such schemes including schemes which provide top up payments over and above the provisions contained in awards, agreements or legislation.

The Code does not prohibit employers, employees, or unions from taking 'protected' industrial action in accordance with the applicable legislation in pursuit of new workplace arrangements.

Where there is a project agreement which provides for special payments, conditions or benefits to be applied on a site-wide basis, the contractor, subcontractor, consultant or supplier may be required to comply with the terms of the project agreement where the terms of the project agreement have been advised at the tender stage.

6.4 Project agreements

Project agreements will only be appropriate for major contracts. Accordingly project agreements incorporating site-wide payments, conditions or benefits may be negotiated where the strategy has first been authorised by the principal.

The integrity of individual enterprise agreements must be maintained. This means project agreements cannot override the workplace arrangements of individual contractors, subcontractors, consultants and suppliers, nor may they provide conditions which by their nature have effect beyond the duration of the project, such as, for example, redundancy pay and superannuation contributions. While there may be provisions in a relevant workplace arrangement that enables the parties to the arrangement to encompass provisions in a project agreement, there shall be no double counting of 'overaward' provisions.

There shall be no flow on of the provisions of project agreements.

Such agreements should be developed, where possible, in consultation with the subcontractors working on the project. The agreements shall be certified or otherwise approved under the relevant industrial relations legislation.

The Code is based on the primacy of enterprise-level determination of pay and conditions. Nevertheless, the Code does recognise that there may be some situations where project agreements may be appropriate but only under strict conditions, the most important of which is the agreement of DTUP and DOTARS. DTUP and DOTARS may, consistent with the Code, adopt a policy of not agreeing to project agreements.

It is very important that DTUP and DOTARS do not agree to project agreements unless there is a clear and demonstrable benefit to the South Australian and Australian Governments in doing so. This is most likely to take the form of improved time or cost performance compared to what might reasonably be expected in the absence of a project agreement.

DTUP and DOTARS are accountable for decisions to approve project agreements and must state their reasons for doing so in writing to the relevant portfolio Ministers.

Decisions to approve project agreements must be defensible on objective and detailed grounds and clearly demonstrate a benefit to the project, such as improved completion schedules that would not otherwise have been achievable on a best practice basis.

Project agreements must be reviewable against performance benchmarks over the construction period and be able to be terminated or varied if those benchmarks are not met.

Project agreements will not be permitted on projects worth less than \$25 million except in exceptional cases.

Where contractors wish to negotiate a project agreement to regulate special payments, conditions or benefits for more than one contractor, the strategy must first be discussed with, and authorised by, DOTARS and DTUP before work commences. Whenever practical, subcontractors and their employees should be involved in the process of developing a project agreement before it is finalised.

Given the workplace focus of the agreement system, the capacity for multi-employer agreements to be made requires the consent of all employers and the majority of the employees to be covered and involves testing by the Australian Industrial Relations Commission or relevant State industrial tribunal.

While project agreements may cover matters other than pay and conditions, in regard to the latter they should generally only provide for project specific productivity payments, which should be tied to the achievement of identified performance targets. The project agreement must not require employers with their own workplace agreements in place to make payments or provide other benefits which would result in double dipping by other parties. For example, where a project agreement provides for a project/productivity allowance, the subcontractor must be able to absorb any enterprise productivity allowance against the project allowance. Parties must not use any term, condition or benefit in the project agreement as a precedent on any other project or for any other purpose.

In deciding whether to approve the use of a project agreement, DOTARS and DTUP should consider:

- the degree of commitment demonstrated by the parties to the proposed agreement to improving productivity and workplace relations;
- past performance and the parties' history of maintaining and abiding by agreements;
- the manner in which the proposed project agreement will interact with workplace arrangements, including CAs and AWAs, already in place or in the process of being negotiated, endorsed or certified; and
- whether there is anything in the proposed agreement which is inconsistent with the Code, awards or other legislation.

Project agreements covering several employers should be certified under the multiple-business provisions of the WR Act (s. 170LC) and/or State legislation and this should be made a condition of approval by DOTARS and DTUP.

6.5 Freedom of association and right of entry

All parties have the right to freedom of association. This means that parties are free to join or not join industrial associations of their choice and that they are not to be discriminated against or victimised on the grounds of membership or non membership of an industrial association. Under Federal legislation a person cannot be forced to pay a fee to an organisation if not a member.

Among the fundamental principles underpinning the Australian Government's workplace relations policy are:

- freedom of choice;
- freedom of association, the choice to be or not to be in a union or employer association, and the choice of which union or employer organisation; and
- all Australians must be treated equally before the law.

Greater choice will encourage the development of registered organisations that are more competitive, providing a higher level of service to members. Organisations must be representative of, and accountable to, their members and able to operate effectively.

Membership of all organisations must be voluntary. Compulsory unionism/employer association requirements, 'no ticket, no start' and preference clauses are not acceptable and are unlawful. Parties are protected from coercion (whether direct or indirect) to join or not to join an organisation or to cease to be a member of an organisation. Provisions in contracts, federal awards, CAs and AWAs which provide for preference in employment or use of members of employee associations are null and void and unenforceable.

The payment of 'bargaining fees', success fees or other payments to employer bodies, industrial associations by persons who are non members is contrary to the principles of freedom of association. Membership of employer bodies, industrial associations and any associated membership fees or other payments must be entirely voluntary under the WR Act. Employment discrimination against, or victimisation of, a party (or threatened discrimination or victimisation) is unlawful where that occurs on the grounds of:

- the party's membership or non-membership of a registered organisation or an association applying for registration
- a party seeking to exercise rights under legislation, awards or agreements, or seeking the assistance of any person or body to seek the observance of the party's rights under legislation, awards or agreements, or the party's participation in industrial proceedings.

Contractors must adopt policies to ensure that all those working on projects covered by the Code and these Joint Guidelines have their right to choose whether or not to join a union or employer association properly respected. In particular, the following practices are inconsistent with the Code:

- employers providing the names of new staff or job applicants to unions or employer associations
- sacking workers because they belong to a union and replacing them using labour hire companies
- supplying the names of contractors or subcontractors to unions or employer associations
- 'no ticket, no start' signs, or other notices, posters, helmets, stickers etc that imply that union membership is anything other than a matter for individual choice
- 'show card' days
- an employer encouraging or discouraging employees to join a union
- the imposition, or attempted imposition, by a union of a requirement for any contractor, subcontractor or employer to employ a non-working shop steward or job delegate, or other person, on a construction site and any attempt by a union to compel any contractor, subcontractor or employer to hire an individual nominated by a union
- the imposition, of pressure on a subcontractor to join an employer association
- using site delegates to undertake or administer site induction processes. Site induction should always be undertaken by site management. Site management may, however, invite site delegates to participate in the induction process to outline site specific safety procedures and practices. This may only occur where a site delegate has nominated health and safety representative or safety supervisor status. The use of site delegates in this way should not be a device to compromise or circumvent freedom of association principles
- using induction forms requiring the employee to identify their union status or a contractor their membership of an employer association
- using forms requiring employers and contractors to identify the union status of employees or subcontractors or their membership of an employer association
- the existence, whether in a CA or otherwise, of any requirement for any person or enterprise to pay a fee to a registered organisation of which he or she is not a member including, but not limited to, any requirement that a person pay a 'bargaining fee' however described, to an industrial association in respect of services provided by it regarding any workplace arrangements that might regulate that person's employment by that enterprise.

Employers must not cooperate with or act to facilitate these practices. Employers will be held responsible under the Code if they are found to have done so.

Parties must report any alleged or suspected breaches of the freedom of association provisions of the Code or the WR Act of which they are aware to the South Australian Government Contract Superintendent in the first instance.

6.5.1 Right of entry

The right of entry of employee association and union representatives is to be in accordance with the legal requirements of state and federal legislation.

The principal contractor, subcontractor, consultant or employee is to grant admission to a site by a representative of an industrial association in compliance with the procedures governing entry and inspection under the WR Act or under relevant State legislation.

Under the WR Act, representatives of registered organisations do not have an automatic right of entry to workplaces. A registered organisation may apply to the Industrial Registrar to issue a permit to an officer or employee of the organisation. A permit holder must observe the legislative provisions relating to the rights of permit holders to enter workplaces. An entry permit can be revoked if the Industrial Registrar is satisfied that the permit holder has intentionally hindered or obstructed an employer or employee or otherwise acted in an improper manner.

The WR Act provides that permit holders may only enter a workplace for two reasons. The first is to investigate a suspected breach of the WR Act, of a federal award or CA, or of an order of the Australian Industrial Relations Commission. To exercise a right of entry, there must be employees who are members of the permit holder's organisation who work at the premises. In addition, the permit holder's organisation must be bound by the relevant federal award, agreement or Commission order. If these conditions are met, the permit holder may enter a workplace during working hours and inspect and make copies of any pay or time sheets relevant to the suspected breach, inspect machinery and other appliances relevant to the suspected breach, and speak to employees about the suspected breach. However, permit holders cannot inspect an AWA or documents that show some or all the contents of an AWA.

The second reason is to hold discussions with employees who are members, or eligible to be members, of the relevant organisation at the workplace. To exercise a right of entry, a federal award binding on the organisation must apply to work that is being carried on at the premises. A permit holder may only enter the premises during working hours and may only hold the discussions during the employees' meal-time or other breaks. If an award is 'displaced' on the site by a CA, or if all employees on the site are covered by AWAs, the permit holder does not have the right to enter the premises to hold discussions with employees.

In each of these above reasons to enter, under the WR Act a permit holder must give the occupier of the site (that is, whoever is in charge of the work site such as the project manager or head contractor) 24 hours notice of the proposed entry.

Employers, industrial organisations (including employer associations/any association of building or construction contractors) must observe and comply with all provisions of relevant industrial and workplace relations legislation and the appropriate occupational health and safety and workers compensation and rehabilitation legislation. Construction sites often involve a mixture of employees bound by national and State awards and agreements. Parties should ensure that they comply with all the terms of such legislation, awards and agreements.

6.6 Dispute settlement

All parties are required to make every effort to resolve grievances or disputes with their employees and applicable unions at the enterprise level, in accordance with the procedure outlined in the relevant award or workplace arrangements.

Grievances or matters under dispute are to be dealt with at the workplace between the appropriate level of management and employees and union representatives. Awards and agreements should contain arrangements providing graduated steps for discussion of disputes involving higher levels of authority to which the matter in dispute can be referred if it cannot be resolved.

Reasonable time limits should be allowed for each stage of relevant dispute settlement processes. All parties are required to comply with industrial tribunal decisions, subject to appropriate appeal rights. While dispute settlement procedures are being followed the parties are to ensure that:

- industrial action does not take place
- the circumstances that existed prior to the dispute prevail
- work is to continue as normal without detriment to any of the parties.

Where a dispute relates to OHS&R issues, the procedures contained in the *South Australian Occupational Health Safety and Welfare Act 1986* should be observed.

6.7 Strike pay

No payment shall be made to employees for time spent engaged in industrial action unless payment is legally required or properly authorised by an industrial tribunal (where this is permitted by relevant industrial legislation).

Under the WR Act, industrial action is permitted in relation to bargaining for a CA or an AWA, subject to the requirements specified in the WR Act having been met. Industrial action other than genuine bargaining for agreements is not compatible with the system and is not lawful.

Under the WR Act it is unlawful for an employer to pay strike pay. Similarly, it is unlawful for a union or its representatives to take industrial action to pursue strike pay or for an employee or other party to accept strike pay. The WR Act prohibits contractors, subcontractors, consultants and material suppliers from paying employees for any period during which they were engaged in any form of industrial action including strikes, stop work meetings not authorised by the employer, bans and restrictions or limitations on work.

A person who refuses to do certain work is not engaged in industrial action where the refusal is based on a reasonable concern that the work poses an imminent risk to the person's health or safety. In such circumstances, the person must, however, perform other safe and appropriate work if directed to do so.

6.8 Industrial impacts

The client of the principal contractor shall be advised during the progress of the work, and at the earliest opportunity, of any industrial relations or OHS&R matter which may have an impact on the construction program, the principal contract, other related contracts or project costs.

Any disputes or disagreements relating to workplace relations or OHS&R matters, which can impact on the construction program or the contract, project costs or other related contracts, must be reported to the South Australian Government Contract Superintendent at the earliest opportunity. To ensure the South Australian Government Contract Superintendent is appropriately advised, site project managers are to be encouraged to establish an effective and clear reporting structure for construction projects.

Such reporting structures should enable Government agencies to:

- identify at an early stage any disputes or disagreements and, in particular, determine whether these have arisen through the failure to apply the Code by any of the parties to the dispute
- assist with better managing their overall work programs.

Any actual or threatened industrial action flowing from implementation of the Code and these Joint Guidelines is to be reported by the South Australian Government Contract Superintendent to the PJCMG. Government agencies are strongly encouraged to establish internally coordinated arrangements which will ensure effective communication with the PJCMG.

6.9 Workplace reform

Industry participants are encouraged to adopt a broad-based agenda to improve productivity through the development of workplace and management practices that are flexible and responsive to the business demands of the enterprise and its clients' requirements. An enterprise with this focus will achieve a workplace culture that is recognised for value, quality, innovation and competitiveness and will be a preferred partner for clients' projects.

Workplace reform is a key component of the Australian Government's reform strategies for the building and construction industry. Contractors, subcontractors, consultants and material suppliers are encouraged to pursue and implement workplace reform strategies appropriate to the nature, size and capacity of the individual workplace.

Workplace reform is by nature a dynamic and evolving change process and requires the commitment of employers and employees. Workplace reform covers innovations and complementary approaches to workplace behaviour including:

- workplace relations and work practices
- management practice
- training and skill formation
- consultative arrangements
- quality management
- OHS&R.

Workplace reform has the potential to strengthen the building and construction industry's viability through workplace and productivity improvements. Such improvements can foster positive changes for individual workplaces including:

- lower production costs
- reduced waste and time lost
- better quality products and services
- a more flexible and adaptive workforce
- improved communication, motivation, morale and commitment
- higher standards in OHS&R and return to work performance
- improved remuneration and working conditions for the workforce.

The Code seeks to provide an environment conducive to the pursuit of workplace reform strategies. The parties shall not seek to negotiate arrangements that restrict the efficient performance of work and contain provisions that restrict productivity improvement. Such practices could include last-on first-off arrangements, ratios of employees and 'one-in-all-in' procedures for overtime.

6.10 OHS&R

OHS&R obligations must be actively addressed by all industry participants. Unequivocal commitment to OHS&R management must be demonstrated in systems that address responsibilities, policies, procedures and performance standards to be met by all parties involved in a project and are directly linked to quality OHS&R outcomes.

Federal and State governments have given the highest priority to improving the management of OHS&R in the construction industry.

All contractors must meet their obligations under relevant laws when working on Government projects and sites. The principal contractor must establish a site-specific OHS&R management plan before work commences. A comprehensive management plan aims for prevention and eliminating hazards that cause injuries and illnesses at the workplace.

A comprehensive management plan will include:

- explicit management commitment
- employee involvement
- rigorous work practices analysis
- proactive worksite analysis that anticipates and assigns roles and responsibilities and defines efficient procedures while on site
- hazard identification, prevention and control
- induction and task training
- appropriate case management and rehabilitation
- efficient maintenance of records.

It is essential that an OHS&R management system is fully documented and clearly communicated to people in an enterprise. It should systematically cover the ways a contractor's own people are expected to work safely, the way the contractor will ensure others work safely and the ways they intend to improve their practices over time. This will also entail defining roles, duties and responsibilities so that everyone knows what they have to do, when and in what circumstances.

Improving the industry's OHS&R performance requires positive measures that aim for prevention rather than correcting things when they go wrong. This initiative is directed at making OHS&R management an integral part of the organisational culture of companies and enterprises.

SECTION 7

Additional practices and components

7.1 Consultant selection and ethics

The ethics to be adopted by the industry apply to all parties and reflect those identified in the Australian Standard (AS 4121-1994). This standard is based on the following principles:

- the conditions of inviting proposals are the same for each consultant
- the consultant selection process is conducted honestly and fairly
- consultants retain their right and title to intellectual property submitted unless specific engagement conditions or payments are made for that intellectual property or there are exceptional circumstances clearly warranting an alternative approach
- the principal will have regard to the costs of preparing proposals with a view to minimising the overall cost of selection
- briefing documents will specify the principal's requirements as clearly and precisely as possible
- the principal will specify what information in the proposal documents is to be treated as confidential
- consultants often provide professional services without payment but the principal shall not require work without payment
- consultants will not respond to an invitation unless they genuinely believe they have the competence and capacity to undertake that project
- parties shall be prepared to attest to their probity, if necessary by statutory declaration or other reasonable means
- parties will comply with all legislative obligations including those required by trade practices and consumer affairs legislation
- parties will seek and submit proposals with the firm intention to proceed
- parties will not engage in any practices which give one party an improper advantage over another
- parties will not engage in practices such as collusion, secret commissions, or any other such improper arrangements
- any party with a conflict of interest will immediately disclose that conflict of interest.

7.2 Tendering Process

No party will require or compel another party, either directly or indirectly, to be bound by a contract, contractual direction and/or tender which includes provisions contrary to the intent of these Joint Guidelines.

The best practice principles that these Joint Guidelines adopt reflect those identified in the Australian Standard (AS 4120-1994). These include the requirements that all parties at all levels of the industry involved in the tendering process must:

- conduct tendering honestly and fairly and refrain from seeking or submitting tenders without a firm intention to proceed
- seek to constrain the costs of bidding
- apply the same conditions of tendering for each tenderer and avoid any practice that gives one party an improper advantage over another
- produce tender documents that clearly specify the principal's requirements and evaluation criteria
- preserve the confidentiality of all tender information nominated as confidential during the tendering process other than public opening of tenders and disclosure of tender prices which are acceptable
- comply with all statutory obligations, including trade practices and consumer affairs legislation

- refrain from practices such as collusion on tenders. Collusive tendering practices are defined as including but not limited to
 - agreements between tenderers as to who should be the successful tenderer,
 - any meeting of tenderers prior to the submission of their tenders that may disadvantage the principal,
 - agreements between tenderers to fix prices,
 - the submission of a cover tender (a pre-arranged inflated bid or a non-genuine bid) or any assistance to submit such a cover tender that is intended to advantage another tenderer or disadvantage the principal,
 - any unlawful or illegitimate agreement between tenderers before submission of tenders, such as fixing a special rate of payment to a third party where the payment of such fees is conditional on the tenderer being awarded the contract or commission,
 - agreement between tenderers for payment of money, incentives, the securing of reward or benefit, incentives or other concessions for unsuccessful tenderers or other third parties by the successful tenderer, particularly where that benefit does not relate to the provision of bona fide services relevant to the object of the tender.
- be prepared to attest to their probity by statutory declaration, in particular on issues concerning collusive practices and conflicts of interest
- recognise that tenderers retain their right to intellectual property, unless otherwise provided in the contract
- not conduct post-tender negotiations solely on price. Neither clients nor contractors shall seek to trade off different tenderers' prices against others in an attempt to seek lower prices.

7.3 Security of payments

The following minimum practices are to be adhered to in construction contracting:

- payment terms within a contract that match accepted industry practice including intervals at which payments are to be made
- the safeguard and return of all cash and other securities when the contract is satisfactorily completed
- the safeguard and return of all retention monies held during the course of the contract
- timely and effective dispute resolution procedures. In the event of a dispute, all payments that are not directly subject to dispute will continue to be made in accord with the agreed process and conditions and any agreed payment cycle
- "paid when paid" and "paid if paid" practices are prohibited
- all parties are to avoid frivolous claims and disputes, particularly those affecting the amount or timing of payments.

7.4 Environmental Management

All industry parties have a responsibility to contribute to meeting the community's demand for ecologically sustainable development. Sound environmental practices above and beyond mere compliance with regulatory requirements are encouraged to be in place. Service providers should develop and implement a systematic approach to environmental management to ensure that it becomes an integral part of organisational culture and day to day work practices.

Government and other industry clients will encourage ecologically sustainable development by working with industry to:

- define ecologically sustainable development in a way which is meaningful for participants in the construction industry
- establish environmental best practice on projects
- showcase projects with outstanding environmental innovation and management
- pilot recycling and re-use of material on government construction projects
- support effective use of scarce resources.

For service providers a systematic approach to environmental management includes:

- explicit management commitment and environmental policy
- acceptance by the organisation that its activities, products or service have an impact on the environment
- development and implementation of planning processes and procedures that assist in identifying possible environmental impacts and measures to mitigate or minimise these impacts
- establishing organisational responsibility, systems and procedures to review the implementation process
- establishing management processes for the review of these systems and procedures which support the organisation's commitment and environmental policy and which leads to continually improving performance.

7.5 Skills development and training

The Code supports skills development and training. In particular, it encourages the harnessing and extension of the skills and creativity of the people working in the industry and the continual development of training to help develop career paths.

The following principles will be encouraged as best practice:

- employees should be encouraged to acquire those skills which match industry needs and assist them to rapidly understand new technology
- current job roles and contract practices should be continually tested against existing and emerging industry operational requirements
- changes to work systems and practices should be aimed at improving industry productivity
- employees should be employed in their most productive capacity
- work should be organised to encourage the development and introduction of best practice in skill development and training activity
- all relevant parties should participate in skill development and training
- active management of OHS&R policies and procedures.

A commitment to the following best practices by all parties is encouraged and may be a requirement for those seeking Government projects. The industry should aim to achieve best practice in relation to:

- employee qualification and skill levels
- completion of projects on time
- value for money
- quality in all aspects of service, delivery and product
- training, research and development
- OHS&R (including the return to work of injured employees)
- environmental management
- equal opportunity for employment.

SECTION 8

Compliance and monitoring provisions for the Code and these Joint Guidelines

As noted in Section 5, the CMG deals with Code issues, including breaches, which have come to its attention. Following investigation, the CMG may impose a sanction against a party found to be in breach of the Code. The PJCMG will report to the CMG.

8.1 DTUP role as client

The intention of the Code is to encourage cooperation, best practice and ethical behaviour by all parties involved in a construction project. It is intended that client agencies will have the support necessary to effectively apply the Code and these Joint Guidelines without detriment to their principal focus on successful project management.

It is DTUP's role to ensure that the Code and these Joint Guidelines are applied. DTUP ensures that the Code and these Joint Guidelines are formally applied to the project through inclusion in tender and contract documentation and by obtaining an undertaking of compliance from the successful tenderer. The South Australian Government Contract Superintendent is responsible for initial actions taken to address Code issues which might arise in relation to a project.

If a Code-related problem is brought to his/her attention, the South Australian Government Contract Superintendent should respond with initial actions designed to encourage the modification or cessation of non-compliant behaviour. It would be open to a client to write to a party to request clarification of behaviour which is considered to have breached the Code or these Joint Guidelines or to write requesting that the behaviour cease or be modified. In some cases clients may simply wish to advise relevant parties that the matter has been referred to the PJCMG for further action.

Clients should, however, inform the South Australian Government Contract Superintendent of all breaches of the Code and these Joint Guidelines within 28 days. The South Australian Government Contract Superintendent will promptly inform the PJCMG and CMG of all breaches of the Code and these Joint Guidelines. Serious breaches of the Code and these Joint Guidelines will also be referred by the South Australian Government Contract Superintendent to the appropriate regulatory body for investigation.

8.2 DOTARS role as funding administrator

DOTARS as the agency responsible for administering AusLink program expenditure will ensure that DTUP as funding recipient requires that parties subsequently engaged to undertake building and construction work apply the Code and these Joint Guidelines on the project.

8.3 Exclusion of parties from tendering opportunities

The Code provides that breaches by parties can be regarded as a relevant factor when awarding contracts. In general, this would only apply in situations where the CMG advises that a sanction has been applied, and would only apply in the terms and for the period that the sanction applies. All tenderers should be advised of this condition in the tendering documentation.

Information concerning the exclusion of parties from tendering opportunities can be obtained from the CMG Secretariat (see section 9 for details).

If a party is excluded from a specific business opportunity on these grounds, the client should inform them of the reason, in writing, at the earliest opportunity.

SECTION 9

Contact details

Queries about the Code or its application can be referred to the CMG secretariat.

The contact for the secretariat and for workplace relations and OHS&R matters is:

Mr Leigh Quealy
Workplace Relations Implementation Group
Department of Employment and Workplace Relations
Phone (02) 6121 6015
Fax (02) 6276 7004
Email: leigh.quealy@dewr.gov.au

The contact for procurement and tendering matters is:

Mr Guy Verney
Asset Management Group
Department of Finance and Administration
Phone (02) 6215 3617
Fax (02) 6267 3018
Email: guy.verney@finance.gov.au

The contact in South Australia is:

Code of Practice Register
Building Management
Department for Administrative and Information Services
Phone (08) 8266 5209
Fax (08) 8226 5588
Email: buildingmanagement@saugov.sa.gov.au

APPENDIX A

ACRONYMS

AWA	Australian Workplace Agreement
BOO	Build, Own, Operate
BOOT	Build, Own, Operate, Transfer
CA	Certified agreement
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CMG	Code Monitoring Group
FMA Act	<i>Financial Management Accountability Act 1997</i>
BIT	Building Industry Taskforce
PFIs	Private Finance Initiatives
PJCMG	Project Joint Code Monitoring Group
PPPs	Public Private Partnerships
OHS & R	Occupational health, safety and rehabilitation
WR Act	<i>Workplace Relations Act 1996</i>