

MEMORANDUM OF UNDERSTANDING

**Relating to the Establishment of Regional Development
Australia (South Australia)**

BETWEEN

COMMONWEALTH OF AUSTRALIA

**as represented by and acting through the Department of Infrastructure,
Transport, Regional Development and Local Government**

-And-

MINISTER FOR REGIONAL DEVELOPMENT FOR SOUTH AUSTRALIA

acting through the Department of Trade and Economic Development

-And-

LOCAL GOVERNMENT ASSOCIATION OF SOUTH AUSTRALIA

on behalf of its members.

MEMORANDUM OF UNDERSTANDING dated:

PARTIES

COMMONWEALTH OF AUSTRALIA (“**Commonwealth**”) acting through and represented by the Department of Infrastructure, Transport, Regional Development and Local Government (“**DITRD LG**”)

And

MINISTER FOR REGIONAL DEVELOPMENT FOR SOUTH AUSTRALIA (“**Minister**”) acting through the **Department of Trade and Economic Development (SA)** (“**DTED**”)

And

LOCAL GOVERNMENT ASSOCIATION OF SOUTH AUSTRALIA on behalf of its members (“**LGASA**”)

MEMORANDUM OF UNDERSTANDING

To integrate the regional development activities in South Australia through the establishment of RDA(SA) for the benefit of South Australian Communities.

RDA(SA) aims are to:

- improve the coordination and delivery of regional development initiatives;
- deliver local input into national programs and help co-ordinate development initiatives at the regional and local level;
- work with the three spheres of government as a key linking organisation to empower communities in regional development activity;
- provide advisory and support services to business, State Government and Local Government Bodies and the Commonwealth in the regions;
- provide local input to governments on the effectiveness and delivery of policies and programs in the regions;
- consult and provide advice on local issues confronting the regions; and
- provide a shop front for business development services.

1. DEFINITIONS

In this Memorandum of Understanding, unless the contrary intention appears:

- 1.1 “**ACC**” means an Area Consultative Committee in existence at the date of this Memorandum;
- 1.2 “**Administration Agencies**” means DITRDLG, DTED and the LGASA;
- 1.3 “**ALGA**” means the Australian Local Government Association;
- 1.4 “**Commonwealth**” mean Commonwealth of Australia;
- 1.5 “**DITRDLG**” means Department of Infrastructure, Transport Regional Development and Local Government;
- 1.6 “**DTED**” means the South Australian, Department of Trade and Economic Development;
- 1.7 “**Incorporated Association**” means an organisation as defined under the *Associations Incorporation Act 1985 (SA)*;
- 1.8 “**Intellectual Property Rights**” means any patent, copyright, trademark, trade name, design, trade secret, know how or other form of intellectual property right whether arising before or after the execution of the Memorandum and the right to registration of these rights;
- 1.9 “**LGASA**” means the Local Government Association of South Australia;
- 1.10 “**Local Government Bodies**” means bodies established under the South Australian, *Local Government Act 1999* or the *Outback Areas Community Development Trust Act 1978* and “**Local Government Body**” means any of the Local Government Bodies;
- 1.11 “**Memorandum**” means this Memorandum of Understanding between the Parties;
- 1.12 “**Minister**” means Minister for Regional Development for South Australia;
- 1.13 “**Parties**” means the Commonwealth, the Minister and the LGASA and “**Party**” means any of the Parties;
- 1.14 “**RDA**” means the Regional Development Australia program;
- 1.15 “**RDA(SA)**” means the Regional Development Australia in South Australia program;
- 1.16 “**RDA(SA) Bodies**” means bodies incorporated under the *Associations Incorporation Act 1985 (SA)* to implement the RDA(SA) program;
- 1.17 “**RDB**” means a South Australian Regional Development Board in existence at the date of this Memorandum;
- 1.18 “**SAGR**” means South Australian Government Region(s) established by the State Government;
- 1.19 “**SA**” means South Australia;
- 1.20 “**State Government**” means the Government of South Australia.

2. BACKGROUND

- 2.1** The Commonwealth established a network of ACCs in 1994. Since then their role has evolved from providing advice and generating support for labour market programs to playing a major role in working with their communities to develop projects that would be successful in attracting funding.
- 2.2** SA has a long-established network of 13 RDBs in country SA supported jointly by the State Government and Local Government Bodies. The RDBs' operating costs are funded through joint agreements between the Minister and participating Local Government Bodies on a \$3:\$1 basis respectively.
- 2.3** RDBs are incorporated associations under the *Associations Incorporations Act (1985)*. Board membership comprises between 8 and 15 people with a background in industry, Local Government Bodies and the community.
- 2.4** RDBs provide a shop front for business development services offered to regions by the State Government, and provide support services to local business, State Government and Local Government Bodies in the regions. They also provide a service delivery function for a number of other State Government and Commonwealth programs.
- 2.5** RDBs support South Australia's Strategic Plan Objectives with regard to regional economic development and employment. RDBs also take into account social and environmental issues, where these issues have an impact on the economic development of a region. They also provide advice to the State Government and Local Government Bodies on economic development issues of significance to their local region.
- 2.6** On 20 March 2008, the Hon Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, announced that the ACC network would transition to RDA.
- 2.7** On 30 July 2008, in Broome, the Regional Development Council met and approved a core set of principles for aligning the operations of Commonwealth, state and territory government regional development organisations.
- 2.8** On 25 November 2008, the Minister wrote to the Hon Gary Gray, Parliamentary Secretary for Regional Development and Northern Australia, agreeing to work together with LGASA to develop a Memorandum of Understanding.

3. PRINCIPLES

The following principles were agreed to by the Regional Development Council meeting in Broome on 30 July 2008, as published in the Council Communiqué:

1. “integrated arrangements: the Australian, State, Territory and Local Governments will continue to work towards the eventual adoption of more integrated and aligned arrangements for regional engagement and economic development, recognising that alignment is necessarily a long term process”;
2. “a commitment to collaboration: where possible, the three levels of government collaborate at the regional level”;
3. “common boundaries: review existing boundaries to align ACCs, RDO [regional development organisations] and local government boundaries wherever possible”;
4. “acknowledging the differences: regional engagement and economic development structures vary across the Australian Government and States and Territories”;
5. “the intention for tripartite arrangements: local regional development structures to involve the three spheres of government, including joint membership of boards, committees and governing bodies”;
6. “sharing of information: improve information sharing on regional development activities and outcomes”;
7. “purpose and role of ACCs and RDOs: work towards a shared purpose”;
8. “cross membership: as opportunities arise, work towards a degree of cross membership of boards and committees”;
9. “joint funding: where possible collaborate through joint funding of regional development bodies to enable an increase in the scope of their activities”; and
10. “co-location: where possible co-locate regional development offices to facilitate better communication and minimise duplication of facilities.”

4. KEY OUTCOMES

4.1 The Parties agree to implement the principles in Clause 3 by:

4.1.1 integrating the current 13 RDBs and 4 ACCs in regional SA and create 7 new RDA(SA) Bodies based on the SAGR as follows:

- Eyre and Western Region;
- Far North Region;
- Yorke and Mid-North Region;
- Barossa Region;
- Murray and Mallee Region;
- Adelaide Hills, Fleurieu and Kangaroo Island Region;
and
- Limestone Coast Region.

4.1.2 establishing a new RDA(SA) Advisory Committee based on the four Metropolitan Adelaide SAGRs to be known as:

- Adelaide Metropolitan Advisory Committee.

4.1.3 addressing service duplication;

4.1.4 maintaining the existing of number shop fronts except where there is duplication;

4.1.5 developing a cooperative culture with improved information sharing between the RDA(SA) Bodies and the three spheres of government;

4.1.6 maximizing the impact of funding provided through resource sharing;

4.1.7 implementing a nationally co-ordinated approach to developing Australia's regions;

4.1.8 providing a more coordinated service to the community;
and

4.1.9 developing stronger regional communities through contributing to a strong national economy, improved infrastructure, a whole of government approach and closer cooperation between levels of government.

4.2 The Parties will ensure that RDA(SA) Bodies will not compete with the private sector or undertake commercial projects or activities without the prior agreement of the Parties.

5. IMPLEMENTATION AND MANAGEMENT

5.1 General

The Parties agree to:

- 5.1.1** develop policies for the integration of ACCs and RDBs into RDA(SA) Bodies;
- 5.1.2** develop joint projects and activities for RDA(SA) Bodies; and
- 5.1.3** inform each other about work programs, funding agreements, outcomes and audits from jointly funded activities.

5.2 Administration Agencies

The Parties agree that:

- 5.2.1** DITRDLG, DTED and the LGASA will jointly administer the RDA(SA) program;
- 5.2.2** DITRDLG will be responsible for providing direction and oversight to the RDA(SA) Bodies with respect to Commonwealth funding agreements. The responsible contact officer is identified in Clause 17.1;
- 5.2.3** DTED will be responsible for providing direction and oversight to the RDA(SA) Bodies with respect to State Government funding agreements to be developed based on the bilateral resource agreement with Local Government Bodies. The responsible contact officer is identified in Clause 17.2;
- 5.2.4** LGASA will be responsible for providing direction and oversight to the RDA(SA) Bodies with respect to Local Government Bodies' funding agreements to be developed based on the bilateral resource agreement with the State Government. The responsible contact officer is identified in Clause 17.3;
- 5.2.5** DITRDLG, DTED and the LGASA will:
 - 5.2.5.1** jointly be responsible for providing direction and oversight to the RDA(SA) Bodies for joint funded projects and activities; and
 - 5.2.5.2** co-operate in supporting the RDA(SA) Bodies to develop local strategic regional plans.

5.3 Implementation

- 5.3.1** The Parties agree to establish a Working Group, comprising representatives of the Parties, to formulate a plan for the transition of the RDBs and ACCs to RDA(SA) Bodies and support and manage the preparation of regional transition plans. The plan for the transition will be finalised for commencement by or before 31 July 2009.

5.3.2 The Parties agree that the plan for the transition will include but not be limited to:

5.3.2.1 the timing of bi-annual consultation meetings between the Parties;

5.3.2.2 facilitating the relocation of the offices of the RDA(SA) Bodies where there is duplication;

5.3.2.3 the development of the constitutions and codes of conduct of the RDA(SA) Bodies;

5.3.2.4 the transition arrangements (including guidelines for site closures, relocations, staffing, funding and amalgamations);

5.3.2.5 a transition timeline finalised on or before 17 July 2009;

5.3.2.6 a risk mitigation strategy outlining options, should any of the above not be achievable by or before 31 July 2009; and

5.3.2.7 policies and procedures for the operation of the RDA(SA) Bodies including reporting, key performance indicators and due diligence requirements.

5.3.3 The Parties agree to keep each other informed of progress on implementing the plan for the transition.

5.4 Funding

The Parties agree to establish administrative frameworks under which it is their intention that the current level of funding provided by the Commonwealth to ACCs, and provided by the State Government and Local Government Bodies to the RDBs, would be maintained for RDA(SA), subject to appropriation. The Parties agree that funding will be provided direct to RDA(SA) Bodies through Funding Agreements.

5.5 Appointments to Boards of RDA(SA) Bodies

5.5.1 The Parties agree that the Administration Agencies will facilitate the establishment of the 8 new RDA(SA) Bodies.

5.5.2 The RDA(SA) Bodies' rules must ensure that:

5.5.2.1 the Chairs and Deputy Chairs, appointed by the Parties are leading members of the community;

5.5.2.2 Chairs, Deputy Chairs and other board members are drawn from the community, business and government to reflect the economic, social and cultural diversity of the region. Members will collectively have a strong understanding of the economic social and environmental opportunities and challenges facing regional communities;

5.5.2.3 the appointment of members is subject to approval by the Parties in accordance with an agreed selection criteria; and

5.5.2.4 Expressions of Interest for the appointment of members are widely and publicly advertised.

5.6 RDA(SA) Bodies' Objectives

The Parties will facilitate the establishment of RDA(SA) Bodies that:

5.6.1 support the Commonwealth, the State Government and Local Government Bodies in facilitating regional economic development outcomes in SA, that are consistent with policies, priorities and strategic plans of the three spheres of government;

5.6.2 maintain the current referral function for business development services offered to the regions by the State Government;

5.6.3 maintain regional economic development advisory and support services to local businesses, the Commonwealth, the State Government, Local Government Bodies, and communities;

5.6.4 provide advice to the Parties about issues relevant to their local region;

5.6.5 provide local input into programs of the Commonwealth, the State Government and Local Government Bodies;

5.6.6 provide information to regional communities on Commonwealth and State Government initiatives;

5.6.7 assist to co-ordinate regional planning and regional development initiatives;

5.6.8 are small, responsive and cost effective, and have strong working relationships with the Commonwealth, the State Government, and Local Government Bodies;

5.6.9 understand their role as a service provider for and by the Parties to and within their local communities; and

5.6.10 work closely with Local Government Bodies and other regional organisations.

5.7 Promoting RDA(SA)

5.7.1 The Parties agree that DITRDLG will take the lead in developing the national branding for RDA.

5.7.2 The Parties will consult with each other on the names and the logo of the RDA(SA) Bodies;

5.7.3 The Parties will ensure that:

- 5.7.3.1** shop fronts of the RDA(SA) Bodies will display in a clear and visible place at the public entrance of their premises, signage as agreed by the Parties and prepared and supplied by DITRDLG;
 - 5.7.3.2** they will nominate RDA(SA) Bodies as a source of local information or service delivery to the Commonwealth, the State Government, Local Government Bodies and key community-based organisations which progress regional development initiatives in SA;
 - 5.7.3.3** RDA(SA) Bodies acknowledge in any printed or electronic correspondence, or promotional material, the contributions made by the three spheres of government towards the establishment and ongoing operations of RDA(SA) Bodies and of any other services that RDA(SA) Bodies may deliver; and
- 5.7.4** DITRDLG agrees to seek registration of the trademark and the business name of RDA, to maintain the name and trademark, and to licence the trademark on a royalty free perpetual license arrangement to the Parties and RDA(SA) Bodies.

5.8 Cooperative Resource and Workload Management

The Parties agree to:

- 5.8.1** consult, where appropriate, and keep each other informed of their intent to engage RDA(SA) Bodies in activities, and of the likely resource and workload impacts that the engagement will have on the operations of RDA(SA) Bodies; and
- 5.8.2** not enter into agreements with a RDA(SA) Body that may compromise the capacity of that Body to deliver regional development activities agreed by another Party and as specified in approved operational plans and funding agreements.

5.9 Joint Projects

- 5.9.1** RDA(SA) Bodies may develop and undertake collaborative projects with each other with a regional development focus, subject to resources being available; and
- 5.9.2** RDA(SA) Bodies may share and provide feedback on all relevant information regarding the status of collaborative projects with the other Parties, if requested by that Party.

5.10 Liaison with the Commonwealth, the State Government and the Local Government Association of South Australia

5.10.1 The Parties agree to meet regularly with the Chairs of the RDA(SA) Bodies.

5.10.2 DTRD&LG will organise an annual national RDA Conference in consultation with the Parties and the ALGA.

6. TERM OF MEMORANDUM

The Parties agree that the Memorandum:

6.1 will come into effect on the date of its signing by the Parties; and

6.2 will remain in force until it is terminated by any Party upon giving three months written notice to the other Parties.

7. MODIFICATION

Any modification or amendment of the Memorandum must be in writing and signed by all Parties.

8. LEGAL EFFECT OF MEMORANDUM

8.1 The Memorandum records the current level of understanding between the Parties and is a record of their intention to collaborate with each other to achieve beneficial outcomes for the Parties and South Australian communities.

8.2 The Memorandum is not intended to create legally enforceable obligations on any of the Parties.

8.3 The Parties agree that only Clause 11 and Clause 12 are contractually binding and no other Clause imposes any legal liability or obligation on any Party.

8.4 The Parties also agree that the Memorandum does not constitute any offer or invitation which is capable of acceptance.

9. FUNDING AND FACILITIES

9.1 The Memorandum arrangement has no financial obligation on any Party.

9.2 The funding of any activities under the Memorandum, the provision of facilities and/or resources will be in accordance with detailed terms to be agreed to by the relevant Parties in each implementing arrangement or contract (if any).

10. CONSULTATION

- 10.1** The Parties agree to consult with each other on an ongoing basis or upon the request of another Party regarding any matter relating to the terms of the Memorandum.
- 10.2** The Parties will endeavour, jointly in a spirit of cooperation and mutual trust, to resolve any difficulties or misunderstandings which may arise.

11. COPYRIGHT AND INTELLECTUAL PROPERTY

- 11.1** The Parties acknowledge that during the course of their dealings under the Memorandum, they may provide each other resource materials of various kinds including, but without being limited to, any code, guides, manuals and other texts, or documents of any kind whatsoever ("Materials").
- 11.2** To the extent that each Party may have Intellectual Property Rights in any such Materials, written notice of which must be given by the Parties to each other, the Parties acknowledge and agree that Intellectual Property Rights in the Materials remains the absolute property of the Party providing the Materials.
- 11.3** No Party will copy any other Party's Materials without the prior written consent of the other Party and, then on such terms and conditions as may be agreed between the relevant Parties from time to time.
- 11.4** The obligations as to Intellectual Property Rights under this Clause survive any expiry or termination of the Memorandum.

12. CONFIDENTIALITY

- 12.1** Each Party agrees to treat as confidential all confidential information obtained from another Party in connection with the Memorandum and must not divulge such information to any other person except:
 - 12.1.1** with the written approval of the relevant Party; or
 - 12.1.2** to employees of a Party who need to know that information; or
 - 12.1.3** to the Commonwealth and South Australian Parliaments, the Governor-General, the Governor of South Australia, Cabinet, a Parliamentary or Cabinet committee or sub-committee or any other Minister of the Commonwealth or State Government, and members of the State Executive Committee of the LGASA;

12.1.4 with the written approval of all Parties to Local Government Bodies pursuant to sections 62, 87, 90, 91 and Schedule 2 of the Local Government Act 1999 (SA);
or

12.1.5 as required by the operation of any law.

12.2 Subclause 1 of this Clause does not apply to information which was rightfully in the possession of a Party prior to the execution of the Memorandum or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause).

12.3 The obligations as to confidentiality under this Clause survive any expiry or termination of the Memorandum.

13. CONFLICT OF INTEREST

If a conflict of interest arises between the Parties or is likely to arise:

13.1 as soon as learning of the actual or likely conflict, the identifying Party must give written notice to the corresponding Party of the actual or likely conflict; and

13.2 upon receiving such notice or otherwise learning of the actual or likely conflict, the relevant Party must take such reasonable steps to either resolve or otherwise deal with the conflict.

14. EMPLOYEES AND AGENTS

The Parties acknowledge and agree that any act, matter or thing which either is required to be performed or done by a Party pursuant to the Memorandum may be performed or done by a Party's duly authorised employees or agents.

15. EXCLUSION OF IMPLIED RELATIONSHIPS

15.1 The relationship between the Parties is only that of independent contractors with several rights, liabilities, duties and obligations set out in the Memorandum.

15.2 No Party is deemed or construed to constitute any Party a partner, joint venturer, principal, agent or fiduciary of any other Party.

15.3 No Party has the authority to act for or to incur any liability or obligation on behalf of any other Party except with the express written authority of that other Party.

16. COUNTERPARTS

The Memorandum may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

17. PARTIES REPRESENTATIVES

17.1 Department of Infrastructure, Transport, Regional Development and Local Government:

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17.3 Local Government Association of South Australia

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EXECUTED as a Memorandum of Understanding

SIGNED for and on behalf of the)

COMMONWEALTH OF AUSTRALIA)

by the Hon Maxine McKew MP)
Parliamentary Secretary for Infrastructure,)
Transport, Regional Development and)
Local Government)

In the Presence of:

..... [WITNESS' SIGNATURE]

..... [NAME OF WITNESS]

Dated.....

THE COMMON SEAL of the)
MINISTER FOR REGIONAL DEVELOPMENT)

was affixed hereto by the Hon Paul Caica MP)

In the Presence of:

..... [WITNESS' SIGNATURE]

..... [NAME OF WITNESS]

Dated.....

SIGNED for and on behalf of the)

LOCAL GOVERNMENT ASSOCIATION)
OF SOUTH AUSTRALIA)

by)
)
)

In the Presence of:

..... [WITNESS' SIGNATURE]

..... [NAME OF WITNESS]

Dated.....