

Challenges in meeting infrastructure needs in SA: Obtaining access to transport and freight routes.

Transforming the exploration boom into a production reality will require access to crucial existing and proposed infrastructure over the longer term.

Private proposals for competitors to set aside their differences and together best utilise locations (such as Port Bonython), to create “*working hubs*” or “*industry precincts*” to provide integrated service delivery for export of product are being explored.

The SA resources industry has committed to finding workable solutions by:

- itself identifying and exploring flexible commercial possibilities; and
- in its support and active participation in a RESIC identified industry-wide vision.

However, access regimes under the *Trade Practices Act, 1974 (Cth)* (“TPA”) in respect of rail, roads, ports, gas and electricity, could also permit long term access on commercial terms agreed between service operator and third party.

Services regulated under the TPA include use of integrated road/rail/freight/port facilities and each infrastructure singly. What is excluded is third party operator access to intellectual property, supply of goods or “*production processes*”.

This last exception is important, as where a service provider can identify that access to a transport route or facility comprises an integral but subsidiary part of a service (best characterised as part of the “*production process*”), then access to the route/facility will be denied.

The TPA declaration access regime may require private owners of monopoly infrastructure to allow upstream or downstream competitors access to essential services enabled by the infrastructure. In this way, groups of small operators will not be forced to re-duplicate services where duplication is uneconomical.

Third party access can be achieved by:

- seeking an application for a Ministerial “*declaration*”, which then provides a right to negotiate terms and conditions (including fair payment) to access services with the service provider; or
- an acknowledged effective access regime (being legislative (usually State based), or by way of industry code), or
- a documented undertaking by the service operator to grant access on certain terms.

Reliance on Commonwealth access regimes under the TPA could be one mechanism for access to **road, rail and ports** in SA.

The development of effective road links to freight product is an integral part of any access regime.

Understanding the obligations to develop and maintain roads, whether under Mining Leases, Crown Development or major project development approvals is an important aspect of any access regime.

Sparke Helmore Lawyers are conducting a breakfast seminar on Thursday 24 April 2008, level 9, 55 Currie Street, Adelaide.

For an understanding of the importance of:

- access regimes in providing integrated service infrastructure;
- the role of freight routes and an understanding of permissible planning processes for those roads; and
- the legislative basis which underwrites community expectations for minimising the impact of freight routes in built up areas.
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The details of this breakfast seminar are:

Access to Infrastructure - Product to Port
Port, Rail, Roads - Who bears the cost of access, creation and maintenance?
Part IIIA Trade Practice Act Implications.

Speaker for this event is Leonie Paulson, who is a consultant in the Sparke Helmore mining and resources team where she practices in the areas of environment, planning, infrastructure support to mining and all aspects of statutory compliance for the mining industry.

To register for this event please contact: **Tracey Gold** Business Development & Marketing Executive, Sparke Helmore.

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