

FACT SHEET

Local government compliance and enforcement – summary of Draft Report

May 2014

Overview

The NSW Government has a target of \$750 million in reduced ‘red tape’ costs for business and the community by June 2015.

To help achieve this target, the NSW Government has engaged IPART to undertake a review of local government compliance and enforcement activity in NSW. This is the first in a series of red tape reviews IPART will be undertaking on behalf of the NSW Government.

Our draft recommendations are expected to:

- ▼ reduce red tape to businesses and individuals by at least \$177.7 million per year
- ▼ save councils approximately \$42.4 million per year
- ▼ save the NSW Government about \$1.3 million per year
- ▼ provide net benefits to the community of NSW of \$220.5 million per year.

What have we found?

The draft report highlights the extensive role of NSW councils as regulators of local communities across the State. We identified that councils have 121 regulatory functions, involving 309 separate regulatory roles, emanating from 67 State Acts, which are administered by approximately 31 State agencies.

We have found a strong case for increased consistency, co-ordination, co-operation and harmonisation amongst councils in undertaking their regulatory roles. At the same time, we recognise the need to reflect local preferences in council approaches where appropriate.

Significant gains for business and the community can be achieved through enhanced:

- ▼ interaction and coordination between State Government agencies and local councils – during both the development and implementation of new regulation
- ▼ council regulatory capacity and capability (eg, through reduced delays and more consistency across and within councils)
- ▼ collaboration between councils (to maximise economies of scale, improve consistency where appropriate and share expertise)
- ▼ sharing of ideas and leading practices amongst councils (to also maximise the benefits of separate councils).

Impact and recommendations

The savings identified above relate to proposed recommendations which aim to improve the *existing stock* of regulation currently in force in NSW.

In addition, our draft recommendations to improve regulatory impact assessment processes would prevent \$48 million per year of *new* red tape, on average, over the next 10 years. This would also provide a further \$21 million per year in net benefits for NSW,¹ assuming:

- ▼ the loss of community benefits that could potentially be gained from new regulation
- ▼ no estimated change in costs to local councils, and
- ▼ an increase in costs to the NSW Government.²

The draft recommendations that account for the largest reductions in red tape are:

- ▼ \$59.2 million per year saved in improving road access for heavy vehicles. Potentially the gains are far larger, with heavy vehicle access restrictions estimated to cost \$366 million per year in NSW.
- ▼ \$36 million per year saved by preventing councils from imposing conditions of consent above what is required by the Building Code of Australia.
- ▼ \$19.4 million per year saved in implementing a partnership arrangement between the NSW Department of Planning and Infrastructure and local government, with net benefits of \$17.9 million per year. There are substantial additional benefits possible from continued improvements in planning, with the excessive costs associated with planning estimated to be in the order of about \$300 million per year.

In addition, draft recommendations regarding increased sharing of regulatory services and resources across councils could reduce council costs by \$30 million per year.

¹ The Better Regulation Office's guidelines for estimating red tape savings towards the \$750 million target indicate that these savings should be considered separately, as they relate to minimising the burden of potential future regulation, rather than minimising the impact of the existing stock of regulation.

² The CIE, *Local Government Compliance and Enforcement – Quantifying the impacts of IPART's recommendations*, June 2013, pp 23-25.

Our draft recommendations are intended to complement the work of the NSW Planning System Review, Independent Local Government Review Panel and the Local Government Acts Taskforce.

Our report highlights a number of examples of best practice regulatory approaches stakeholders have provided to us in the course of the review. These practices may have scope to further reduce red tape and benefit councils, businesses and the community, if more broadly adopted.

Our draft recommendations and best practice findings are listed at the end of this Fact Sheet in **Attachment A**.

The Draft Report, along with further information on IPART's review, is available at IPART's website <<http://www.ipart.nsw.gov.au>>.

What happens next?

We invite all stakeholders including businesses, business groups, councils, community groups, individuals and NSW Government departments or agencies to make written submissions in response to our Draft Report by **4 July 2014**.

Late submissions may not be accepted at IPART's discretion.

Submissions may comment on any or all of the draft recommendations and findings made, or on any other issues stakeholders consider relevant to the review.

We would prefer to receive them electronically via our online submission form <www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission>.

You can also send comments by mail to:

Regulation Review - Local government compliance and enforcement

Independent Pricing and Regulatory Tribunal
PO Box Q290

QVB Post Office NSW 1230

Our normal practice is to make submissions publicly available on our website on <www.ipart.nsw.gov.au> as soon as possible after the closing date for submissions. If you wish to view copies of submissions but do not have access to the website, you can make alternative arrangements by telephoning one of the staff members listed on the previous page.

If you would like further information on making a submission, IPART's submission policy is available on our website.

After we have considered all the information and views expressed in submissions, we will provide our Final Report to the NSW Government in September 2014.

Attachment A

Draft Recommendations

A new partnership between State Government and local government

- 1 Subject to cost benefit analysis, the NSW Department of Planning and Infrastructure (DoPI) should engage in a Partnership Model with local government, similar to the Food Regulation Partnership, to enhance the capacity and capability of councils to undertake their regulatory functions. This should include:
 - enshrining the partnership model in legislation
 - clear delineation of regulatory roles and responsibilities
 - a risk-based approach to regulation supported by a compliance and enforcement policy
 - use and publication of reported data to assess and assist council performance
 - a dedicated consultation forum for strategic consultation with councils
 - ability for councils to recover their efficient regulatory costs

- a system of periodic review and assessment of the partnership agreement
- a dedicated local government unit to provide:
 - o a council hotline to provide support and assistance
 - o a password-protected local government online portal
 - o guidelines, advice and protocols
 - o standardised compliance tools (eg, forms and templates)
 - o coordinated meetings, workshops and training with councils and other stakeholders.

- 2 Subject to cost benefit analysis, the NSW Environment Protection Authority should engage in a Partnership Model with local government, similar to the Food Regulation Partnership (as per Draft Recommendation 1).

Improving the regulatory framework at the State level

- 3 The Better Regulation Office (BRO) should revise the *NSW Guide to Better Regulation* (November 2009) to include requirements for developing regulations involving regulatory or other responsibilities for local government, in particular:
 - consideration of whether a regulatory proposal involves responsibilities for local government
 - clear identification and delineation of State and local government responsibilities
 - consideration of the costs and benefits of regulatory options on local government
 - assessment of the capacity and capability of local government to administer and implement the proposed responsibilities, including consideration of adequate cost recovery mechanisms for local government
 - consultation with local government to inform development of the regulatory proposal

- if establishing a jointly provided service or function, agreement with local government as to the objectives, design, standards and shared funding arrangements, and
 - development of an implementation and compliance plan.
- 4 The NSW Government should establish better regulation principles with a statutory basis. This would require:
- amendment of the *Subordinate Legislation Act 1989* (NSW) or new legislation, and
 - giving statutory force to the NSW *Guide to Better Regulation* (November 2009) and enshrining principles in legislation.
- 5 The NSW Government should maintain the register of local government regulatory functions (currently available on IPART's website) to:
- manage the volume of regulation delegating regulatory responsibilities to local government
 - be used by State agencies in the policy development of regulations to avoid creating duplications or overlaps with new or amended functions or powers.
- 6 The BRO should:
- Develop a Regulators' Compliance Code for local government, similar to the one currently in operation in the UK, to guide local government in undertaking enforcement activities. This should be undertaken in consultation with the NSW Ombudsman and State and local government regulators.
 - Include local government regulators in its Regulators' Group or network.
 - Develop simplified cost benefit analysis guidance material for local government to undertake proportional assessments of the costs and benefits of regulatory actions or policies, including consideration of alternatives.
- Develop simplified guidance for the development of local government policies and statutory instruments.
- 7 The NSW Ombudsman should be given a statutory responsibility to develop and maintain a more detailed model enforcement policy and updated guidelines for use by councils to guide on-the-ground enforcement:
- The model policy should be developed in collaboration with State and local government regulators.
 - The model policy should be consistent with the proposed Regulators' Compliance Code, if adopted.
 - The NSW Ombudsman should assist councils to implement the model enforcement policy and guidelines, through fee-based training.
 - All councils should adopt the new model enforcement policy, make the policy publicly available and train compliance staff in exercising discretion and implementation of the policy.
- 8 The *Local Government Act 1993* (NSW) should be amended to abolish Local Orders Policies (LOPs), as the function of LOPs will be replaced by adoption of the new model enforcement policy.
- 9 The NSW Government should publish and distribute guidance material for:
- councils in setting their regulatory fees and charges (to apply to fees and charges, where councils have discretion), and
 - State agencies in setting councils' regulatory fees and charges.

This guidance material should include principles and methodologies for estimating efficient costs, setting fees and charges, and reviewing and updating these fees and charges over time.

Enhancing regulatory collaboration amongst councils

10 The *Local Government Act 1993* (NSW) should be amended to remove any impediments to, or facilitate the easier use of, shared regulatory services. In particular, consideration should be given to:

- removing or amending section 379 – which currently restricts the delegation of a council's regulatory functions under Chapter 7 of the *Local Government Act*, including to shared services bodies
- amending section 377, which prohibits any delegation by a council of the acceptance of tenders.

If Regional Organisations of Councils (ROCs) continue as the preferred form of council collaboration, consideration should also be given to whether the Act should specify how and in what form ROCs should be established (including whether management frameworks should be prescribed).

11 The NSW Government should encourage and develop incentives to form collaborative arrangements in relation to regulatory functions. This should include training, guidance and promotion of leading practice collaborative arrangements, and the establishment of a small repayable fund to assist in setting up shared regulatory services. Councils could obtain a loan with a concessional rate of interest that is repayable within a specified period. This should tend to be cost neutral over time, as cost savings to councils would be achieved from the collaborative arrangements.

Improving the regulatory framework at the local level

12 The *Local Government Act 1993* (NSW) should be amended to:

- remove duplication between approvals under the *Local Government Act 1993* (NSW) and other Acts, including the *Environmental Planning & Assessment Act 1979* (NSW) and *Roads Act 1993* (NSW) in terms of: footpath restaurants; mobile vendors; installation of amusement devices; installation and operation of manufactured homes; stormwater drainage approvals
- remove low-risk activities from the list of activities currently requiring approval under section 68 of the *Local Government Act*, including: Busking; Set up, operation or use of a loudspeaker or sound amplifying device; and Deliver a public address or hold a religious service or public meeting
- allow for longer duration and automatic renewal of approvals
- provide more standard exemptions or minimum requirements from section 68 approvals, where possible, initially in the areas of: footpath restaurants; A-frames or sandwich boards; skip bins; domestic oil or solid fuel heaters
- abolish Local Approvals Policies (LAPs) or, alternatively: reduce the consultation period to 28 days in line with Development Control Plans; remove sunset clauses; require Ministerial approval only for amendments of substance; centralise LAPs in alphabetical order in one location on DLG's website; consolidate activities within 1 LAP per council; and DLG to provide a model LAP in consultation with councils
- enable councils to recognise section 68 approvals issued by another council (ie, mutual recognition of section 68 approvals), for example with mobile vendors and skip bins.

- 13 The NSW Government, as part of its reforms of the *Local Government Act 1993* (NSW), should amend the Act to provide a modern, consolidated, effective suite of compliance and enforcement powers and sanctions for councils and council enforcement officers.

The powers would be applicable to all new State Acts or regulations. This suite should be based on the best of existing provisions in other legislation and developed in consultation with the NSW Ombudsman, Better Regulation Office, State and local government regulators. This should include effective cost recovery mechanisms to fund enforcement activities.

- 14 Councils should support the use of alternative and internal review mechanisms (for example, the NSW Ombudsman, NSW Small Business Commissioner, and private providers of ADR services) to provide business and the community with a path of redress for complaints (not including complaints concerning penalty notices) that is less time-consuming and costly than more formal appeal options.

Improving regulatory outcomes

- 15 As part of the State's Quality Regulatory Services initiative, the NSW Government should require all State agencies that devolve regulatory responsibilities to local government to:
- consider councils' responsibilities in developing their risk-based approach to compliance and enforcement
 - consider councils' responsibilities in defining the regulatory outcomes and setting monitoring mechanisms to measure the outcomes, and
 - identify what information needs to be obtained from councils in relation to their regulatory activities to measure regulatory outcomes and how this data will be used or published to assess and assist council performance.

These requirements should be developed in consultation with local government regulators and commence by the end of 2014.

Planning

- 16 DoPI, in consultation with key stakeholders and on consideration of existing approaches, should:
- identify which development consent conditions may be applied across council areas, including regional groupings of councils, and which conditions will vary across council areas
 - then develop (where appropriate) a standardised and consolidated set of development consent conditions for councils to utilise for different forms of development.
- 17 The NSW Government (eg, DoPI) should enable building owners to submit Annual Fire Safety Statements online to councils and the Commissioner of the Fire and Rescue Service.

Building and construction

- 18 The NSW Government should:
- subject to a cost benefit analysis, create a stronger, single State regulator, the Building Authority, containing, at a minimum, the roles of the Building Professionals Board and the building trades regulation aspects of NSW Fair Trading, and
 - create a more robust, coordinated framework for interacting with councils through instituting a 'Partnership Model' (as discussed in Chapter 2).
- 19 The Building Professionals Board or Building Authority (if adopted) should:
- initially, modify its register of accredited certifiers to link directly with its register of disciplinary action

- in the longer term, create a single register that enables consumers to check a certifier’s accreditation and whether the certifier has had any disciplinary action taken against them at the same time.
- 20 Councils seeking to impose conditions of consent above that of the Building Code of Australia (BCA) (now part of the National Construction Code (NCC)) must conduct a cost benefit analysis (CBA) justifying the benefits of these additional requirements and seek approval from an independent body, such as IPART, under a ‘gateway’ model.
 - 21 Certifiers should be required to inform council of builders’ breaches if they are not addressed to the certifier’s satisfaction by the builder within a fixed time period. Where councils have been notified, they should be required to respond to the certifier in writing within a set period of time. If council does not respond within the specified period, then the certifier can issue an occupation certificate.
 - 22 The Building Professionals Board (BPB) or Building Authority (if adopted) should incorporate into the current Principal Certifying Authority signage information setting out contact details for specific complaints (eg, off-site impacts like building refuse or run-off and onsite issues). The BPB or Building Authority should trial the use of such a sign in a specific local government area to see if time is reduced in redirecting complaints for councils, the BPB/Authority and certifiers.
- 24 The NSW Food Authority, in consultation with councils, should stipulate a maximum frequency of inspections by councils of retail food businesses with a strong record of compliance to reduce over-inspection and costs.
 - 25 The NSW Food Authority should finalise its internal review and work with councils to implement its reforms within 18 months of its review being completed to:
 - remove any regulatory overlap (eg, of related retail and non-retail food business on the same premises)
 - develop a single register of notification for all food businesses, or a suitable alternative, to avoid the need for businesses to notify both councils and the Food Authority
 - review the notification system to determine whether negligible risk food businesses should be exempt from the requirement to notify
 - ensure the introduction of the standard inspections template for use by all councils in NSW, to enhance the consistency of inspections across the State.
 - 26 DLG should:
 - develop a ‘model’ risk-based inspections program to assist councils in developing their own programs under the *Swimming Pools Act 1992* (NSW)
 - issue guidance material on the implementation of amendments to the *Swimming Pools Act 1992* (NSW)
 - provide a series of workshops for councils (by region) on how to implement and comply with their new responsibilities under the *Swimming Pools Act 1992* (NSW)
 - promote the use of shared services or ‘flying squads’ for swimming pool inspections, if a backlog becomes apparent under the new regulatory regime

Public health, safety and the environment

- 23 All councils should adopt the NSW Food Authority’s guidelines on mobile food vendors. This will allow for food safety inspections to be conducted in a mobile food vendor’s ‘home jurisdiction’, which will be recognised by other councils.

- review the *Swimming Pools Act 1992* (NSW) in less than 5 years to determine whether the benefits of the legislative changes clearly outweigh the costs.

27 Ageing, Disability and Home Care, in consultation with the Division of Local Government, should:

- develop a ‘model’ risk based inspections program, including an inspections checklist, to assist councils in developing their own programs under the *Boarding Houses Act 2012* (NSW)
- issue guidance material on the implementation of the *Boarding Houses Act 2012* (NSW)
- co-ordinate a series of workshops for council employees (by region) on how to implement and comply with responsibilities under the *Boarding Houses Act 2012* (NSW).

28 DoPI, in consultation with the EPA and other relevant stakeholders, should:

- develop standard waste management requirements for inclusion in the NSW Housing and NSW Industrial and Commercial Codes, which establishes site waste management standards and requirements for exempt and complying development, and
- remove the need for applicants to submit separate Waste Management Plans to councils for these types of developments.

Parking and road transport

29 Councils should either:

- solely use the State Debt Recover Office (SDRO) to handle parking fine requests for review or appeals to remove current confusion, duplication and reduce costs, or

- adopt the SDRO’s guide for handling representations where a council is using SDRO’s basic service package and retains the role of handling parking fine requests for review or appeals, to ensure consistency and fairness across the state.

30 DLG should review and, where necessary update, its free parking area agreement guidelines (including model agreements). Councils should then have a free parking area agreement in place consistent with these guidelines.

31 That the NSW Government:

- notes the potential red tape savings and net benefits that could accrue to NSW through the National Heavy Vehicle Regulator (NHVR) providing:
 - o technical assistance to councils in certifying local roads for access by heavy vehicles, and
 - o guidelines to councils for assessing applications for heavy vehicle access to local roads in relation to potential amenity and safety impacts; and
- in the event of delay in the NHVR providing these elements of the national reforms, funds an interim unit to provide this assistance to local government.

Companion animal management

32 DLG should allow for an optional 1-step registration process, whereby:

- the owner could microchip and register their pet at the same time
- the person completing the microchipping would act as a registration agent for councils either by providing access to online facilities (per recommendation below) or passing the registration onto councils (on an opt-in, fee-for-service basis).

33 DLG should allow for online companion animals registration (including provision to change details of registration online).

- 34 DLG should implement targeted, responsible pet ownership campaigns with councils in particular locations/communities of concern with the input of industry experts, providing accessible facilities for desexing where these campaigns are rolled out.
- 35 DLG should amend the companion animals registration form so an owner's date of birth is mandatorily captured information, as well as other unique identifiers such as driver's licence number or official photo ID number or Medicare number.
- 36 DLG should amend the *Companion Animals Act 1998* (NSW) to enable fees to be periodically indexed by CPI.

Other areas

- 37 The NSW Government should amend section 125 of the *Roads Act 1993* (NSW) to extend the lease terms for footway restaurants to 10 years, subject to lease provisions ensuring adequate access by utility providers.
- 38 DLG should collect data on the time taken for Section 68 approvals to be processed by councils. This data should be collated and reported as an indicator of performance in this area to reduce delays.
- 39 Councils should issue longer-term DAs for periods of 3-5 years for recurrent local community events (subject to lodging minor variations as section 96 EP&A Act amendments).

Findings on best practice

- 1 The use of portable technology such as iPads by council enforcement officers (eg, in tree assessments by Sutherland Shire Council) has the potential to cut costs to councils and the public.
- 2 Greater use of existing networks such as AELERT and HCCREMS (Hunter Councils Inc) provide greater resources, consistency of approach and build expertise or capability in undertaking council environmental compliance activities.

- 3 Councils would benefit from the use of the following self-assessment tools:
 - the Hunter Council Inc (HCCREMS) Compliance System Self-assessment tool to assess regulatory capacity to enhance regulatory performance
 - the Hunter Council Inc (HCCREMS) Electronic Review of Environmental Factors (REF) Template to assist councils in undertaking Part 5 assessments under the *Environmental Planning & Assessment Act 1979* (NSW) of their own activities
 - the Smart Compliance Approach, currently used by Newcastle City Council and adapted from the US EPA, to provide a framework for using performance data to achieve better regulatory outcomes
 - the NSW EPA's online "Illegal Dumping: A Resource for NSW Agencies" tool/guide available through AELERT and EPA websites.
- 4 Publication of more significant individual local government regulatory instruments on a central site, such as the 'NSW Legislation' website, will allow a stocktake, and facilitate review and assessment, of such instruments. These regulatory instruments would be formal plans or policies developed by councils under State legislation (eg, Local Environmental Plans, Development Control Plans, Local Approvals Policies and Local Orders Policies).
- 5 The use of 'SmartForms' by councils, through the Federal Government's 'GovForms' or individual council websites, reduces costs to businesses and councils by enabling online submission and payment of applications directly to councils.

- 6 The provision of guidance material to assist businesses in obtaining approvals and complying with regulatory requirements, such as the guidance provided by the Federal Government's Australian Business Licence and Information Service (ABLIS) or the Queensland Local Government Toolbox (www.lgtoolbox.qld.gov.au), can reduce the regulatory burden on businesses and the community.
- 7 Projects like the Electronic Housing Code provide considerable benefits to businesses and the community by providing a single, consistent, time-saving, online process to obtain an approval.
- 8 The development of central registers (eg, Companion Animals register) by State agencies that devolve regulatory responsibilities to councils can substantially reduce administrative costs for regulated entities and councils, and assist with more efficient implementation of regulation (eg, assist with data collection and risk analysis).
- 9 Memorandums of Understanding between State agencies and councils in relation to enforcement and compliance activities (eg, between local police and local council) facilitate information sharing to achieve better communication, coordination and enforcement outcomes.
- 10 Councils engaging independent panels or consultants where development applications or DAs relate to land owned by local government improves transparency and probity.
- 11 Where proponents seek to develop infrastructure on public land owned by the council, providing notice of the relevant leasing or licencing options and conditions likely to be attached to the use of the land (where practical) prior to the requirement for a DA to be submitted could reduce unnecessary costs for proponents.
- 12 Councils can use Order powers under the *Environmental Planning & Assessment Act 1979* (NSW) (eg, under s121O) to allow certain modifications to developments. This circumvents the need for the applicant to obtain additional council approvals or development consents when there are concerns with existing structures (eg, safety concerns).
- 13 Council policies that identify, prioritise and if possible, fast-track emergency repair works within existing regulatory processes (eg, urgent tree trimming work following a storm or urgent repair works following a flood) would reduce costs.
- 14 Broadening the scope of DLG's current Promoting Better Practice program would strengthen its assessment of regulatory performance. Greater promotion of DLG's better practice findings amongst all councils would improve regulatory outcomes.