

Draft

**LGNSW Response to NSW Government on
IPART Final Report on Local Government
Enforcement and Compliance**

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Table of contents

Introduction	3
Comments	3
State and local government interaction	4
Council capacity and capability	5
Consistency and standardisation	5
Council collaboration	5
Conclusion	6
Attachment: Intergovernmental Agreement between LGNSW and NSW Government	

Introduction

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the long-awaited release of the final report of the Independent Pricing and Regulatory Tribunal (IPART) *Final Report on Local Government Compliance and Enforcement* (the Report) and the NSW Government's initial response to IPART's recommendations.

We commend the Government for putting out many of the final recommendations for further consultation. LGNSW welcomes the NSW Government's commitment to further consultation on streamlining approval processes within councils and state agencies.

As the final report was completed in October 2014, many of its key recommendations and findings are dated. Some of recommendations have already been implemented. Others have been overtaken by legislative and regulatory changes or have been the subject of more recent reviews. Since the report was completed there have been numerous amendments to the Local Government Act, the Environmental Planning and Assessment Act, the Companion Animals Act and numerous other Acts affecting local government. The new Crown Lands Management Act has commenced. There have also been significant improvements in intergovernmental collaboration between the National Heavy Vehicle Regulator, TfNSW and local government in the time that has elapsed.

Given these changes we limit our comments to the major themes and principles of the Report and some of the broader/key recommendations.

Comments

LGNSW starts from the position that regulation is necessary to protect public and individual interests. Regulations are generally well intended, based on perceived needs and are commonly a response to public demands. The questions for IPART involve the equity, efficiency and effectiveness of our current regulatory frameworks. It is not simply a matter of reducing regulation or "cutting red tape", it is a matter of improving regulation. After recent events nobody would deny the need for tougher regulation in areas such as building and construction, the banking and finance sector and in relation to water usage.

LGNSW generally supports the intent and objectives of the 42 recommendations of the Report. The report has considerable overlaps with the later report on the *Review of the Revenue and Compliance Burdens on Local Government* (April 2016), the 51 recommendations of which are all fully or partially supported by LGNSW. This submission should be read in conjunction with the LGNSW submission in response to that [report](#).

LGNSW has constantly stressed the majority of regulatory compliance and enforcement functions of local government originate from the State Government. Councils do not make laws and mostly act as agents of the State Government in enforcing regulations.

It is important that IPART has recognised this and the regulatory burden this places on councils as well as businesses and the community. IPART's finding that councils have 121

regulatory functions, involving 309 separate regulatory roles emanating from 67 State Acts which were administered by approximately 31 state agencies, clearly demonstrates the size and complexity of the burden.

LGNSW welcomes IPART's focus on reducing the regulatory burden on local government. IPART estimated implementation of the Report's recommendations would save councils around \$42 million per annum (in 2014 dollars). These are significant savings and should be pursued. It comes on top of estimated savings of \$178 million per annum to businesses and individuals.

State and local government interaction

Given that local government regulatory responsibilities stem from NSW Government legislation and the responsibilities are divided between both spheres of government, LGNSW strongly agrees with IPART there is a need for more effective interaction. We also agree with IPART that the Food Regulation Partnership instituted by the Food Authority and local government presents a good model for cooperation and effective interaction. LGNSW represented local government in the development of this model.

Councils are very supportive of the Food Regulation Partnership as are businesses and other stakeholders. Councils welcome the clear delineation of regulatory roles, dedicated consultation forum for strategic collaboration and capacity building and ability to flexibly recover efficient regulatory costs under the Partnership framework.

LGNSW agrees with IPART the Food Regulation Partnership model is an example of best practice and should be applied more widely. This would include regulation in areas such as building, planning, the environment, transport and environmental health. The latter includes legionella regulation. In contrast to food regulation, environmental health regulation with NSW Health involvement is far less supported by the NSW Government, in terms of council capacity building and partnerships.

Another good example of State and local government interaction on new operational and regulatory matters was the process set in place around the implementation of the proposed Fire and Emergency Services Levy (FESL). In this case NSW Treasury closely engaged LGNSW, the NSW Local Government Revenue Professionals and the OLG in developing the legislation, regulation and operational arrangements for the FESL. Treasury guaranteed cost neutrality to councils with all set up and ongoing operational costs to be covered. Early engagement ensured council systems would be compatible and councils would have capability and capacity. There was extensive engagement in the year leading up to the proposed implementation date. The parties involved were disappointed with the deferral of the FESL given the effort that had gone into getting it to operational readiness. However, it remains another model example of State and local government collaboration.

This approach is consistent with the Intergovernmental Agreement between LGNSW and the NSW Government entered into in October 2019 (attached). The Agreement is predicated on both spheres of government working as equal partners.

Council capacity and capability

Capacity and capability vary widely across the 128 councils in NSW.

LGNSW agrees many councils lack the capacity and capability to carry out their regulatory roles effectively. There are several reasons for this including:

- Lack of resources to undertake the regulatory burden imposed on them. Local government is subject to tight financial constraints and often cannot afford the additional staff resources required. This is often the result of the absence of cost recovery mechanisms for the regulatory activity and/or regulated fees that do not provide for full cost recovery.
- Poor regulatory design that is complex and difficult to administer, often accompanied by onerous reporting requirements.
- Lack of State Government support for capacity and capability building.
- Difficulties in attracting and retaining skilled staff, particularly in rural and regional areas.
- Logistical difficulties in service delivery to rural and remote areas including the costs of enforcing regulations over long distances.

Many of these issues could be minimised or avoided if state agencies would involve local government as partners at the outset in when formulating the design and implementation of regulatory frameworks.

Consistency and standardisation

LGNSW agrees there are benefits to be gained from greater consistency and standardisation in the application of regulation. However, local government does not accept regulation should or could be absolutely uniform across NSW.

Regulatory frameworks need to accommodate the diverse circumstances of the 128 councils in NSW and their respective priorities. For example, enforcement of parking regulations is more likely to be a higher priority for high density urban councils than it is for rural councils, similarly, planning regulations. Councils do not consider their primary role to be regulatory agents of the NSW Government, they are there to serve their communities. LGNSW is pleased IPART has recognised the need to reflect local preferences and acknowledged there are benefits from diversity including innovation in regulatory enforcement.

Council collaboration

LGNSW agrees there are benefits to be gained from greater council collaboration in undertaking regulatory functions. This already occurs to some extent. For example, many rural councils share skilled staff necessary for implementing regulations such as planners, building surveyors, environmental health officers and engineers. Local Water Utility (LWU) alliances have also served this purpose, for example, Lower Macquarie Water Utility Alliance and the Central West (Centroc) Water Utilities Alliance. Regional Organisations of Councils (ROCs) have also fostered collaboration in many areas, although to varying degrees.

The more recently established Joint Organisations (JOs) are largely replacing ROCs in rural and regional NSW. JOs also have potential to promote regional collaboration between

councils and with state agencies in regulatory functions. It is noted that collaborating in service delivery is not a core function of JOs. Their core functions are:

- Regional strategic planning and priority setting.
- Intergovernmental collaboration.
- Shared leadership and advocacy.

However, the legislation allows JOs to engage in other functions such as shared services and procurement. It is for the member councils to decide what other roles and functions the JO may take on. LGNSW encourages regional collaboration in regulatory functions and service delivery.

The 13 JOs vary widely in size, capacity and maturity. Some JOs are recent collaborations while others are based on long established and effective ROCs. The future of many JOs remains uncertain, particularly in the absence of a State Government commitment to ongoing funding support. LGNSW is advocating for funding certainty to ensure the effectiveness of JOs.

Conclusion

LGNSW advocates:

- adoption of a genuine partnership between state and local government in conception, design and implementation of regulations.
- stronger collaboration with local government in designing and building regulatory frameworks
- wider adoption of the Food Regulation-type model of step-by-step and close collaboration between State and local government.
- a risk-based approach to regulation that it is more focussed and efficient.
- greater consideration of the economic costs of regulation on businesses and the community in proposing and designing regulation.
- greater consideration of the costs and other regulatory burdens regulatory enforcement places on local government.
- ensuring full cost recovery mechanisms are built into regulatory frameworks.
- State Government support in developing and maintaining necessary council capability and capacity
- greater flexibility for councils in administering regulation to reflect local preferences and priorities.
- removal of unnecessary regulation subject to local government agreement.

If you would like further information in relation to this submission and related issues, please contact Shaun McBride, Chief Economist on 9242 4072 or email shaun.mcbride@lgnsw.org.au.

(SEE ATTACHMENT)