

Draft
Local Government NSW
Submission to NSW Government on the
Recommendations of the Independent
Pricing and Regulatory Tribunal Review of
the Reporting and Compliance Burden on
Local Government

October 2019

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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) Review of the Reporting and Compliance Burdens on Local Government 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. However, it is disappointing that a number of significant recommendations have been ruled out from further consultation. LGNSW recommends that the report be considered holistically, with the entire regulatory and compliance burden on local government open for further consultation. This needs to be an ongoing process not a finite exercise.

This is a draft submission awaiting review by the LGNSW Board. Any revisions made by the Board will be forwarded.

Comments

LGNSW welcomed the commissioning of the Independent Pricing and Regulatory Tribunal of NSW (IPART) Review of Reporting and Compliance Burdens on Local Government in 2015 (the Review). It was as an important initiative in its own right and was perceived as a key element of the NSW local government reform process.

LGNSW actively participated in the review process, making comprehensive submissions in response to the Review's issues paper and draft report and participating in the associated roundtables and public hearings. We appreciated our access to the review process and IPART's recognition of our views.

Our advocacy was based on extensive consultation with councils and the local government sector over a long period. The policy positions advocated by LGNSW represent a broad consensus across local government and reflect positions endorsed by LGNSW Annual Conference resolutions.

The IPART report (the Report) is more than a simple list of unrelated recommendations that would marginally reduce regulatory burdens and achieve piecemeal efficiency gains. It has the potential to contribute to fundamental reform of the relationship between the NSW Government and Local Government in NSW.

LGNSW is pleased that IPART has acknowledged that there is direct cost shifting onto Local Government by the NSW Government as well as the imposition of large and unnecessary administrative burdens. These are impositions that have been repeatedly denied or played down by successive NSW Governments. LGNSW supports the

objectives of addressing systematic issues to reduce cost shifting onto local government and of streamlining reporting requirements.

LGNSW supported the majority of the recommendations of IPART's draft report in 2016 and we provide full or qualified support for the recommendations presented in the final report.

The views expressed in this submission are consistent with those contained in our previous representations to IPART.

This submission presents LGNSW's position on each of the IPART recommendations. Comment is not restricted to the recommendations that the Government has flagged as being open for consultation. We acknowledge that some of the recommendations have been already adopted in recent legislation, are subjects of other ongoing and planned review processes or have been overtaken by changes since 2016. However, there are many that remain unaddressed or where responses remain incomplete. As noted previously, we see this as an ongoing process

The IPART recommendations are not politically sensitive or contentious. On the whole, they are pragmatic recommendations that will remove unnecessary and often duplicative compliance and reporting processes. They will result in the reduction or avoidance of unnecessary costs and produce efficiency gains that will benefit state and local government and ultimately the entire NSW community. These potential gains should be vigorously pursued.

The recently executed Intergovernmental Agreement (IGA) between the NSW Government and LGNSW provides a platform from which to move forward on reform of the regulatory burden.

The IGA obliges the NSW Government to consult with LGNSW before any laws or significant policy initiatives impacting on the sector prides an underpinning for a joint program to further reduce regulatory and compliance burdens.

The IGA also recognises cost shifting. Importantly, it commits the State Government to consideration of councils' financial capability and budget cycles before they are asked to provide new or expanded functions.

Even more importantly, by signing this agreement the Berejiklian-Barilaro Government has committed itself to alleviate potential budgetary impacts on councils where possible.

This submission should be read in conjunction with our earlier submissions to IPART:

- [LGNSW Response to IPART Draft Report – February 2016](#)
- [LGNSW Submission to IPART – August 2015](#)

Systemic Issues

1. That the Department of Finance, Services and Innovation revise the NSW Guide to Better Regulation to include requirements for State agencies developing regulations involving regulatory or other responsibilities for local government, as part of the regulation-making process, to:

- consider whether a regulatory proposal involves responsibilities for local government;
- clearly identify and delineate State and local government responsibilities;
- consider the costs and benefits of regulatory options on local government;
- assess the capacity and capability of local government to administer and implement the proposed responsibilities, including consideration of adequate cost recovery mechanisms for local government;
- take a coordinated, whole-of-government approach to developing the regulatory proposal;
- collaborate with local government to inform development of the regulatory proposal
- if establishing a jointly provided service or function, reach agreement with local government as to the objectives, design, standards and shared funding arrangements, and
- develop an implementation and compliance plan.

OLG Comment:

Treasury is currently developing a new regulatory policy guideline, which will provide guidance on undertaking proportional assessments of the costs and benefits of regulations, including the cost impact on State and Local Government, consideration of alternatives, and engagement with all affected stakeholders to inform the development of regulatory policies. In December 2017, the Premier assigned responsibility for the NSW regulatory framework to the Treasurer. This means Treasury is now the lead agency for the whole-of-government regulatory initiatives (instead of DPC).

LGNSW Response

Support

Comment:

LGNSW is concerned about the apparent lack of progress and consultation on the development of a new regulatory guideline.

LGNSW also calls for the recommendation be strengthened by inclusion of a requirement to consult with Local Government at the commencement of the regulation-making process. The current wording that State agencies “collaborate with local government to inform development of the regulatory proposal” allows for Local Government engagement not to be sought until after the commitment to regulate is made.

2. That the NSW Government maintain a Register of local government reporting, planning and compliance obligations that should be used by NSW Government agencies in the

regulation-making process to manage the volume of regulatory requirements imposed on councils and to avoid creating unnecessary or duplicative requirements.

OLG Comment:

Not for consultation – see Pg 1 for details

LGNSW Response

Support

Comment:

LGNSW does not accept that this recommendation should be closed to consultation. There is no evidence that this recommendation has been acted on or overtaken by other initiatives. It is a fundamental recommendation and should be adopted.

The recommendation is consistent with LGNSW's initial submission to the *IPART – Review of Reporting and Compliance Burdens on Local Government*.

3. That the NSW Government remove restrictions on fees for statutory approvals and inspections to allow for the recovery of efficient costs, subject to monitoring and benchmarking.

OLG Comments:

Not for consultation – see Pg 1 for details

LGNSW Response

Support

Comment:

LGNSW does not accept that this recommendation should be closed to consultation.

LGNSW has long advocated for the deregulation of council fees and charges to allow for full cost recovery. LGNSW would support a monitoring and benchmarking framework provided that it was developed with and agreed with local government.

4. Where fees continue to be set by statute, that the relevant NSW Government agency reviews the level of the fees every three to five years and amends the relevant legislation to allow these fees to increase annually in line with CPI or an index of fee-related costs.

OLG Comments:

Not for consultation – see Pg 1 for details

LGNSW Response

Support

Comment:

LGNSW does not accept that this recommendation should be closed to consultation.

LGNSW advocates regular review and indexed adjustment of regulated fees. Ideally, this should be done annually. If not reviewed annually, the period between reviews should not exceed three years. Indexation should apply between reviews. If indexation is not applied between reviews, the review should provide for recovery of cumulative cost movements in that period.

5. That the NSW Government review the basis upon which the fees for Development Applications (DAs) are calculated to:

- better reflect the efficient cost to councils and the NSW Government of processing DAs;
- minimise disputes and subsequent adjustments, and
- facilitate online payment of DAs.

OLG Comment:

Further information is available on the Department of Planning, Industry and Environment's website linked here. <https://www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/EPA-Regulation-review>
Not for consultation – see Pg 1 for details.

LGNSW Response

Support

Comment:

The review of DA and other fees structures is long overdue. LGNSW notes the OLG refers to DPIE review of the EP&E Regulation 2000. This review process started in 2017 but appears to have stalled. LGNSW is seeking a briefing on the status of the Regulation Review from DPIE. The NSW Government should not arbitrarily force councils to provide services at less than efficient cost.

This recommendation should remain open for consultation.

6. That if statutory fees are capped below cost recovery to ensure affordability or for other policy reasons, then the NSW Government should reimburse councils for the shortfall in efficient costs.

OLG Comments: Not for consultation – see Pg 1 for details

LGNSW Response

Support

Comment:

Refer comment for point 5, above.

7. That the Department of Premier and Cabinet amend the Good Practice Guide to Grant Administration 2009, to:

- recognise local government as separate from non-government organisations
- remove acquittal requirements for untied grants
- explicitly address ongoing maintenance and renewal costs when funding new capital projects
- require agencies to rely on existing council reporting to assess financial stability and management performance of councils
- lengthen acquittal periods for ongoing grant programs to four years, and use Memorandum of Understanding (MOU) arrangements, rather than requiring councils to reapply annually, and
- provide for a streamlined acquittal process for grants of less than \$20,000 in total, examples of streamlining include:
 - not requiring further external financial audit
 - using risk-based controls and requirements, and
 - confining performance measurement to outcomes consistent with the purpose of the grant.

LGNSW Response

Support

Comment:

This is a common-sense recommendation that recognises councils are a sphere of government and exist in a constitutional and legislative framework. Councils are already subject to comprehensive regulatory oversight by state governments within frameworks that provide a high degree of accountability and transparency. Councils are already subject to financial audits by the Auditor General. Councils are also highly visible and under the intense scrutiny of their communities.

It is unnecessary and inefficient to overlay additional and duplicative reporting requirements on councils.

8. That NSW Government agencies collecting local government data and information make this data discoverable through the Data NSW open data portal or the Information Asset Register maintained by the Department of Finance, Services and Innovation.

LGNSW Response

Support

Comment:

LGNSW supports the intent of the recommendation and would support the formation of an expert group to further review the proposal.

9. That the Department of Finance, Services and Innovation:

- support NSW Government agencies to use the Open Data Rolling Release Schedule to establish clear timeframes for publishing local government data and information in Data NSW (in machine readable formats)

- support councils to make local government data and information available for discovery through Data NSW or the Information Asset Register, and
- support the Office of Local Government to develop a central portal for local government reporting and streamlined data collection.

LGNSW Response

Support

Comment:

Refer response to point 8.

10. That the Department of Planning and Environment, including through the Office of Local Government, review public notice print media requirements in the Local Government Act 1993, the Local Government (General) Regulation 2005, the Environmental Planning and Assessment Act 1979, and the Environmental Planning and Assessment Regulation 2000, and, where the cost to councils of using print media exceeds the benefit to the community, remove print media requirements and allow online advertising, mail-outs and other forms of communication as alternatives.

OLG Comment:

Not for consultation – see Pg 1 for details

LGNSW Response

Support

Comment:

The review of print media requirements should be undertaken in consultation with councils.

Water and Sewerage

11. That the Department of Primary Industries Water regulate Local Water Utilities (LWUs) on a catchment or regional basis, rather than on an individual LWU basis, using a whole-of-government, risk-based and outcomes-focused regulatory approach.

OLG Comment:

Not for consultation - see Pg 1 for details. Information about future related consultation will be found on the Department of Industry's website linked here <https://www.industry.nsw.gov.au/water> when available.

LGNSW Response

Support

Comment:

LGNSW and LWUs are engaged in discussions with DPIE Water on this matter.

12. That DPI Water amend the Best-Practice Management of Water Supply and Sewerage Guidelines to:

- streamline the NSW Performance Monitoring System to ensure each performance measure reported is:

- linked to a clear regulatory objective
- used by either most Local Water Utilities (LWUs) or DPI Water for compliance or meaningful comparative purposes
- not in excess of the performance measures required under the National Water Initiative, and
- not duplicating information reported to other NSW Government agencies.

- align trade waste reporting with other performance reporting, on a financial year basis, subject to consultation with LWUs, LGNSW and the Water Directorate.

OLG Comment:

Not for consultation - see Pg 1 for details. Information about future related consultation will be found on the Department of Industry's website linked here <https://www.industry.nsw.gov.au/water>

LGNSW Response

Support

Comment:

LGNSW and LWUs are engaged in discussions with DPIE Water on this matter.

13. That the Office of Local Government determine a standardised service report template to be used by technicians undertaking quarterly servicing of aerated wastewater treatment systems, in consultation with NSW Health and councils.

LGNSW Response

Support

Comment:

This recommendation broadly reflects the approach proposed by LGNSW in our submission on the draft report.

14. That the Local Government (General) Regulation 2005 be amended to require service reports to be provided to councils using the template determined by the Office of Local Government as a standard condition of approval to operate an aerated wastewater treatment system.

LGNSW Response

Support

Comment:

This recommendation broadly reflects the approach proposed by LGNSW in our submission on the draft report.

Planning

15. That the Department of Planning and Environment (DPE), now Department of Planning, Industry and Environment (DPIE):

- Implement a data sharing model with the Australian Bureau of Statistics in relation to building approvals in NSW.
- Introduce a consolidated data request of councils for the purposes of the Local Development Performance Monitoring (LDPM), Housing Monitor, State Environmental Planning Policy (Affordable Rental Housing) 2009 (Affordable Rental Housing) and State Environmental Planning Policy No 1 – Development Standards (SEPP 1 variations).
- Fund an upgrade of councils' software systems to automate the collection of data from councils for the purposes of the LDPM, Housing Monitor, Affordable Rental Housing and SEPP 1 variations.
- Publish the data collected from councils on Affordable Rental Housing and SEPP 1 variations data.
- Seek agreement with the Land & Environment Court to obtain appeal data directly from the Court.
- Remove the administrative requirement for councils to report to DPE on political donations or gifts under section 147 of the Environmental Planning & Assessment Act 1979.

LGNSW Response

Support

Comment:

Since IPART completed its report in 2016, implementation of ePlanning and the NSW Planning Portal have advanced significantly. LGNSW is of the strong view that data sharing should be underpinned by data sharing agreements between state and local government to provide clarity on issues such as: the information and data to be shared; the costs and benefits that will be incurred; custodianship of the data; any regulatory and contractual issues; and ongoing governance arrangements, including maintenance.

16. That the Environmental Planning & Assessment Act 1979 be amended to enable information or certificates under section 149(2) of the Environmental Planning & Assessment Act 1979 to be provided through the NSW Planning Portal.

Prior to this amendment, as part of the DPIE review of the EP&A Regulation, DPE should:

- review section 149(2) and (5) planning certificates to clarify and simplify the information to be provided, and ensure only information relevant in the conveyancing process is provided in a section 149(2) planning certificate, and:

- consider what section 149(2) information should be provided through the Planning Portal and whether that information should be provided in certificate form, having regard to:
- data quality assurance
- liability for accuracy of State or council information.

State and council costs, and mechanisms to recover costs.

OLG Comments:

Not for consultation - see Pg 1 for details.

LGNSW Response

Support

Comment:

LGNSW consider this matter to be ongoing and open for consultation.

The recommendation that, prior to provision of planning certificates through the NSW Planning Portal, the EP&A Regulation be reviewed to clarify and simplify information to be provided as well as data quality assurance and liability for accuracy of State or council information is critical. LGNSW has strongly supported the rollout of ePlanning and the NSW Planning Portal but has raised the need for data sharing agreements between state and local government so that they are properly managed.

17. That the Environmental Planning and Assessment Regulation 2000 be amended to specify the information that can be provided by councils in accordance with section 149(2) and (5) of the EP&A Act.

OLG Comment:

Not for consultation – see Pg 1 for details.

DPIE is currently conducting a review of the EP&A Regulation 2000, which contains some related provisions. Further information about the review, including how to make a submission can be found here. <https://www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/EPA-Regulation-review>

LGNSW Response

Support

Comment:

As there is considerable debate and confusion about the appropriate content of section 149 (5) certificates (now section 10.7 planning certificates), it is critical that DPIE consult with councils when determining the information to be provided. LGNSW is aware of the review of the EP&A Regulation, but still considers that this recommendation should remain open for consultation.

18. That DPIE amend the NSW Planning Portal to provide for online:

- payment of fees and charges by applicants and for the Planning Reform Fund fee to then be automatically directed to DPE
- information or certificates under section 149(2) of the Environmental Planning & Assessment Act 1979, and
- joint applications for development approvals and construction certificates.

LGNSW Response

Support

Comment:

LGNSW is pleased to note that DPIE is progressively expanding the scope of the NSW Planning Portal to include these items.

19. That DPIE:

- notify councils electronically at least 21 days prior to the commencement of legislative changes that will affect the structure or content of section 149 planning certificates, and
- maintain an up-to-date, publicly available list of all legislative instruments with the potential to affect the structure or content of the certificates.

OLG Comment:

Not for consultation – see Pg 1 for details.

LGNSW Response

Support

Comment:

It is critical that protocols be established within the DPIE to ensure councils are given sufficient notice of changes. LGNSW considers that this recommendation should remain open for consultation.

20. That Department of Planning and Environment manage referrals to NSW Government agencies through a 'one stop shop' in relation to:

- planning proposals (LEPs)
- development applications (DAs), and
- integrated development assessments.

OLG Comment:

DPIE has begun rolling out a digital system that allows councils to lodge all documentation online and send requests for advice directly to agencies. A number of councils are using the digital system, with all councils to be trained and rolled into the system progressively through 2019.

DPIE has also implemented various other regulatory measures to improve integrated development assessment processes.

LGNSW Response

Support

Comment:

LGNSW notes the rollout of the digital system of referrals is underway. As previously noted, councils' participation in this and all other aspects of ePlanning should be governed by a data sharing agreement.

21. That DPIE suites of standardised development consent conditions and streamline conditions that require consultant reports or subsequent approvals, in consultation with councils, NSW Government agencies and other key stakeholders.

OLG Comment:

The Standard Conditions and Compliance Reporting and Post Approval Requirements documents were published in 2018.

LGNSW Response

Support

Comment:

Support. LGNSW supports standardisation where it streamlines planning processes, however councils need to be closely involved in any processes to develop standardised approaches. LGNSW is not aware of the full suite of documents referred to by OLG and will be seeking further briefings from DPIE.

Administration and Governance

22. That the NSW Government streamline the reporting requirements for the Integrated Planning and Reporting framework in the revised Local Government Act 1993.

OLG Comment:

Feedback on recommendation 22 is being sought via a combined response with recommendation 23 below.

LGNSW Response

Support

Comment:

LGNSW notes that the NSW Government has launched the *Your Council* website, which provides information and links to data used for the annual comparative reporting on all NSW councils. The website uses very similar data and measures to those used in recent years.

If new indicators and guidance are to be adopted for the 2020 reporting cycle, councils will need this information in the coming months. LGNSW supports the adoption of a limited set of common performance indicators providing the indicators are:

- Primarily based on a council's performance against the Community Strategic Plan
- Easily understandable by the community
- Relevant (i.e. non-mandatory for those measures that do not apply) and do not add to the reporting burden
- High level and not designed for the micro management of councils by the Office of Local Government
- Trend indicators used for comparative purposes, and
- Developed in partnership with and endorsed by Local Government.

23. Ahead of the 2020 Integrated Planning and Reporting (IP&R) cycle, that the Office of Local Government:

- provide councils with a common set of performance indicators to measure performance within the IP&R framework
- conduct state-wide community satisfaction surveys and release the results to allow comparisons between councils and benchmarking
- provide guidance to councils on the form and content of the End of Term Report and its relationship to local councils' Annual Reports
- clarify for councils the purpose, form and content of the State of the Environment report and clarify its relationship to the End of Term Report
- work with the Office of Environment and Heritage, the NSW Environment Protection Authority and other relevant agencies to develop performance indicators for councils to use, and
- where relevant, amend the IP&R Guidelines and Manual to incorporate this material.

OLG Comment:

Feedback on recommendation 22 is also being sought via this response. It should also be noted that the requirement for State of the Environment reporting will be removed from the Local Government Act prior to the next cycle of reporting under the IP&R framework.

The Government values the role that IP&R plays in helping councils and their communities to plan effectively for the future and deliver meaningful outcomes. Similarly, the IP&R framework recognises that each community is unique, with its own particular needs and priorities. Therefore a 'one size fits all' approach to measuring IP&R outcomes would not be appropriate.

However, the Government acknowledges the need to support councils in developing suitable methods of reporting that are clearly focused on social, environmental, economic and governance outcomes and avoid unnecessary duplication. Therefore comments are sought with respect to how the IP&R framework could best be shaped to achieve this.

As part of the Government's ongoing commitment to strengthening transparency and accountability in the local government sector, OLG will continue to work with local councils to improve how we measure their performance, clarify what is expected of them and provide better reporting.

LGNSW Response

Refer to point 22 for combined response.

24. That the Office of Local Government remove requirements for councils to report more in the General Purpose Financial Statements than is required by the Australian accounting standards, issued by the Australian Accounting Standards Board, except for requirements which are unique and high value to local government such as Note 21 and Special Schedule 7.

OLG Comment:

Not for consultation – see Pg 1 for details.

LGNSW Response

Support

Comment:

As a member of the Technical Advisory Group, LGNSW has been working with OLG and the Audit Office to identify opportunities to reduce reporting requirements.

25. That clause 163(2) of the Local Government (General) Regulation 2005 be amended to allow the Office of Local Government to determine the councils for which the threshold for formal tendering would be increased to \$250,000, with this threshold to be reviewed every five years.

OLG Comments:

Not for consultation – see Pg 1 for details.

LGNSW Response

Support

Comment:

LGNSW acknowledges that this recommendation has been adopted in recent amendments to the Local Government Act.

26. That section 377(1)(i) of the Local Government Act 1993 be amended to allow the Council to delegate the acceptance of tenders to General Managers.

OLG Comment:

Not for consultation – see Pg 1 for details.

LGNSW Response

Support

Comment:

LGNSW acknowledges that this this delegation is permitted except where services are currently provided by members of staff of the council.

27. That section 55(3)(g) of the Local Government Act 1993 be amended to allow local government access to the full range of prequalification panels run by NSW Procurement.

OLG Comments:

Not for consultation – see Pg 1 for details.

LGNSW Response

Support

28. That the Department of Planning and Environment, through the Office of Local Government, review the requirements in the Local Government Act 1993 for Ministerial approvals and remove those that are not justified on the basis of corruption prevention, probity or protecting the interests of the State.

LGNSW Response

Support

Comment:

LGNSW has advocated that all approvals provisions in the Local Government Act (NSW) 1993 be subject to review.

29. That the Office of Local Government introduce guidelines that specify maximum response times for different categories of Ministerial approvals.

LGNSW Response

Support

Comment:

LGNSW supports the recommendation with qualifications. LGNSW accepts that applicants should have an indication of the expected response times for standard approvals. However, it needs to be recognised that circumstances vary and some approvals become more complicated than others. This may be the result of various factors including the applicant's own failure to meet requirements.

LGNSW would support development of indicative benchmarks for different types of approvals but is opposed to mandated maximum timeframes.

30. That the Department of Planning and Environment, through the Office of Local Government, review all approvals required under section 68 of the Local Government Act 1993 in order to:

- determine the activities for which a separate local council approval under section 68 is necessary
- place as many approval requirements as possible in specialist legislation, and
- revise the regulatory frameworks within NSW legislation to remove duplication

- where appropriate, enable mutual recognition of approvals issued by another council.

LGNSW Response

Support

Comment:

Mutual recognition provisions now available pursuant to the 2019 amendments, but this provision has not commenced yet.

31. That the Local Government Act 1993 be amended to transfer current requirements relating to the length of time for temporary appointments under section 351(2) to the Local Government (General) Regulation 2005 or the relevant awards.

LGNSW Response

Support

Comment:

The current limitation on the duration of temporary appointments (12 months, or 24 months in the case of maternity relief) is too restrictive. Councils require greater flexibility to appoint staff temporarily for specific tasks or projects and to relieve staff who take extended period of leave exceeding 12 months. For example, employees with school aged children can request to work part-time which may extend for many years, however, councils can only temporarily replace those employees for up to 12 months.

State government agencies can temporarily appoint employees for 4 years within any continuous period of five years (see Rule 10, Government Sector Employment Rule).

LGNSW advocated for amendments to s351 of the LG Act during the recent review of the LG Act, which were not adopted. See here (page 36-37): <https://lgnsw.org.au/files/imce/uploads/127/lgnsw-submission-lg-act-review-phase-1-proposals-march-2016.pdf>

32. Extend the maximum periods of temporary employment from 12 months to four years within any continuous period of five years, similar to Rule 10 of the Government Sector Employment Rules 2014.

LGNSW Response

Support

Comment:

The current limitation under s351(2) of the LG Act on the duration of temporary appointments (12 months, or 24 months in the case of maternity relief) is too restrictive. Councils require greater flexibility to appoint staff temporarily for specific tasks or projects and to relieve staff who take extended period of leave exceeding 12 months. For example, employees with school aged children can request to work part-time which may extend for many years, however, councils can only temporarily replace those employees for up to 12 months.

LGNSW advocated for amendments to s351 of the LG Act during the recent review of the LG Act, which were not adopted. See here (page 36-37): <https://lgnsw.org.au/files/imce-uploads/127/lgnsw-submission-lg-act-review-phase-1-proposals-march-2016.pdf>

33. That section 31 of the Public Interest Disclosures Act 1994 (PID Act) be amended to require councils to report on public interest disclosures in their annual reports and remove the requirement for an annual public interest disclosures report to be provided to the Minister for Local Government.

OLG Comments:

Not for consultation – see Pg 1 for details.

LGNSW Response

Support

Comment:

Councils are currently required to provide 6-monthly reports to the NSW Ombudsman as well as an annual report to the NSW Ombudsman and the Minister for Local Government (i.e. three reports a year). These duplicative requirements should be removed.

The proposed amendment removes the need for councils to prepare a separate annual report.

34. That clauses 15 and 16, schedule 3 of the Environmental Planning and Assessment Amendment Act 2014 (which adds new sub-sections 158(1A) and (4A) to the EP&A Act) be proclaimed in order to allow councils a licence or a warranty to use copyright material for the purposes of the EP&A Act (including making available development applications and related documents which may be subject to copyright).

OLG Comments:

Not for consultation – see Pg 1 for details.

LGNSW Response

Support

Comment:

LGNSW notes that this has already provided for in the 2018 amendments to the EP&A Act but a regulation is required for the form of the licence. We understand that DPIE is currently reviewing the regulation.

35. That the NSW Government:

Repeal clause 3, schedule 1 of the Government Information (Public Access) Regulation 2009 (GIPA Regulation).

Amend the EP&A Act to require councils to make available information and documents currently prescribed as open access information in clause 3, schedule 1 of the GIPA Regulation (DA information) to a person (on request).

Amend the EP&A Act to allow councils to charge a person making a request the efficient costs of making DA information available (after the 'submission period' under section 79(1) of the EP&A Act has expired).

Consistent with Recommendation 4 of the IPART review, review the efficient costs to councils of making DA information available to a person (on request).

Amend the Environmental Planning and Assessment Regulation 2000 to set the fees for accessing DA information (after the submission period has closed) at the efficient cost to councils.

OLG Comment:

Not for consultation – see Pg1 for details.

This matter will be considered by DPIE as part of the ongoing review of the EP&A Regulation 2000. Further information about the review, including how to make a submission can be found here. <https://www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/EPA-Regulation-review>

LGNSW Response

Support

Comment:

LGNSW acknowledges that this matter will be considered by DPIE as part of the ongoing review of the EP&A Regulation 2000.

36. That the Office of Local Government assist the Information and Privacy Commission to circulate to councils information related to the Government Information (Public Access) Act 2009.

OLG Comment:

Not for consultation – see Pg1 for details.

LGNSW Response

Support

Comment:

This is a very basic recommendation that should be adopted without question.

Building and Construction

37. That the Building Professionals Board or the proposed Office of Building Regulation (in consultation with Department of Planning and Environment, Fire & Rescue NSW and local government) design the new online system for submitting annual fire safety statements

(AFSS) to allow councils to identify buildings in their area that require an AFSS, and where follow up or enforcement action is required.

LGNSW Response

Support

Comment:

LGNSW previously indicated that an online system has the potential to reduce the administrative burden on councils associated with annual fire safety statements. LGNSW is not clear how an online system for fire safety statements (AFSS) as recommended would relate to the NSW Planning Portal. Consultation with key players, including councils will be critical when designing this system.

LGNSW notes that the regulatory framework for building has changed but the core recommendation remains valid.

38. That the Environmental Planning and Assessment Regulation 2000 be amended to clarify what constitutes a 'significant fire safety issue'.

OLG Comment:

Not for consultation – see Pg1 for details.

LGNSW Response

Support

Comment:

LGNSW previously noted that it may be challenging to agree on a definition of "significant" for the purpose of clarity in practical application.

39. That section 121ZD of the Environmental Planning and Assessment Act 1979 be amended to allow councils to delegate authority to the General Manager to consider a report by the Fire Brigade, make a determination and issue an order, rather than having the report considered at the next council meeting.

LGNSW Response

Support

Comment:

LGNSW considers it appropriate to delegate operational matters to the General Manager. The decision by the General Manager should be reported to the next council meeting.

Public Land and Infrastructure

40. That the NSW Government transfer Crown reserves with local interests to councils:

- as recommended by the NSW Crown Lands Management Review and piloted through the Local Land Program Pilot, and

- where the transfer is agreed by the council, including where this agreement is conditional on change of land classification.

OLG Comment:

Not for consultation – see Pg1 for details.

This has been addressed by the introduction of the Crown Lands Management Act 2016 (CLM Act) and the Land Negotiation Program (LNP). You can find further information on the LNP here <https://www.industry.nsw.gov.au/lands/what-we-do/our-work/land-negotiation>

LGNSW Response

Support

Comment:

LGNSW acknowledges that this recommendation has been adopted but we are concerned about the lack of any real progress on the transfer of any Crown lands to councils. LGNSW are also concerned about the shortcomings in the implementation of the CLM Act, particularly the inadequacy of support for Native Title Management and preparation of Plans of Management.

41. Consistent with its response to the Crown Lands Legislation White Paper, that the NSW Government ensure that Crown reserves managed by councils are subject to Local Government Act 1993 requirements in relation to:

Ministerial approval of licences and leases, and reporting

OLG Comment:

Not for consultation – see Pg1 for details.

LGNSW Response

Support

Comment:

LGNSW acknowledges that the recommendation has already been adopted in the CLM Act.

LGNSW's submission to the Crown Lands Legislation - White Paper supported the move to allow councils to manage reserves under the Local Government Act (NSW) 1993.

42. That the NSW Government streamline the statutory process for closing Crown roads, including the arrangements for advertising road closure applications.

OLG Comment:

Not for consultation – see Pg1 for details.

LGNSW Response

Support

43. That the NSW Government reduce the backlog of Crown road closure applications to eliminate the current waiting period for applications to be processed.

OLG Comment:

Not for consultation – see Pg1 for details.

LGNSW Response

Support

Comment:

LGNSW is concerned that the backlog still exists, a further indication of the inadequacy of resources provided to DPIE Crown Lands.

44. That the NSW Government streamline the provisions of the Local Government Act 1993 relating to plans of management for community land to enable councils to align public notice and consultation with councils' community engagement for Integrated Planning and Reporting purposes.

LGNSW Response

Support

Comment:

This is another logical and practical recommendation that helps give meaning to Integrated Planning and Reporting.

This should also apply to Crown lands under council management. The period granted for completion of new plans of management for Crown land under council management should also be extended.

45. That Roads and Maritime Services provide greater support for councils to develop the competency to conduct route access assessments and process heavy vehicle applications. This support should be focused on developing the competency and skills within councils to perform these regulatory functions.

OLG Comment:

Not for consultation – see Pg1 for details.

LGNSW Response

Support.

Comment:

Making heavy vehicle access decisions, particularly for councils in rural and remote areas places a substantial burden on limited council resources. As some councils infrequently receive access requests, it means that the number of total applications processed does not justify the employment of a full-time staff member to process the applications. LGNSW strongly supports any additional outreach activities that RMS is able to provide these councils, in particular. LGNSW also supports the recommendation arising from the federal

Oversize Overmass (OSOM) Inquiry (2018) that the deployment of a specialized support officer in each jurisdiction to provide expert support and advice to councils would be of benefit.

46. That the Impounding Act 1993 be amended to treat caravans and trailers (including advertising trailers) in the same way as boat trailers when considering whether they are unattended for the purposes of the Act.

OLG Comment:

Not for consultation – see Pg1 for details.

LGNSW Response

Support.

Comment: LGNSW strongly supports the amendment of the Impounding Act 1993 to include provisions to treat caravans and trailers in the same way the legislation has previously been amended to include boat trailers. Similarly, LGNSW strongly supports the amendment of the Impounding Act to include shopping trolleys in the same way the legislation has previously been amended to include share bicycles and others shared mobility devices. This position is also supported by the current Minister for Local Government, the Hon. Shelley Hancock.

47. That the Office of Local Government's redesign and modernisation of the central Register of Companion Animals includes the following functionality:

- online registration, accessible via mobile devices anywhere
- a one-step registration process, undertaken at the time of microchipping and identifying an animal
- the ability for owners to update change of ownership, change of address and other personal details online
- unique identification information in relation to the pet owner (ie, owner's date of birth, driver licence number or Medicare number)
- the ability to search by owner details
- the ability for data to be analysed by Local Government Area (not just by regions)
- the ability for data to be directly uploaded from pound systems, and
- centralised collection of registration fees so funding can be directly allocated to councils.

OLG Comment:

Not for consultation – see Pg1 for details.

LGNSW Response to 47 & 48

Support

Comment:

LGNSW notes that the legislative amendments of 2018 and the upgrade to the NSW Pet Registry have implemented most of the above recommendations. This online system validates the person's online profile that through the Document Validation System that links

to drivers licence, passports etc. It also requires that addresses be verified through Land and Property NSW System. All **new** pet registrations will have provision of full names and owner address details, however **existing** registrations may be incomplete or inaccurate (e.g. Johnathan Blue not shortened to Joe Blue) and legal notices issued with the incorrect details may not be upheld. While the existing entries will be progressively phased out over time, this is a current regulatory barrier and burden for councils, and a verification program is needed.

48. That the Companion Animals Act 1998 and Companion Animals Regulation 2008 be amended to require unique identification information in relation to the pet owner (i.e. owner's date of birth, drivers licence number or Medicare number), to be entered in the register at the time of entering animal identification information and when there is a change of ownership.

OLG Comment:

Not for consultation – see Pg1 for details.

LGNSW Response

Support

Comment:

Refer response to point 47

49. That the NSW Government, in consultation with councils, review how councils are currently applying Alcohol Free Zone (AFZ) and Alcohol Prohibited Area (APA) provisions in response to alcohol related anti-social behaviour and clarify the rationale and processes for declaring AFZs and APAs in the Local Government Act 1993 and Ministerial Guidelines on Alcohol-Free Zones.

LGNSW Response

Support

Comment:

Local Government supports the approach of alcohol harm minimisation including Alcohol Free Zones (AFZ) and Liquor Accords. AFZ and Alcohol Prohibited Areas (APA) are key tools used by councils to control the presence of alcohol in public open spaces including on footpaths, in parks and on beaches. They are implemented to promote and ensure community safety as part of crime prevention strategies by way of eliminating alcohol affected behaviours.

The identification by council of priority areas for AFZ and APA often occurs through community consultation along with knowledge of the local areas where people gather. Hotspots include malls, CBDs, and areas near licenced premises. However, councils often experience difficulties in applying short term AFZ and APA restrictions in holiday periods or during events.

Clarifying, simplifying and rationalising the processes of determining and declaring AFZ and APA in the Local Government Act (NSW) 1993 and updating the ministerial guidelines should address this issue.

50. That the NSW Government provide an efficient process for consultation and decision making on temporary and events-based alcohol restrictions.

LGNSW Response

Support

Comment:

The review of AFZ and APA need to include extensive consultation with local government to address councils' concerns with respect to various processes, particularly with respect to applying short term restrictions. Furthermore, the review could also address councils' issues with respect to signage and enforcement.

51. That the Graffiti Control Act 2008 be amended to:

- allow councils to prosecute individuals and organisations that commission or produce bill posters that are visible from a public place within their local government area, and
- provide councils with compliance and enforcement powers to support their enforcement role under the Act, similar to those provided under Chapter 7 of the Protection of the Environment Operations Act 1997.

OLG Comment:

Not for consultation – see Pg 1 for details.

The Department of Justice is currently reviewing the Graffiti Control Act 2008. This review will consider all aspects of the Act, including the issues raised by the IPART recommendations.

LGNSW Response

Support

Comment:

Since 2007, LGNSW has been advocating for legislative amendments to address issues associated with bill posters. Councils regularly have to deal with illegally advertised bill posters on public land, including on roadside power poles. However, prosecution is difficult. To obtain a successful prosecution the person fixing the advertising must be caught in the process. A better and more effective option would be to allow councils to prosecute event promoters as they have some responsibility for the type of advertising that is used for their events.

The review of the Graffiti Control Act (NSW) 2008 needs to include extensive consultation with Local Government to address the issues of bill posters on public land and visible from a public space. Additionally, the review needs to consider who would be the most appropriate person to receive the infringement - the promoter, the venue operator, the performer, the

advertising agency etc.

LGNSW looks forward to contributing to the NSW Government review of the Graffiti Control Act 2008.

Conclusion

IPART's Final Report provides a strong case for a comprehensive overhaul of the regulatory framework imposed on local government in NSW. LGNSW would like to work closely with the Government in reviewing and implementing many of the IPART recommendations. We agree with IPART that this should be a whole of government reform program if the systemic issues are to be addressed. The Government's current response the regulatory burden to date appears to be fragmented and lacking in momentum. Invoking the IGA, LGNSW recommends that a steering committee be established to oversee an integrated and concerted program of regulatory reform based on the recommendations and findings of the review.

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