

RED TAPE REVIEW LOCAL GOVERNMENT COMPLIANCE AND ENFORCEMENT SUBMISSION

November 2012



CENTRAL NSW
COUNCILS



Centroc's Mission is to be recognised as the lead organisation advocating on agreed regional positions and priorities for Central NSW whilst providing a forum for facilitating regional co-operation and sharing of knowledge, expertise and resources; effectively nurturing sustainable investment and infrastructure development.

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The Centroc Board is made up of the 34 Mayors and General Managers of its member Councils who determine priority for the region. These priorities are then progressed via sponsoring Councils. For more advice on Centroc programming and priorities, please go to our website and download our annual report at centroc.com.au/publications.

Overall, Centroc members seek to ensure that the compliance burden on Councils and their communities is as small as can be and is equitable in application. Common sense in compliance needs to apply. Further, the appropriate level of government should have the right job, for example the State should be in charge of assessing every bridge in NSW for its High Productivity Vehicle risk rating rather than it being undertaken in a piecemeal and as needs basis by Local Government.

It is the experience of Local Government in NSW that some compliance based activity, for example the production of a plan, is developed by a State Government Department and then the review of the plan or activity by the State is not resourced adequately. An example is the Best Practice program for local water utilities. While the program is admirable, with the current level of resource, the State cannot review the strategies, which are linked to funding, in a timely manner. Further, significant expense is undertaken in developing these plans when they often say pretty much the same thing. For example Demand Management Plans which require review on a two yearly basis. Given that close to same advice is required for the Integrated Water Cycle Management Plans, a review should be taken to minimise duplication and ensure that the strategic work including review periods and process is fit for purpose.

Further, "compliance" can mean different things to different individuals within State agencies. An example in Central NSW is the difficulties experienced by Orange City Council as it implemented storm water harvesting. It is too often too easy for some individuals to take a box ticking rather than merit based approach. Further, it is also the case that some individuals in State Departments to ask well beyond what is required for compliance with a view to delivering "better than best practice." While this is admirable it comes with a cost in time and money which may not demonstrate best value for the community.

Please find below commentary on the specific issues raised by IPART.

Please contact our Executive Officer Ms Jennifer Bennett on 0428 690 935 for any further questions.

Yours sincerely,



Cr Phyllis Miller OAM
Chair
Central NSW Councils (Centroc)

Exemptions provided by local government

Question 1: Local Approvals Policies (LAPs) can be used to provide exemptions from requiring approvals under the Local Government Act 1993. Should LAPs be used to provide more exemptions to reduce red tape?

LAPs provided value during the early to mid 1990s, as during this time, all local approvals were regulated by the Local Government Act and there was no avenue for what is now known as Exempt and Complying Development.

1998 saw the introduction of Exempt and Complying Development (provided by the Environmental Planning and Assessment Act 1979) the need for LAPs has since this time diminished, as the approvals that are left under the provisions of the Local Government Act are relatively minor.

Furthermore, with plumbing and drainage regulation being taken over by the Office of Fair Trading on 1 January 2013, even less approvals will be managed by the Local Government Act (this change will impact on Councils that are water and sewer authorities).

The complexity of the current State Environmental Planning Policy – Exempt and Complying Development Codes (SEPP Code), makes it difficult for staff, let alone the general public to understand all of the approval systems of the State. LAPs create an extra level of complexity and regulatory control that is excessive with little value provided to the community.

Councils in this region typically rely on a small number of minor policies to assist with operations, and obtains direction from the State, through the SEPP Code for the regulation of local approvals.

It is unclear what additional matters could be addressed in a LAP – it is suggested that it would be more beneficial to include all local provisions in one area for the State. The most appropriate area for that is considered to be the SEPP Code.

Register of local government regulatory functions

Question 2: We are developing a register of local government regulatory functions (available from IPART's website by early October). How useful is the register? Would there be any benefit in maintaining the register as an ongoing resource?

The Register offers a useful tool for checking mandatory obligations. It also identifies the breadth of state based legislation which is administered and enforced by local government. Currency and accuracy of the items listed is paramount and would require the maintenance processes to be clearly articulated and confirmed so that the information could be relied upon.

Notwithstanding this, it should be noted that given the complexity of the regulatory functions prescribed by the State legislation, it is difficult to determine the full value of the Register as an individual resource.

An alternative to resourcing the Register at a detailed IPART level, is to develop a guidance template which recommends web information and format for which individual councils can display on their individual websites. This information could list the regulatory functions that the Council administers. This common approach would assist those people who are wondering what an individual Council regulates and having it in a standard format, allows the user to undertake comparisons and makes reading/searching by the user more 'user friendly'. This may address the issue of a person not knowing to look at the IPART Register, but knowing they want to work in a particular council area.

Local Government and State Government interactions

Question 3: Are there areas where compliance or enforcement roles of local government and State Government agencies overlap or are unclear? What are the impacts of this on business, the community, councils or the State Government?

Given the enforcement provisions are provided through State legislation, there are areas of regulatory enforcement in Local Government that mirror State Government areas, such as public health (NSW Health), food inspection (NSW Food Authority), environmental and development regulation (DECCW / EPA), asbestos management (WorkCover & EPA) road management (RMS) and Trade Waste (NSW Office of Water). In many cases these similarities are managed through the use of MOUs. Areas of overlap, such as swimming pool hygiene, skin penetration and other public health matters are expected to be managed through MOUs under the new Public Health Regulations. Other environmental issues are managed by the understanding 'Scheduled Premises' are managed by DECCW/EPA and non-scheduled premises are managed by council, however technically State delegations remain on all sites.

Major reforms are currently taking place in planning throughout the State. Some overlapping has been removed, through the use of a Standard Local Environmental Plan (LEP) and the SEPP Code (mentioned above). The removal of this overlapping to bring in a standard approach throughout the State can have its drawbacks. For example, the SEPP Code came at the expense of local Development Control Plan relating to Exempt and Complying Development. In this case, individuals no longer have the option of using the local code or the State Code. As a result the range of Exempt and Complying Development available in the region has decreased, thus increasing the use of the complex Development Application process.

Question 4: Can you provide examples of poor consultation or coordination between local government and State Government agencies in relation to compliance and enforcement activities? What impacts does this have on business, the community, councils or the State Government?

Ensuring sufficient time is allocated where consultation is required is essential. Councils have extensive consultation networks and formulated engagement strategies as part of the Community Strategic Planning processes prescribed by the State Government. The State Government could utilise the existing consultation networks that Councils have in place to improve their consultation processes.

Indeed, it is arguable that Local Councils are far more adept at consultation as a value for money proposition. For example, compare the costs of consultation for the Bells Line of Corridor Long Term Corridor Plan as against the costs of consultation across Central NSW. Where Councils were appropriately remunerated for their work, the region would argue that a collaborative approach making better use of Council consultation mechanisms could

- Save time and money;
- Keep State and Local Government stakeholders better informed;
- Build relationships between State agencies and Local Government (assuming the process was not overly bureaucratic); and
- Reduce community “consultation burn-out.”

Question 5: Can you provide examples of good consultation or coordination between local government and State Government agencies in relation to compliance and enforcement activities?

The roll out of the NSW Food Blueprint, through the NSW Food Authority has been a great success. This process was carried out over some years, and involved the commitment of State and Local resources to ensure the State provided adequate training and ongoing support required in order to mandate the role of Local Government in food surveillance.

A similar approach, but less resources were provided (shorter implementation period) was with NSW Health and the review and implementation of the new Public Health Regulation. Whilst possibly not as successful as the Food Authority model, this was a good approach to improving the support and links between the State and Local Governments in public health matters.

The upcoming transferal of authority to inspect and regulate plumbing and drainage inspection from the Council to the Office of Fair Trading is of interest. It is understood that this is part of progression to National standards and licensing. (COAG agreement). These changes have been clearly articulated by the Office of Fair Trading for over 12 months. Numerous information sessions and correspondence provided to Local Government. Even though in most instances, the changes will not alter how a local council regulates plumbing and drainage. This phased consultation, implementation and ongoing resource support provided by the OFT in this case has made this process successful.

Question 6: Can you suggest ways that Local Government and State Government agencies can work together to reduce red tape?

Given the legislative framework is a State Government responsibility, any processes of reviewing legislation **in consultation** with Councils is recommended. This collaborative approach would place those reviewing legislation within the State government in a better decision making position concerning the mechanics of implementing the regulatory functions of legislation.

Significant thought needs to be undertaken about **how** to consult with Local Government where this would engage Councils from across NSW. It is important that Councils in regional NSW are consulted appropriately to ensure metro-centric decision making with unfortunate unintended outcomes do not occur.

A root and branch approach to all Council functions should be mapped out, including Councils in regional areas where they have greater responsibilities for example for water and airports. Given this region's collaborative approach to delivering secure and quality water supplies, we have some solid feedback on ways to minimise red tape in the provision of water.

IPART needs to know that State agencies are "rolling out their" programs across our towns with variable consultation. So for example a round-about might be instated by RMS where the comm

Question 7: Does the Division of Local Government's 'Promoting Better Practice Program' assist local government in undertaking its regulatory activities more efficiently?

The Promoting Better Practice reviews offer an opportunity to identify best practice and communicate this across Councils. There are opportunities for the State Government to make better use of this process exists given 111 reviews have been completed since 2004/05. The Department of Local Government must have amassed a large volume of material which could be the basis for training materials to assist Local Government in improving standards of service delivery.

Indeed, this begs the question of data gathering and data use by the State. Members suggest that all data is useful and that commitment should be undertaken by the State to ensure what is collected can be accessed by Local Government and further that the gathering of data be reviewed to ensure it:

- is fit for purpose;
- is accessible where thought is gone into some type of one stop shop portal;
- does no duplicate effort; and
- maximises the potential of the process, so for example if the community is being surveyed, the maximum amount of data that can be comfortably sought, is sought.

Question 8: Are there other ways to enhance assistance to councils?

The Destination 2036 working parties that have been established by the State government offer an opportunity for enhanced assistance to Councils through the sharing of information and collaboration of efforts. The critical element for consideration by the State is how the findings from the working parties will be made known across local government entities.

It is most important that where that Council functions be interrogated with a view to having them resources at the appropriate level and in the appropriate way.

An example of a function that would be better resources by the State is bridge assessments for High Productivity Vehicles. These specialist engineering assessments should be undertaken across the State . While they were at it, the information could inform the "Bridges to the Bush" program where to date those bridges announced are not based on a state wide audit.

Local Government resources and skills

Question 9: Do councils have the resources and skills to undertake regulatory activities effectively?

Yes –the experience of the region is that skills are high in these areas although the ability to resource regulatory activities is often restricted. There are however challenges in the recruitment of staff, particularly in regional areas the further west into NSW.

Some members provide advice that resourcing can be challenging especially when the regulation devolved does not come with funding. While not current, two examples of this that the region recalls only too well were septic tank legislation (created in response to issues with coastal oyster growers which had a dramatic impact inland where problems were minor or non-existent) and the Companion Animals Act.

It should be understood that every cent spent on regulation is taken from another activity, for example road repair and maintenance. Councils are rate pegged, and while able to request rate variations, this process itself is tortuous and not one a Council enters into without serious thought and resourcing.

The Destination 2036 project with working parties that are considering the skills needs and diversity issues for local government would be able to provide useful information in this area.

Question 10: Can you provide examples of how a lack of council resources or skills impacts on business or the community?

Legislative changes (such as the requirement for the individual accreditation of Council Building Surveyors) often have the potential to adversely impact on the ability of Local Government to retain the resources and skills to carry out its regulatory work. This accreditation is based on the level of qualifications and experience of the staff member and is determined by the NSW Building Professionals Board, not the General Manager of the Council in which they work. A Council Building Inspector must only inspect works for which they hold accreditation for.

This requirement has resulted in some Councils offering a bonus for staff with higher levels of accreditation (eg. Wagga City Council is currently advertising a position with such a bonus). In an area that currently has a skills shortage, the additional impost of accreditation may magnify the impact of the shortage resulting in increased costs to Local Government, the building industry and the community and also increasing delays in the building process.

Question 11: How can councils improve their resources and skills?

Limited opportunity to meet market forces for salaries has significant impact on the recruitment process. The limitations on the revenue options for local government impacts here most particularly through rate pegging restrictions.

Question 12: If you are operating a business across more than 1 council area, how do differences in council approaches impact on your business?

N/A

Question 13: How, and in what areas, could coordination between councils be improved to reduce unnecessary regulatory burdens on business and the community?

A number of councils within the State have developed informal 'alliances' with each other in order to share resources and skills. These alliances provide very effective platforms for the consistent

enforcement of State legislation. Central NSW Councils has developed the Centroc Water Utilities Alliance which for example has the same water restriction descriptors across the region.

Such alliances have both formally and informally been used by Councils in this region for many years. For example the Weight of Loads Group and Netwaste. These alliances are impacted by duplicate State regulation. The requirement to regulate operations on an individual site basis, (such as mobile food vans, amusement devices etc.) often results in over regulation. That is, food vans and amusement devices are often inspected in every town they operate. This is normally a higher level of regulation than permanent operators. The NSW Food Authority is currently considering a state wide approach to mobile food vans.

Question 14: In what areas could mutual recognition (e.g., recognition of registration in multiple local government areas) be used to reduce regulatory burdens on business or the community?

As above.

Question 15: What other approaches could be used to improve the way councils apply regulations?

Guidance from the State government that includes standards for application of the regulatory role would assist.

Rather than each Council preparing the mechanisms to perform regulatory functions in accordance with State legislation, having the State invest at the commencement of the process in providing tools, training (initial and ongoing) and information to the communities would assist in improving the standard application and knowledge of processes by applicants, business and the community.

Identifying unnecessary regulatory costs or burdens

Question 16: What specific local government compliance or enforcement activities are imposing unnecessary costs on business or the community? What are these costs (eg, form filling, reporting, compliance, delay, fees and charges)?

It is difficult to identify these. Every regulatory process, includes a requirement on Local Government for administrative record keeping. The costs of this and inspection (often mandated) is passed onto the user. It is often the case that State Legislation prescribes a maximum cost/fee that a Council may charge in order to offset the costs of the regulatory action. (eg. Fees relating to: food inspection; swimming pool inspections; charges associated with food and environmental compliance orders etc)

Best practice regulatory enforcement

Question 18: Are the principles of best practice regulatory enforcement (as set out in Chapter 3 of the issues paper) a sound basis for assessing good compliance and enforcement practices and testing reform options?

No comment.

Question 19: How do State Government and councils review or assess councils' regulatory performance? How could this be improved?

Most State regulators require reporting on councils regulatory function. These reports are often published in a manner to 'allow bench marking' between councils. Areas in which this is undertaken includes development assessment; food inspection; building control; trade waste; water management; animal regulation etc.

Unfortunately these results are often reported in a negative manner, such as 'number of dogs impounded'; 'number of food safety orders issued' etc. The focus is a 'name and shame' approach rather than a support and education process, which would have more long term benefits to the community.

Question 20: To what extent do councils follow best practice enforcement principles?

The implementation of best practice enforcement principles would be expected to be common. Councils' generally have a common approach to enforcement. Organisations such as ICAC and the NSW Food Authority have for some years promoted the development and implementation of enforcement policies to ensure consistent and appropriate regulatory action.

It is often difficult due to lack of resources to follow best practice enforcement principles. For example, Orange City Council has developed a non-regulatory, self-assessment toolkit for small to medium term business. The toolkit is for business to assess how their activities can impact on water quality in nearby streams and creeks. The toolkit was developed following extensive consultation with business, asking 'what do you need?' The toolkit guides the business through a self audit, provides them with a library of information, a strategic planning mechanism to assist them improve and also identifies grants that may help. Council is currently struggling to find additional external funding to have the toolkit converted to an electronic form (as requested by business). The barriers faced with this excellent non-regulatory tool highlight that unless a Council is taking regulatory action, the ability to secure additional external funds is limited, even when the project will significantly help the business community.

Question 21: What are examples of best practice enforcement approaches being used by NSW councils? Could these be applied more widely?

As mentioned above, the use of standard enforcement policies is often utilised to achieve this.

Question 22: What compliance and enforcement approaches used in other jurisdictions should be applied in NSW?

No comment.

Identifying reform opportunities

Question 23: Should any of the leading practices identified by the Productivity Commission in its 2012 Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator be implemented in NSW?

The region supports the following:

- annual regulatory plans by all departments of all known and anticipated proposals to introduce, amend, repeal or review legislation, including tertiary regulation to the extent possible;
- enhanced certification requirements to strengthen accountability for meeting the government's regulatory commitments;
- post-implementation reviews for proposals that are formally assessed by a Treasury's Regulatory Impact Analysis Team as inadequate (or that by-pass the government's regulatory impact analysis regime);
- regulatory scans to be undertaken by agencies responsible for regulation on a systematic basis to identify regulation that is unnecessary, ineffective, or excessively costly; and
- regulatory reporting on how the government is meeting the commitments in the statement.

Further, Local Government needs to be engaged in the process to:

- identify and discuss key issues to consider in developing regulatory policy, and/or formulating an implementation program
- outline how its representatives can be involved in policy development processes, to provide valuable first hand, practical and contextual information and perspectives in considering these matters.

Local Government should be engaged when:

- a regulatory solution is among the preferred options to achieve desired outcomes;
- local authorities will, or may be, involved in the administration or implementation of the regulatory framework; and
- existing local authority functions may be changed or removed through a policy option.

Policy guidance should include Local Government on a range of matter including:

- division of responsibilities between territorial authorities or regional councils;
- consideration of funding impacts for increased or amended regulatory responsibilities;
- taking into account that the cost of activities may vary significantly between local authorities of differing size, population density, location and character;
- clarity about the extent and limits of local discretion and the manner in which it is to be exercised;
- clear identification of outcomes and objectives and

- decision making and reporting.

Question 24: What specific reforms to local government compliance and enforcement activities would reduce unnecessary regulatory burdens to business and the community?

Many of the regulatory burdens felt by business and the community are a result of complex State legislation, the impacts of the judicial system and the ever increasing demands of the community. For example, communities demand more extensive involvement in individual Development Applications, whilst the Courts require ever increasing detail in assessment, thus increasing the complexity of legislation surrounding the development assessment processes. This results in delays in the assessment of development applications. A simplification of the regulatory processes in which Local Government is required to operate would be beneficial to business and to the community.

Question 25: What impediments prevent councils from undertaking their compliance and enforcement activities more efficiently? How can these impediments be removed?

The sheer complexity and detail required to undertake any enforcement action, whether it be to issue a notice on a dangerous dog owner, an unfenced pool owner, or to undertake the assessment of a Development Application significantly impacts on Local Government's ability to undertake its activities efficiently. There has been a big shift in legislation in the last 10 years to provide for extra red tape, by providing for 'natural justice.'

An example of this is the need to issue a Notice of Intention to Serve an Order on the owner of an unfenced swimming pool – a process that provides 14 days. Thus it is 14 days before an order to actually fence the pool can be issued. Whilst the Notice of Intention provides natural justice to the pool owner by providing them time to make comment to the Council on the proposed order, this process provides delays and does not make the community safe.

Estimating impacts of recommended reforms

Question 26: Do you have information that will assist us in estimating costs of specific regulatory burdens arising from local government compliance and enforcement activities?

It is suggested that IPART investigate this matter with the Local Government Shires Association, as each year every council completes a cost shifting survey for them which would assist with this question.

Question 27: Do you have information that will assist us in estimating cost savings from potential reforms to local government compliance and enforcement activities?

It has come to the attention of the Centroc Board that the KPMG report informing the Local Water Utilities' Inquiry may have made quite astronomical claims regarding cost benefit ratios. This region is implementing collaborative activities across a number of areas including procurement, training and mentoring. While there are substantial savings, they are not astronomical.

This region believes that detailed work would have to be undertaken, where Local Government in authentically in the tent at steering committee level, to ensure that any reform delivers on cost savings.

Other issues

Question 28: Do you wish to comment on any other issues relevant to this review?

Please see the advice in the covering letter.