



**PRODUCTIVITY COMMISSION REVIEW
Business Regulation Benchmarking:
Role of Local Government**

SUBMISSION

Local Government Association of Queensland Ltd

October 2011

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individuals needs. LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

Background

This submission has been prepared by the Local Government Association of Queensland (LGAQ) in response to the Issues Paper on *Business Regulation Benchmarking: Role of Local Government* released by the Productivity Commission in September 2011.

The review is examining the extent to which different approaches to the exercise of regulatory responsibilities by local governments materially affect costs incurred by business, both within and between jurisdictions. The review is also intended to identify leading practices that reduce unnecessary regulatory costs while still delivering on policy goals.

The main areas where local governments in Queensland have substantial regulatory involvement include:

- planning and land use
- building and construction
- environmental management including vegetation management
- waste management
- public health and safety
- food safety
- advertising signs
- footpath dining
- control of foreshores, malls, parks and public spaces
- parking.

In some of these areas, the regulatory impacts are primarily on individuals rather than business, and these areas are not the subject of this review.

In addition to planning and land use controls, in some cases there may also be local laws covering some business types (eg caravan parks, cemeteries).

What is the most appropriate way in which to group local governments for the purpose of comparing regulatory responsibilities across jurisdictions?

Use of the full range of ACLG categories would not appear necessary.

Some broad classification (eg developed metropolitan, fringe metropolitan, provincial cities and towns, rural, remote-rural and Indigenous councils) would be appropriate.

Legislative Instruments

What are the legislative instruments (acts, regulations, etc) which councils have to administer and enforce?

In most cases, the role of local government is under delegation from State legislation. Some Commonwealth legislation (eg Environment Protection and Biodiversity Conservation Act 1999) can be a consideration in development control.

Specific State legislation where councils have a regulatory role include:

- Animal Management (Cats and Dogs) Act 2008,
- Building Act 1975
- Coastal Protection and Management Act 1995
- Dangerous Goods Safety Management Regulation 2001 (regulation returns to State from January 2012 under uniform workplace health & safety regulations)
- Environmental Protection Act 1994
- Environmental Protection Regulation 2008
- Environmental Protection (Waste Management) Regulation 2000
- Food Act 2006
- Land Protection (Pest & Stock Route Management) Act 2002 and Regulation 2003
- Nature Conservation Act 1992
- Plumbing and Drainage Act 2002
- Public Health Act 2005
- Public Health (Infection Control for Personal Appearance Services) Act 2003
- Sustainable Planning Act 2009 (and Regulations)
- Tobacco and Other Smoking Products Act 1998
- Transport Operations (Road Use Management) Act 1995
- Vegetation Management Act 1999

New legislation impacting on local government regulatory roles includes:

- Waste Reduction and Recycling Bill 2011 (proclaimed late October 2011)
- Stock Route Network Management Bill 2011

In some cases, the key regulatory role played by councils will relate to individuals (eg cats and dogs). Nevertheless, some businesses may be impacted by the legislation. For example, under the Transport Operations (Road Use Management) Act 1995 a Local Government can make a local law about the:

- use of a footpath to provide food or drink
- advertising on the road of any business
- washing or cleaning, painting, repairing, alteration or maintenance of vehicles in, on or over a road
- regulation of roadside vending
- regulation of lights, notices and signs.

Under the Tobacco and Other Smoking Products Act 1998, a council can ban smoking in public areas (eg a Mall). Some businesses may see this as an impact on their trade even though the aim of the regulation is to protect individuals.

Do state/territory governments provide guidelines, templates, training or otherwise assist local governments create their own regulations? Are local governments making their own regulations to complement or strengthen state and territory laws or to address specific local issues?

Section 28 (1) of the *Local Government Act 2009* (LGA) also provides that a Local Government may make and enforce any local law that is necessary or convenient for the good rule and Local Government of its Local Government area.

There are over 3000 individual local laws in existence across Queensland (see Department of Local Government and Planning (DLGP) register of Local Laws). For example, Gold Coast City Council has 45 Local Laws/Subordinate Local Laws.

A number of Model Local Laws have been prepared by DLGP. These include:

- No. 1 (Administration) 2010
- No. 2 (Animal Management) 2010
- No. 3 (Community and Environmental Management) 2010
- No. 4 (Local Government Controlled Areas, Facilities and Roads) 2010
- No. 5 (Parking) 2010
- No. 6 (Bathing Reserves) 2010
- No. 7 (Indigenous Community Land Management) 2010

Again, some of these primarily affect individuals. However, No. 3 (Community and Environmental Management) can be used to control noise at sporting and entertainment venues which may be seen by some businesses as restrictive but by the nearby residential community as essential to local wellbeing.

The point is that the necessary level of control relates to the particular community of interest and its circumstances. Care must be taken to avoid a 'one-size-fits-all' approach when assessing variations between council areas in regulatory approaches. While consistency in local laws would be desirable for businesses operating state-wide, this might result in over-regulation in some situations if a standard model law was applied.

All local laws made since 1998 were required to be reviewed to identify possible anti-competitive provisions, with a requirement for a public interest test of any possible anti-competitive provisions.

From 1999, under the LG Act 1993, councils were required to review local laws every 10 years.

Local governments are no longer required to review their local laws and subordinate local laws every 10 years for redundant provisions or for the relevancy of anti-competitive provisions contained in their laws. Section 33 of the *Local Government Act 2009* provides that a council must regularly review the provisions of its local laws (including anti-competitive provisions) with a view to ensuring the local laws are relevant to the public interest.

Councils affected by amalgamation or boundary changes after the local government elections held in March 2008 are required to consolidate their current set of local laws and subordinate local laws. This must be done by 31 December 2011 after which local laws applying to previous council areas expire automatically.

In practice, Queensland local governments should now (or very shortly) have up-to-date local laws.

To what extent are state government agencies undertaking local government regulatory responsibilities in, for example, Indigenous communities, or remote localities?

In Indigenous council areas, some environmental health matters are conducted by State agencies, although training of local environmental health workers is also undertaken. For example, food safety requirements where applicable would need State agency support.

Local government is responsible for enforcing asbestos risk management in non-workplace settings through the *Public Health Act 2005* and associated Regulation. Currently local government is unable to obtain public liability or professional indemnity insurance to enforce these laws. Whilst the matter is being resolved, local governments receive complaints of unsafe activities at non workplaces (less than ten square metres in area) then request Queensland Health to investigate. This provides QH with the statutory powers to enforce the *Public Health Act 2005* for asbestos complaints.

Regulatory Fees and Charges

In what regulatory areas do local governments charge fees to businesses? How are these fees determined and how do they vary between business types both within and between local governments? Is there evidence that local governments are charging above or below the costs of providing regulatory services?

Section 97 of the LGA allows councils to set cost recovery fees for licenses, permits, registrations and various approvals. However, a cost recovery fee cannot be more than the cost to the council of taking the actions involved in the matter for which the fee is charged (see Attachment A for details of section 97 and section 98 of the LGA).

In some cases, councils will not be recovering the full cost of particularly regulatory costs from fees, and subsidising the cost from general rate revenue as a CSO. As an example, Gold Coast City Council (GCCC) does not charge a fee for some health regulatory purposes when the applicant can demonstrate that they own, rent or lease a rateable property within the City. The council also provides free food safety training courses to persons directly associated with any GCCC licensed food business within the city.

Under the Environmental Protection Act there are regulated fees set, although a council has the option of charging the regulated fee or can charge more or less (subject to the requirements of Section 97 of the LG Act noted above). In most cases, anecdotal information suggests that councils are charging less than the regulated fee.

How much of local government expenditure is directed to regulatory functions? What regulatory functions have the highest expenditure levels? Which have the lowest expenditure? What are the associated staff costs?

LGAQ is not aware of any published data that provides details of the expenditure by councils on the various regulatory functions, or on the overall level of cost recovery from fees.

Regulatory Interactions

Are there regulatory functions which could be undertaken more effectively by a different jurisdiction or by the private sector? When delegating regulatory responsibilities, to what extent do state/territory governments consider the resources of local councils to ensure their effective delivery?

LGAQ does not consider that there are additional regulatory functions currently undertaken by the State which should be delegated to local government. LGAQ has previously raised concerns about the increasing devolution of compliance and regulatory roles to councils.

In the LGAQ submission to the Federal Government's Cost Shifting Inquiry in 2002, LGAQ noted new regulatory responsibilities in relation to building fire safety for budget accommodation, licensing of environmentally relevant activities, along with other licensing and regulatory requirements under the Environment Protection Act as all impacting adversely on council resources and costs.

The Intergovernmental Agreement on Local Government Matters (IGA 2006) following the Cost Shifting Inquiry included the establishment of principles guiding the allocation of roles and responsibilities in relation to services and functions between local government and the other spheres of government. The IGA states that:

"...where the Commonwealth or a State or Territory intends to impose a legislative or regulatory requirement specifically on local government for the provision of a service or function, subject to exceptional circumstances, it shall consult with the relevant peak local government representative body and ensure the financial implications and other impacts for local government are taken into account."

There have however been regulatory functions devolved to local government since the IGA. For example, regulation of commercial nuisance (eg noise from motors) under the EP Regulation 2008 has been devolved to local government where previously the regulatory responsibility related only to domestic situations.

Some regulatory functions previously undertaken by councils are now undertaken by the private sector (eg building certification, pool safety inspections). There may be some areas where greater use of the private sector could be possible (eg food premises licensing and inspection). However, based on experience with current third party food safety audits, local government would be concerned that standards would suffer if additional aspects of food safety were undertaken by third parties.

Local government has in the past expressed concerns in relation to delegation of responsibilities to councils without full consideration of the costs imposed and resource considerations. The issue of resourcing is a particular concern to remote rural councils in the State where it is often difficult to attract and retain appropriately qualified staff (eg Environmental Health Officers).

A *Greentape Reduction* project is currently being undertaken by the Department of Environment and Resource Management to provide a streamlined regulatory process for environmental approvals.

Initiatives aimed at reducing 'greentape' are:

- Developing a licensing model that is **proportionate to the risk of the activity**.
- Providing **flexible operational approvals** for environmentally relevant activities (ERAs).
- **Streamlining the process for resources approvals** e.g. exploration and development of mining related activity
- **Improving the quality of information** provided to both business and government

However, under the proposals, to ensure that local governments have the capacity to maintain local conditions, while the statutory rules and standard conditions would form default requirements for all activities administered by local government, a local government would be able to override the statutory rules and standard conditions by developing a local law.

The risk in this approach (and in other areas where the State may reduce regulatory controls within legislation) is that it has the potential to result in differences in regulatory requirements between council areas. This could be counter-productive in terms of business objectives in seeking greater consistency across jurisdictions, although relevant to local circumstances.

Are local government regulatory functions conducted in a timely manner?

LGAQ does not collect data on timelines for regulatory functions of councils. LGAQ did undertake surveys in relation to processing of development applications in 2006 and 2007. The key findings from those surveys were:

- The average time taken for determination of a DA (after deducting applicant delays in responding to information requests or stopping the decision process) was 11.9 weeks. This was similar to the 11.5 weeks identified in the 2006 survey for the same class of DA;
- There is no evidence of inappropriate involvement of elected representatives in DA processing. Only 1.6% of the DAs determined in this survey had an officer recommendation modified by the full Council, less than the 3.6% found in the 2006 survey for the same class of DA;
- There has been a significant increase in the proportion of DAs determined under delegation, particularly in Provincial and SEQ councils;
- In some Councils, particularly rural Councils, increased delegation of decision making would improve processing times. A relatively high proportion (58%) of DAs determined under delegated authority are determined within 20 business days from the start of the decision stage;

- In only a relatively small number of Councils, is there any evidence that staff resources and workloads result in some delays in DA processing;
- Some 67% of councils with DAs included in this survey have undertaken steps to improve processing in the last twelve months. Greater use of technology, increased delegation, checklists and staff training are some of the key improvements noted.

The Queensland Government has developed a Development Assessment Monitoring and Performance Program (DAMPP). The annual report for 2009/10 was released in April 2011. The report uses statutory timeframes for processing development applications to monitor a pilot group of 19 councils, state government departments and applicants. Results¹ from this program include:

- Code assessable applications (68.6%) were approved within 60 business days from lodgement. (SPA timeframe of up to 60 business days, not including time for requesting more information).
- 32.58% of impact assessable applications were decided within 100 business days (SPA timeframe of up to 90 business days, not including time for requesting more information or referring the application to other state government agencies).
- The time for an applicant to respond to an information request was a median 41 business days.

How many council officers are employed to undertake regulatory functions and responsibilities? How capable are council officers in (i) designing, (ii) administering and (iii) enforcing regulation? What skills do they have? What skills do they need? Do they operate from a risk based framework? Do they apply the concept of responsive regulation?

LGAQ does not collect data on council workforce by function. In 2011, there were some 22,757 employees on Federal Awards, which is primarily the “indoor” workforce including those involved in regulatory activities. However, the number of regulatory staff would be a relatively small number of these. For example, a 2004 study of environmental health officer (EHO) recruitment and retention undertaken for Queensland Health identified 320 EHOs in councils across the State.

A study of the planning workforce² in 2007 estimated that there were some 1026 planners in Queensland (using ABS 2001 Census data). The study had 244 planners respond, of which 55% were employed by local government. This suggests that there could be around 500 planners in Queensland Local Government, although not all of these would be involved in development applications.

Local Laws officers would most likely be the single largest category of local government employees involved in regulatory activities.

Queensland Health does collect information on local government activity in relation to the Food Act 2006. The table below provides an indication of the scale of local government involvement in functions delegated under the Food Act 2006.

Overall local government information 2009/10	
Number of food businesses licensed	24,029
Average number of inspections per food business licensed	1
Number of infringement notices issued since 1 January 2009	266
Number of full time equivalent (FTE) employees committed to food regulation	136
Number of prosecutions undertaken since commencement of <i>Food Act 2006</i>	33

Source: Queensland Health Report on Local Government Activities 2010

Food Act regulation is based on a risk based framework, with responsive regulation based on performance.

¹ [Development Assessment Monitoring and Performance Program – Factsheet 2009-2010](#)

² Queensland Planners Attraction and Retention Survey Results, Local Government Career Taskforce – August 2007

What are the resource constraints for councils in ensuring effective delivery of the regulatory functions? How could these be alleviated?

The shortage of appropriately qualified staff and the retention of staff by local government in regulatory functions have been examined in a number of recent studies. While strategies have been developed to address issues, staff resources are an ongoing problem particularly for rural and remote councils.

Work undertaken by the Local Government Skills Formation Taskforce in Queensland in 2007 and 2008 reported serious skill shortages in a number of the regulatory roles of local government. These included:

- Some 60% of Councils surveyed reporting a shortage of DA Planners and 49% reported a shortage of Strategic Planners.
- The level of building certifier vacancies in the next three years was expected to double with the industry needing three times the amount of graduates to fill these vacancies. Some 90% of building surveyors in Queensland will be eligible for retirement in 2014.
- 45% of Councils surveyed reported a shortage of Environmental Health Officers (EHOs) and, of those respondents, 65% reported that it was very difficult to fill positions.

While the situation eased as a result of the GFC, recent figures suggest the skill shortages are returning to the levels seen in 2007. In August 2011, 90% of councils in Queensland are facing a skill shortage³ compared to 75% in October 2010. For example, EHOs shortages in 2011 are the same as reported in 2007.

Is information on the regulatory responsibilities of local governments available to local communities, businesses and interested parties in a complete, effective and timely manner? How easy is it to access information on regulatory requirements across all local governments?

In terms of public information on local laws, councils are required to keep a local law register (LGA s.31) and have copies of local laws available for inspection.

Many councils provide electronic copies of local laws on their web sites.

DLGP maintain a register of local laws for each council, with copies available online.

To what extent do local governments use electronic processes for regulatory functions, and have they had any material impact on compliance costs?

A number of councils in Queensland have made significant progress in terms of on-line development assessment. Projects funded under the Housing Affordability Program are focusing on improving housing affordability in high growth areas across the State, with particular emphasis on South East Queensland (SEQ).

Projects include:

- **electronic Development Assessment (eDA)** – a comprehensive and integrated eDA service in high growth Queensland councils to contribute towards improved housing affordability.
- **Target 5 Days (T5)** – a process reform initiative for residential development applications including a five day approval timeframe for complying low risk applications.
- **Next Generation Planning (NGP)** - creating standard housing related development policies and codes for South East Queensland councils.

Another initiative recently commenced in pilot councils in SEQ and coastal growth areas is an investigation of greater levels of self-certification of operational works in large subdivisions. This is aimed at further reducing local government inspection and compliance assessment in development controls and subdivisional works.

³ Local Government Skill Shortage Survey, Local Government Skills Formation Taskforce, October 2011

There is also a national strategy for ePlanning being implemented⁴ which aims to achieve a single point of entry nationally to complete any desired task in the planning and development process.

LGAQ, through its subsidiary Resolute, is also implementing a Council Business Centre (CBC) aimed at allowing councils of all sizes to significantly improve community engagement and customer service.

It is intended that the CBC will include an interactive website that provides advice and guidance to council staff, business operators and the community on a range of regulatory and compliance issues. This will include information for businesses requiring licensing by a local government. It is intended that the site will allow small business to access simple, tailored information about their compliance obligations in the local, state and federal spheres.

LGAQ is also doing a feasibility study with high growth councils on a one-stop-shop for the payment of infrastructure charges.

Are there examples of where local governments cooperate or otherwise come together for regulatory purposes?

The Council of Mayors South East Queensland (COMSEQ) have been working as a group on the housing affordability initiatives outlined above.

In addition, COMSEQ has initiated the Local **Government Toolbox Project** which aims to provide:

- improved access to consistent environmental health information to local Councils and business customers, ensuring better understanding of regulatory requirements;
- consistency in customer service information to inquiries made by small and home-based businesses across SEQ; and
- standardised and rationalised local law policies across SEQ to enable consistent interpretation and improved understanding of legal requirements.

A number of councils outside SEQ have also made use of this Toolbox.

Are there particular examples where local government approaches to regulatory responsibilities are especially effective at minimising unnecessary compliance costs for business?

Eat Safe Brisbane is a rating scheme that assesses food safety and hygiene standards of licensed food businesses (including restaurants, cafes and food outlets) and issues a food safety star rating. Businesses that demonstrate high levels of food safety receive three or more stars and can choose to publicly display their star rating.

Food businesses with a rating of 4 or 5 stars can perform an Eat Safe self-audit.

The State Government is proposing to introduce an amendment to the Food Act 2006 which would introduce prescribed requirements for food business rating schemes. The Bill includes provisions to fine councils that introduce a rating scheme different to that prescribed by regulation. While LGAQ supports the concept of a state-wide rating scheme, it does not support the current proposals.

There are also councils allowing self-assessment in relation to control of weeds under the Land Protection Act, providing potential for savings for rural businesses.

⁴ National ePlanning Strategy, National eDA Steering Committee, June 2011

ATTACHMENT A LOCAL GOVERNMENT ACT 2009

97 Cost-recovery fees

- (1) A local government may, under a local law or a resolution, fix a cost-recovery fee.
- (2) A **cost-recovery fee** is a fee for—
 - (a) an application for the issue or renewal of a licence, permit, registration or other approval under a Local Government Act (an **application fee**); or
 - (b) recording a change of ownership of land; or
 - (c) giving information kept under a Local Government Act;
or
 - (d) seizing property or animals under a Local Government Act; or
 - (e) the performance of another responsibility imposed on the local government under the Building Act or the Plumbing and Drainage Act.
- (3) A local law or resolution for subsection (2)(d) or (e) must state—
 - (a) the person liable to pay the cost-recovery fee; and
 - (b) the time within which the fee must be paid.
- (4) A cost-recovery fee, other than an application fee, must not be more than the cost to the local government of taking the action for which the fee is charged.
- (5) However, an application fee may also include a tax—
 - (a) in the circumstances and for a purpose prescribed under a regulation; and
 - (b) if the local government decides, by resolution, that the purpose of the tax benefits its local government area.
- (6) The local law or resolution that fixes an application fee that includes a tax must state the amount, and the purpose, of the tax.
- (7) If an application fee that includes a tax is payable in relation to land, the tax applies only in relation to land that is rateable land.
- (8) A local government may fix a cost-recovery fee by resolution even if the fee had previously been fixed by a local law.

98 Register of cost-recovery fees

- (1) A local government must keep a register of its cost-recovery fees.
- (2) The register must state the paragraph of section 97(2) under which the cost-recovery fee is fixed.
- (3) Also, the register must state—
 - (a) for a cost-recovery fee under section 97(2)(a)—the provision of the Local Government Act under which the licence, permit, registration or other approval is issued or renewed; or
 - (b) for a cost-recovery fee under section 97(2)(c)—the provision of the Local Government Act under which the information is kept; or
 - (c) for a cost-recovery fee under section 97(2)(d)—the provision of the Local Government Act under which the property or animals are seized; or
 - (d) for a cost-recovery fee under section 97(2)(e)—the provision of the Building Act or the Plumbing and Drainage Act under which the responsibility is imposed.
- (4) The public may inspect the register at the local government's public office.