

Business Regulation Benchmarking – Role of Local Government

Comment on geographies identified by the Commission

On page 14 of the Issues Paper the Commission invites comment on the type of classification that should be used in its enquiry. Council asserts that the Australian Classification of Local Governments (ACLG) is not a suitable classification scheme for this type of work. The ACLG is now quite old and does not adequately reflect the structure of local government in some states, including Queensland. Given the significant differences between Brisbane City Council (BCC) and all other Australian capital city councils, benchmarking using the Urban Capital City (UCC) classification would not provide a reasonable basis for comparison.

The Australian Bureau of Statistics *Australian Standard Geographic Classification* (cat 1216.0) Statistical Division (SD) structure provides a suitable classification system for comparing capital cities.

In its research report, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*, released in May 2011 the Commission discusses population density in Appendix C, using three disparate measures. It includes one density measurement developed by the Commission itself, and in the report it 'chose to measure density by Local Government Area (LGA), using ABS data'¹ with the 'LGAs included in each city... consistent with the areas defined in each capital city's strategic plan'². For Brisbane, this results in population density measurements, reported by the ABS as 337 persons per square kilometre, being reduced to 118 persons/km² using the Commission's methodology. While it is not clear from the Issues Paper what effect this methodology will have on the final report, it is based on a false premise and should be reviewed.

The capital city strategic plan the Commission relies on for its geography is for South East Queensland, a much larger geography than metropolitan Brisbane and includes rural areas adjacent to metropolitan Brisbane. The data included in Appendix C labelled ABS data is based on the ABS statistical division, and is Council's preferred geography.

For this study, which local areas should be under reference? Should the definition include areas regulated by non-local-government bodies, unincorporated areas and indigenous areas?

- In order for the study to reflect the role of local government or municipal regulation it would be advisable to only reference those bodies that have established regulatory systems in place and whose regulatory responsibilities are conferred by national, state or local legislation.
- This could also be extended to include SEQ water distributor retailers.
- The appropriate reference area for Brisbane is the SD as classified by the ABS. Use of the South East Queensland Region as a unit for analysis would be inappropriate for analysing regulatory provisions affecting businesses in Brisbane.

Which national reform frameworks require local governments to play a regulatory role? With which Commonwealth legislative instruments do councils have a regulatory role to play?

- Food safety is currently under a national review to provide a consistent approach to regulation. The Food Standards Code is a national standard that all food businesses must comply with under the relevant head of power (e.g. State legislation). Local Governments are required to regulate food businesses under their legislative head of power.

¹ Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments Vol 2 pp 573-574

² ibid

- Recent national reform frameworks have not required any additional Built Environment regulation in BCC. For Built Environment regulation, the Building Code of Australia and numerous Australian Standards are the national statutory instruments that guide Built Environment regulation.
- With regard to developing local laws, the Council of Australian Governments Competition Principles Agreement (CPA) is the basis of State legislation requiring local governments to test proposed local laws against the principles that:
 - the benefits of the restriction to the community as a whole outweigh the costs; and
 - the objectives of the legislation can only be achieved by restricting competition.
 - In conducting such tests local governments must :
 - clarify the objectives of the legislation; and
 - identify the nature of the restriction on competition; and
 - analyse the likely effect of the restriction on competition and on the economy generally; and
 - assess and balance the costs and benefits of the restriction; and
 - consider alternative means of achieving the same result including non-legislative approaches.

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

- Animal Management (Cats and Dogs) Act
 - Animal Management (Cats and Dogs) Regulation 2008;
- Building Act 1975
 - Building Fire Safety Regulation 2008
 - Building Regulation 2006
 - Queensland Development Code
- City of Brisbane Act 2010
 - City of Brisbane (Operations) Regulation 2010
 - City of Brisbane (Finance Plans and Reporting) Regulation 2010
 - City of Brisbane (beneficial enterprises and Business Activities) Regulation 2010
- Dangerous Goods Safety Management Act 2001
 - Dangerous Good Safety Management Regulation 2001
- Disaster Management Act 2003
- Environmental Protection Act 1994
 - Environmental Protection Regulation 2008
 - Environmental Protection (Waste Management) Regulation 2000
 - Environmental Protection (Noise, Air, Water) Policy 2008/2009
- Food Act 2006
 - Food Regulation 2006
- Land Protection (Pest & Stock Route Management) Act 2002 (to be replaced by a Bio-security Act in 2012)
- Plumbing and Drainage Act 2002
 - Standard Plumbing and Drainage Regulation 2003
- Public Health Act 2005
 - Public Health Regulation 2005
- Public Health (Infection Control for Personal Appearance Services) Act 2003
- Sustainable Planning Act 2009
 - Sustainable Planning Regulation 2009
- Transport Operations (Road Use Management) Act 1995
- Waste Reduction and Recycling Bill 2011 (currently before State Parliament)

What are the different legislative mechanisms by which local governments are given responsibility for implementation and enforcement of national and state/territory policies? In what areas do local governments have/exercise discretion in their implementation of state regulatory requirements?

- If the State devolves or delegates the legislative responsibility to Local Government for a particular regulatory purpose, local government has the legal accountability for that activity. The amount of discretion is dependent on the State law which Council is required to administer. Generally, Council retains discretion about when to take enforcement action but has little or no discretion over matters such as licence and permit requirements, procedures, enforcement powers and fees.
- Mechanisms include;
 - Devolved powers;
 - Delegated powers; and
 - Concurrence agency obligations (Sustainable Planning Act 2009).

What are the areas in which local governments create their own regulations?

- Under the *City of Brisbane Act 2010*, BCC may make and enforce any local law that is necessary and convenient for the good rule and local government of Brisbane. Council must not make a local law:
 - That sets a penalty of more than 850 penalty units for an offence;
 - That purports to stop a local law being amended or repealed in the future;
 - That regulates telecommunications network connections;
 - That prohibits certain election advertising;
 - That establishes an alternative development process; or
 - That contains an anti-competitive provision unless Council has complied with the regulatory procedures for the review of anti-competitive provisions.

Is there a clear distinction between the service and regulatory functions of local governments? In what areas might there be overlaps or confusion?

- BCC has a branch specifically tasked with providing compliance and regulatory services. There is a clear distinction between service and regulatory function.

In setting their own regulation and administering those of other governments, how do local governments determine which ones to focus on?

- BCC sets regulation in areas where it has been determined that there may be an existing gap and/or in areas that are aligned to BCC's Living in Brisbane 2026 Vision, BCC's adopted long term community plan.
- A risk approach focused on health and safety issues for city residents is taken to determine priority if resourcing is identified.
- A more focused approach to administering regulation for State Agencies is possible when adequate funding for resourcing is provided when devolving activity.

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?

- BCC charges fees for services across almost all regulatory functions, including licenses, permits, audit fees etc.
- Some fees are set by State Acts.

- Other fees are set by resolution in the annual Budget Schedule of Fees and Charges.
- Each year these fees are reviewed, and a costing exercise is carried out to ensure the fee is based on recovering the cost of the service only. As part of the costing exercise the fee is benchmarked against other local government fees.
- Under the *City of Brisbane Act 2010*, Section 99(4) Cost-recovery fees, Council may, under a local law or a resolution, fix a cost-recovery fee, however the fee must not be more than the cost to the council of taking the action for which the fee is charged.

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

- The urban areas of the capital cities should form one group for comparison. Consideration could be given a two tiered approach to the classification of capital cities, with the Sydney, Melbourne, Brisbane, Perth and Adelaide SDs forming one tier and Canberra, Darwin and Hobart SDs a second tier, given the significant differences in the characteristics of the two tiers.
- For local governments outside the capital cities like should be compared with like, that is considerations should be given to :
 - Region (including for example urban, rural)
 - Physical environment, including population density
 - Population
 - Economy
- In addition a comparison by the delegated powers or responsibilities conferred by principal legislation, taken broadly in order to allow for differences between states, including comparing planning schemes and then the role of local government in developing and administering local laws and responsibilities delegated from other levels of government may provide context for analysis of regulatory responsibility

How are regulatory roles allocated between state/territory and local governments, in Australia and other countries?

- In Queensland, the State Government determines what areas of regulation they will retain responsibility for and what is devolved to local governments. The issue of the effects of cost shifting on local governments is discussed below; however it is a real issue for local governments that delegated responsibilities often do not come with commensurate funds to allow for the adequate provision of services.

What level of coordination is there among state/territory and local governments? How is this achieved? What role is played by regional bodies and agreements? How might performance on these matters be benchmarked? Are there particular examples of where regulatory responsibilities between state and territory governments and local governments are or are not well coordinated?

- Consultation and co-ordination across levels of Government varies between departments and functions. As a general principle, operational co-operation, particularly where concurrent agency obligations exist is very robust because of the work of officers at both levels of government.
- The relationship may be less robust when Legislation is altered, included devolving regulatory function. It is not uncommon that the burden or expectation of regulatory function is shifted from State Agency to Local Government with little consultation and no resourcing to support the function.

Are there regulatory functions undertaken by local governments which could more effectively be performed by either the private sector or by the relevant state/territory government? Are there regulatory functions undertaken by state/territory governments which could more effectively be performed by local governments?

- There may be areas of regulation that could be managed as self-regulatory functions. BCC has adopted a self-fulfilment or self- assessment approach in some regulatory functions to enable cheaper, faster permits processing. An incentive approach, including self-audits have been implemented where strong ISO and other standards in place in businesses provide high confidence of ongoing compliance. However, this opportunity may be limited to those matters where public health and safety risk is not compromised.
- State Agencies must consider when devolving activities, whether they wish to devolve the outcome, or whether it is a task they are devolving, and continue to expect to have control of the detail of how the task is carried out. In this latter circumstance there may be benefit in the State Agencies performing the task themselves.

What costs (benefits) does poor (good) coordination between levels of government create for the businesses directly affected, other businesses, government agencies, and local governments?

- The expansion of the regulatory system has resulted in regulatory inconsistency and excessive administrative burdens on businesses attempting to understand and comply with all levels of regulation. In the environmental regulatory area in particular, Council's experience is that provisions change constantly and even the website locations of such provisions also move around. Businesses incur substantial costs employing technical experts to work through the regulations and interpret them for their business.
- Apart from regulatory complexity, for businesses that operate nationally or interstate, State based regulatory systems can add to the costs of doing business in other jurisdictions. There should be no variation in standards applied to business products and services within Australia.
- Anecdotal feedback from industry advisory groups suggests that;
 - Improved consistency between local and state governments provides less regulatory burden in industry and therefore improved cost efficiencies for business.
 - Conversely poor coordination can have significant adverse affects for the businesses directly affected. Time delays are one of the greatest costs incurred by businesses at the local level.

For which aspects of the regulatory process (for example, approval, monitoring, enforcement, and appeals) could costs to business be reduced without compromising the intended regulatory outcomes? How could this be done?

- As online technologies are strengthened, application and approval processes for permits and licences will improve both processing times and cost to businesses.
- In the environmental regulatory area, BCC has developed an on-line tool called the Preliminary Environmental Assessment Tool (PEAT), which assists officers in local government to navigate their way through and identify relevant environmental legislation. A description of this tool, its purpose and benefits is provided at Attachment A.
- Streamlining approval processes, including options such as reducing the requirements to evidence compliance could benefit both government and industry (for example accepting statutory or other declaration of compliance). However the approval process must have suitable provisions and transparency (for example conditions and requirements) to support the outcome.

Is there evidence to suggest that the same regulatory responsibilities are exercised differently by different local governments?

- Brisbane's experience with other local governments in South East Queensland is that there are differences between how different local governments exercise the same regulatory responsibilities as a result of differences in their:
 - Physical environment, including density
 - Population
 - Resource constraints, including ability to attract professional skill
 - Priority for region/local government area
 - Ability to attract professional skills
- Minimum outcomes will be similar however specific focus may be different. For example, BCC provides a higher level of regulation focus on erosion and sediment control issues (water contamination) associated with building sites than most other local authorities in Queensland.

Do the local government regulatory requirements and processes vary unnecessarily between jurisdictions or between businesses operating within a jurisdiction? Which areas could local governments harmonise activities to reduce costs of compliance within and across jurisdictions?

- As per previous response, minimum outcomes will be similar.
- Localised policy priorities may result in some regulatory variation between jurisdictions. For metropolitan areas such as the Brisbane Statistical Division area, businesses would benefit from a consistent regulatory environment across the entire jurisdiction.

Do local governments provide for sufficient transparency to stakeholders, including business, in their consideration of regulatory options and their related costs and benefits?

- BCC conducts engagement with stakeholders when considering regulatory options; in some cases creating advisory and working groups of industry members (for example the food industry for Eat Safe Brisbane, the advertising industry for consideration of a review of The Advertising local law);
- Public Interest Tests are conducted on all proposed local laws as required by State legislation under the Competition Principles Agreement (CPA). In conducting public interest tests Council must :
 - clarify the objectives of the legislation; and
 - identify the nature of the restriction on competition; and
 - analyse the likely effect of the restriction on competition and on the economy generally; and
 - assess and balance the costs and benefits of the restriction; and
 - consider alternative means of achieving the same result including non-legislative approaches.
- The public interest test requires consultation with key stakeholders, including community groups, industry and business, through public advertisement, direct notification and a call for submissions.

When delegating regulatory responsibilities, to what extent do state/territory governments consider the resources of local councils to ensure their effective delivery?

- The Issues Paper does not adequately deal with cost-shifting between levels of government as implementation responsibilities are shifted to local governments without the necessary funding to cover costs. Council agrees with the findings of the Commonwealth Grants Commission³ that cost shifting has contributed to increased levels of user charges. Therefore, as part of its benchmarking, consideration should be given to the effects of cost shifting on charges by local governments.
- BCC experience of State government consideration of resources of local government is that it varies across agencies, resulting in poor consideration of resource implications in some instances.
- BCC experience of State government consideration of resources of local government to delivery of regulatory responses varies across agencies. Some engage at preliminary thinking stage, seeking input to ideas as well as impact to implement, others have minimal consultation, focusing only on public consultation/submission periods for feedback.
- Often regulatory responsibility is delegated without sufficient consideration of resourcing or implementation requirements. Allowable fees may cover costs in some instances.

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?

- BCC publishes regulatory requirements on the website. Fact sheets and brochures are produced to further assist industry and individuals.
- A 24 hour contact centre service is provided, with comprehensive scripting to provide accurate advice.

Do state/territory governments provide guidelines, templates, training or otherwise assist local governments create their own regulations? What role and powers, including for oversight, are given to state and territory governments?

- BCC has a legal team skilled in the drafting of local laws and regulation. Queensland Government provides good information for developing local legislation.
- One area of concern identified in Council is that new legislation does not always consider all other existing legislation which may directly or indirectly impact the intended outcome. For example a 2010 review of legislation affecting student rental accommodation in Brisbane identified inconsistencies between fire regulations, rental regulations and boarding house regulations, all of which were introduced at different types and to address different objectives.

Are local governments making their own regulations to complement or strengthen state and territory laws or to address specific local issues?

- BCC has developed local laws that compliment and enhance State legislation. Animal Management, Natural Assets and Entertainment Venue and Events Local Law are examples.

³ Review of the Operation of the Local government (Financial Assistance) Act 1995, 'Commonwealth Grants Commission June 2001

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?

- Compliance and Regulatory Services for BCC has approximately 450 staff across Community Regulation (including Rapid Response), Environment Health, Built Environment and Natural Environment. (These numbers exclude Development Assessment).
- Qualification and skill requirements differ across disciplines. For example Environmental Health Officers are tertiary qualified in Health Sciences. Natural Environment Officers may have a qualification in Landscaping, or Ecology, or may be qualified by experience to identify invasive species of plant or animal.
- All field officers are trained in investigatory techniques, in good decision making, in appropriate customer interactions. Specific training about legislation relating to their role is provided as part of induction. Regular ongoing updates are provided, often online refreshers.
- BCC uses a risk approach to regulatory activity. Complaints are categorised according to risk with health and safety issues ranked highest, and (as a general principle) amenity or low consequence complaints ranked lower. Audit processes are also risk based, particularly in environmental health (food), with high risk businesses audited annually and those categorised as lower risk, audited every two or three years.
- Enforcement training and prosecution policy describes an over-arching principle that the enforcement action taken must be commensurate with the offence occurred, and must take account of public interest.

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

- Resource constraints for BCC occur where regulatory activity is devolved from State agencies without adequate resourcing. This could be alleviated by adequate funding to local governments when regulatory powers are devolved along with a more collegiate approach to developing changes to legislation.
- Ongoing efficiency reviews and alternative regulatory models (such as self-fulfilment) also help to militate against resource constraints without passing costs on to industry.

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

- BCC uses online systems for some permit applications and renewals, which have improved efficiencies and reduced administration costs.
- Tracking systems are all electronic, allowing management of and reporting against the large volumes of permits, licences and complaints received annually.

Are there examples of where local governments cooperate or otherwise come together for regulatory purposes? Are there examples, either within Australia or overseas, of jurisdictions which have adopted a 'mutual recognition' approach to reduce the regulatory burden on business?

- Brisbane City is in South East Queensland, which has a corridor of significant population, with several different Councils. A high degree of informal co-operation and information sharing is in place along with several formal groups including:
 - South East Queensland Council of Mayors
 - South East Queensland Region Animal Management (SEQRAM)
- A shared access website, developed by BCC, the South East Queensland "Toolbox" has process documents, forms, and information related to Environmental Health available to all Queensland Councils.
- The Preliminary Environmental Assessment Tool (see attachment A) was developed for use by all SEQ Councils.

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

In BCC the following are examples of changes to a regulatory approach, which supports reducing regulatory burden and compliance costs for business;

- Incentive based regulatory schemes such as Eat Safe Brisbane for food licensing can reduce costs for food businesses through reduced license fees and self-audit processes for high performing businesses.
- Self-fulfilment/express footway permits
- Self-fulfilment/express advertising sign permits
- Self-fulfilment/express process for Siting variations

Attachment A

Preliminary Environmental Assessment Tool (PEAT)

PEAT was developed as a collaborative initiative by the SEQ local governments to address a number of issues. These issues include:

- The mounting pressures SEQ local governments are under to implement extensive works programs, minimise environmental impacts and lead by example with growing populations and increasing community expectations;
- Councils with limited resources not putting a high importance on developing and maintaining procedures for works perceived as being unlikely to cause a significant environmental impact or that are low-cost activities are classed as "Minor Works";
- The complexities of environmental legislation, overlap and varying levels of exemptions for "Minor Works";
- The increasing cost of Environmental Consultants;
- Demonstrating and documenting the General Environmental Duty for all council works that have an impact on the environment;
- Inefficiencies in determining State interests via mapping tools and Council costs associated with duplicating State data on their own servers; and
- The lack of communication of changes to State Operational Policies, guidelines, information sheets and approval application forms provided via the relevant departments' websites.

What is PEAT?

PEAT is a web-based application that determines high risk activities that may require local, State or Federal approvals/consultation or detailed investigations (e.g. acid sulphate soils). It is written for a non-environmental professional Project Manager and contains links to relevant supporting information and forms. The user simply enters in a project location (address or via a map) and completes a survey. PEAT generates an Environmental Project Plan which helps the Project Manager plan for the environmental management required for the works; and a draft Project-Specific Environmental Management Plan (EMP).

PEAT was developed in the InfoMaster suite of products used in the On-Line Planning Schemes. It links up to the Smart eDA Declared Interest Services to determine State interests. PEAT contains all environmental legislative requirements pertaining to Council works. The database of legal and other requirements were developed and are maintained by BCC. All generic content is shared with SEQ Councils participating in the program. It is hoped that PEAT will benefit from the current upgrade to the On-Line Planning Schemes to allow on-line lodgement and management of the referral processes.

Benefits of PEAT

The implementation of PEAT as a regional tool is believed to result in a 79% reduction in man-hours spent on developing EMPs and Standard Operating Procedures for Minor Works; and reduce costs associated with consultancy fees (for assessments and training), fines and project delays for Minor Works by 27%.

An estimated savings of \$1.5M per year for SEQ Councils is anticipated once PEAT is fully implemented. BCC have gained an estimated economic benefit of \$250K using PEAT in 2010 (January-December).

Benefits of Improving State Provisions

Issue	Improvement	Result
<p>The mounting pressures SEQ local governments are under to implement extensive works programs, minimise environmental impacts and lead by example with growing populations and increasing community expectations.</p>	<p>Provision of operational policies for recurrent local government maintenance works authorised under:</p> <ul style="list-style-type: none"> ▪ <i>Local Government Act 1993</i> ▪ <i>Land Act 1994</i> ▪ <i>Water Act 2000</i> ▪ <i>Water Regulation 2002</i> ▪ <i>Land Protection (Pest and Stock Route Management) Act 2002</i> ▪ <i>Water Supply (Safety and Reliability) Act 2008</i> 	<p>Councils can conduct their authorised duties under operational policies (i.e. without the need for approval). It is noted that consultation, notification and/or detailed investigations may still be required such as currently required in DERM's <i>Guideline - Activities In A Watercourse, Lake Or Spring Carried Out By An Entity</i>.</p>
<p>Councils with limited resources not putting a high importance on developing and maintaining procedures for works perceived as being unlikely to cause a significant environmental impact or that are low-cost activities are classed as "Minor Works".</p>	<p>Identification of council activities that are low risk of causing environmental harm and ensuring they are not caught up in lengthy and expensive environmental approval processes. Perhaps take a similar approach as BCC's RiskSmart process?</p>	<p>Low risk, low budget Council works should operate under self-assessable codes.</p>
<p>The complexities of environmental legislation, overlap and varying levels of exemptions for "Minor Works".</p>	<p>Reduction in overlap and ensuring works that can be conducted under an operational policy under one Act does not require an approval under another. Example – de-silting works in a waterway requiring in-stream erosion and sediment control can be conducted under operational policies under the Fisheries Act and the Water Act but triggers an approval that requires public consultation under SPA (interference with the flow of water).</p>	<p>Clarity and assurance of compliance with all legislation relevant to the works if works conducted in accordance with a self-assessable code.</p>
<p>The increasing cost of Environmental</p>	<p>Complex legislation triggers the need for environmental</p>	<p>Council funds used for environmental consultants</p>

Issue	Improvement	Result
Consultants.	consultants to keep up with legislative changes, process approval applications and conduct detailed studies. Better information sharing, resource sharing and on-line lodgement of approval applications would reduce reliance on consultants.	directed towards achieving better (leading edge) and more sustainable environmental outcomes (i.e. more value for money).
Demonstrating and documenting the General Environmental Duty for all council works that have an impact on the environment.	PEAT demonstrates due diligence by documenting assessments of Council works. Benefit in working with State government to ensure assessment provided by software aligns with intent of legislation and interests of State.	Confidence that PEAT system complies and where practicable exceeds legislative obligations. Council leads by example.
Inefficiencies in determining State interests via mapping tools and Council costs associated with duplicating State data on their own servers.	State provides access to maps from all departments via the Smart eDa Declare Interest service (or separate local government service such as PEAT web service provided by DIP) with the ability to view data. Provision of other layers required by local governments via service such as Contaminated Land and Cultural Heritage Register/Database. Provision of Federal data relevant to Queensland via service.	Access to current State and Federal data with reduced cost to local and State governments. Improved integration of all GIS layers into business process efficiency tools such as PEAT.
The lack of communication of changes to State Operational Policies, guidelines, information sheets and approval application forms provided via the relevant departments' websites.	Notification services used by some departments could have a filter for local governments.	Local governments receive notifications of changes relevant to their operations.