



# Tasmanian Government Submission

PRODUCTIVITY COMMISSION'S ISSUES PAPER: *BUSINESS  
REGULATION BENCHMARKING – ROLE OF LOCAL GOVERNMENT*

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## INTRODUCTION

This paper represents the Tasmanian Government's submission to the Productivity Commission's Issues Paper *Business Regulation Benchmarking - Role of Local Government*. It outlines the range of State Government legislation and associated documentation that require local councils to exercise regulatory responsibilities that impact upon business, and provides some brief detail upon those responsibilities.

### *Australian Road Rules 2009*

In 2010, councils were given an "Instrument of Delegation" to approve parking controls, which includes issuing Loading Zone Exemption Certificates. The Vehicle Operations Branch (Department of Infrastructure, Energy and Resources) has recently commenced working with individual councils and will be encouraging them to take over the management of Loading Zone Exemption Certificates which are issued under Road Rule 179 & Schedule 6 of the Australian Road Rules 2009.

### *Environmental Management and Pollution Control Act 1994*

The role of local government under the *Environmental Management and Pollution Control Act 1994* (EMPCA) includes:

- undertaking environmental assessments of planning permit applications, and issuing land use planning permits that contain environmental management conditions, including those required by the Environment Protection Authority for 'level 2' (larger scale) activities;
- ensuring compliance with permit conditions for level 1 (smaller scale) activities; and
- ensuring compliance with general environmental duty as outlined in section 23A of the Act and furthering the objectives of the Act (section 8 and Schedule 1), implemented through the use of enforcement provisions detailed in Part 4 of the Act.

Under EMPCA, a council has a role to prevent or control certain levels of pollution. Section 20A(2) of the Act provides that in relation to activities other than prescribed activities, a council must use its best endeavours to prevent or control acts or omissions which cause or are capable of causing pollution.

A council may appoint an employee of the council to be a council officer for the purposes of EMPCA under section 21. Council officers may issue environmental infringement notices in respect to a prescribed offences (section 67) and payments in respect of infringement notices are payable to a council where the notice was served by a council officer (section 71).

Regulations made under EMPCA create more specific responsibilities for councils as detailed below:

- *Environmental Management and Pollution Control (Distributed Atmospheric Emissions) Regulations 2007*  
Councils are expected to enforce provisions on visible smoke created by wood heaters and fireplaces, the modification of heaters, backyard burning and permitted fuel types.
- *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004*  
Councils are expected to enforce the noise level, restricted hours of operation, and proximity provisions of the Regulations.
- *Environmental Management and Pollution Control (Waste Management) Regulations 2010*

Council officers may enforce any of the offence provisions of the Regulations.

### *Food Act 2003*

The safety and quality of food is regulated and monitored by the Department of Health and Human Service's Environmental Health Unit (EHU) in conjunction with local councils.

The Department's EHU develops, implements and interprets statewide policy and legislation as well as having a co-coordinating role in relation to food matters including food recalls, food-borne illness outbreak investigations and the like. Local council Environmental Health Officers (EHOs) enforce the food legislation and deal directly with food businesses on matters such as compliance, food safety skills and knowledge, food complaints and food surveillance programs.

Section 97 of the *Food Act 2003* requires councils to

- take adequate measures to ensure that the provisions of the Act are complied with; and
- carry out any other function the Minister or the Director of Public Health determines.

Councils are responsible for ensuring that food businesses within their area comply with the Food Act. Food businesses that handle potentially hazardous food are required to be registered annually by councils. A list of businesses required to be registered by local government is published by the Director of Public Health under Section 86 of the Act.

Routine inspections are a fundamental aspect of ensuring that both registered and non-registered food businesses comply with the Act and Council EHOs also have a significant role in monitoring food safety, including food sampling, risk assessment and education.

As authorised officers under the Act, council EHOs have broad enforcement powers under the legislation, including the power to require food premises, vehicles and equipment to be kept in a clean and sanitary condition. EHOs have the power to prosecute for breaches of the Act and regulations.

Councils also have the responsibility to ensure that new or altered food businesses comply with the requirements of the Building Code of Australia which sets out a range of constructional requirements including for walls, floors, ceilings, sanitation provisions and so on.

The Food Act adopts, by reference, the Australia New Zealand Food Standards Code, which sets out the operational requirements for food businesses. The Code also contains provisions relating to the labelling and composition of food which are also administered by local government.

More recently, provisions relating to primary production and processing have been added. However, provisions relating to primary production and processing are not generally administered by local government, except in emergencies.

Table 5: Food safety

Council Responsibilities	Aim of legislation	Impact on business
Councils are responsible for the registration of food premises and ensuring food handlers meet minimum skills and knowledge requirements. Routine inspections are a fundamental aspect of the licensing and registration assessment process, and councils also have a significant role in monitoring food safety, including food sampling, risk assessment and education.	To ensure food for sale is both safe and suitable for human consumption; to prevent misleading conduct in connection with the sale of food; and to provide for the continued application in Tasmania of the Australia New Zealand Food Standards Code.	The impact of this exercise of regulatory responsibility on business is the cost of registration fees and the cost of meeting minimum standards in relation to construction and operation of food premises, including ongoing maintenance and general up-keep.


### *Historic Cultural Heritage Act 1995*

Planning authorities<sup>1</sup> are responsible for protecting and managing local heritage places and precincts under their planning schemes and the *Land Use Planning and Approvals Act 1993* (LUPAA).

Planning authorities also provide the conduit by which the Tasmanian Heritage Council receives Works Applications under the *Historic Cultural Heritage Act 1995*. Planning authorities seek public representation, and issue statutory decisions or permits, including approvals, conditional approvals and refusals.

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<sup>1</sup> Under the *Historic Cultural Heritage Act 1995*, a planning authority is a council as defined in the *Local Government Act 1993*.



A number of non-statutory reforms have also been introduced in recent years. These include pre-statutory consultation, pre-lodgement consultation on works and the publishing of Pre-Development Assessment Guidelines. There are also plans to introduce a standard Historic Heritage Code to consistently recognise and protect local heritage places and precincts.

### *Land Use Planning and Approvals and Approvals Act 1993*

Councils are planning authorities under the Act and are responsible for -

- preparing planning schemes and planning scheme amendments;
- regulating the use and development of land;
- enforcing its planning scheme; and
- implementing planning directives.

### *Litter Act 2007*

Councils contribute to the enforcement of the *Litter Act 2007* through council authorised officers who have powers to issue and serve infringement notices for offences.

An authorised officer may issue and serve an infringement notice (section 17) and payments are payable to the respective council if the notice was served by the general manager, or a council authorised officer (section 48).

### *Local Government Act 1993*

#### Section 20

This Section provides councils with broad powers and functions that may have direct or indirect impacts on business. However, they are of a general nature and therefore specific impacts upon business are not made explicit.

Councils are provided with the general power and function to:

- provide for the health, safety and welfare of the community;
- represent and promote the interests of the community; and
- provide for peace, order, and good government of the community.

A council may do anything necessary or convenient to perform its functions.

A council may acquire, hold, dispose of and otherwise deal with property and sue and be sued in its corporate name.

### Section 73

A council may raise funds by:

- imposing rates, fees and charges;
- receiving interest and dividends on investments;
- selling property and assets;
- leasing or hiring out property;
- obtaining grants and other allocations of money;
- carrying out commercial activities;
- receiving gifts and bequests;
- recovering fees, charges, penalties or other money payable to the council; and
- by any other means approved by the Treasurer.

### Section 77

Councils may make a grant or provide a pecuniary or non-pecuniary benefit that is not a legal entitlement to any person for any purpose it considers appropriate. This may include in-kind assistance, fully or partially reduced fees, rates or charges, and remission of rates or charges.

### Part 9 – Rates and charges

Under this part all land is rateable except for limited reserves, crown land, roads, parks, railways, and marine facilities. Hydro-Electric Corporation land, land occupied for charitable purposes, Aboriginal land, and Council land are also excluded.

A council may impose rates and charges on land, and impose penalties for the late or non-payment of those rates and charges, including the sale of the land in respect of which rates are unpaid.


### Part 11 – by-laws

#### Section 145

A council may make by-laws in respect of any Act, matter or thing for which a council has a function or power under the Local Government Act or any other Act.

By-laws may be made so as to apply differently according to matters, limitations or restrictions, whether it is time, circumstance or otherwise, specified in the by-laws. They may be made to apply to the whole or separately to a part or parts of a municipal area.

By-laws may provide for offences and for fines up to 20 penalty units plus 2 penalty units per day for a continuing offence. The value of a penalty unit is currently \$130.



In order to adopt a by-law a council must first prepare a regulatory impact statement for the approval of the Director of Local Government, which is to include:

- the objectives of the by-law and the means by which the by-law is intended to achieve them;
- the nature of any restriction on competition;
- an assessment of the costs and benefits of any restriction on competition or any impact on the conduct of business;
- any alternative option considered by the council;
- an assessment of the direct and indirect economic, social and environmental impact of the by-law; and
- details of the proposed public consultation process.

#### Section 176

Through Regulation 37 of the *Local Government (General) Regulations 2005*, councils may compulsorily acquire land for prescribed purposes which are:

- the establishment of or extension to its public offices;
- the establishment of or extension to a works depot, pound, plant nursery or child care centre;
- the establishment of or extension to public land;
- the establishment of or realignment of a highway or local highway;
- the establishment or provision of access to a stormwater reticulation system, drainage system, handling system, disposal facility system or pump station and a waste management facility, waste disposal site or waste transfer station;
- the undertaking of work for prevention, control or mitigation of a flood; and
- the establishment of and operation of a quarry for the extraction, processing and storage of rock, crushed rock, gravel or sand for council works.

#### Section 189

Councils may close a local highway or part of a local highway for the purpose of operating a market.



## Section 205

Councils may impose fees or charges in respect of:

- the use of any property or facility owned, controlled, managed or maintained by the council;
- services supplied at a person's request;
- carrying out work at a person's request;
- providing information or materials, or providing copies of, or extracts from, records of the council;
- any application to the council;
- any licence, permit, registration or authorisation granted by the council; and
- any other prescribed matter, such as an application for a council land information certificate, issuance of a certificate of liabilities, copy of an annual report, making a complaint, referral of a complaint, and lodging an appeal.

Such fees do not need to be fixed by reference to the cost to the council.

## Section 333A

A council must invite tenders for any contract it intends to enter into for the supply or provision of goods or services valued at or above the prescribed amount, which is \$100 000, excluding GST.

### *Local Government (Highways) Act 1982*

This Act enables closures of roads and works to be carried out that may impact on business and provides for compensation in very limited circumstances.

### *Major Infrastructure Development Act 1999*

Councils have responsibility for –

- providing representatives for a combined planning authority (where applicable);
- assessing the major project; and
- enforcing permits issued by the combined planning authority.

### *Public Health Act 1997*

Tasmania's public health law was reviewed in the early 1990s culminating in the *Public Health Act 1997* and *Food Act 2003*. While the core duties of local government were not significantly altered, these Acts established a new administrative framework for public health. The fundamental role for municipal councils in regulating, monitoring and addressing public health issues has been maintained.





The Public Health Act requires councils to:

- (a) develop and implement strategies to promote and improve public health;
- (b) ensure that the provisions of this Act are complied with; and
- (c) carry out any other function for the purpose of this Act that the Minister or Director determines.

The Food Act contains similar statements in relation to food safety issues.

Local government plays a key role in implementation of the Public Health Act and Food Act and is responsible for day to day responsibilities associated with both Acts.

Statutory responsibilities are found in the Public Health and also in legally-enforceable guidelines issued under that Act. The guidelines that are relevant to Local Government include –

- guidelines for drinking water quality;
- recreational water quality guidelines;
- guidelines for public health risk activities;
- guidelines for the notification of notifiable diseases, human pathogenic organisms and contaminants;
- guidelines for places of assembly; and
- guidelines for Legionella.

#### Section 27

Councils are responsible to ensure that the provisions of the Act are complied with.

The general functions of councils as prescribed under Section 27 are:

- (1) A council, within its municipal area, must –
  - (a) develop and implement strategies to promote and improve public health;
  - (b) ensure that the provisions of this Act are complied with; and
  - (c) carry out any other function for the purpose of this Act the Minister or Director determines.
- (2) A council must carry out any function under this Act in accordance with any relevant guidelines.

Councils are also responsible for annually registering and licensing a range of places and activities under the Public Health Act.

The impact of local government regulatory responsibilities on business as they relate to the Public Health Act are summarised in tables 1 – 5 below:

Table 1: Public Health Risk Activities

Council Responsibilities	Aim of legislation	Impact on business
Councils register and license public health risk activity premises and operators. The public health risk activities are currently tattooing, ear and body piercing and acupuncture.	The aim is to ensure the health and safety of these activities and promote safe practices. The guidelines help operators to comply with the minimum requirements set out in the Act. These guidelines explain how infection can be associated with the procedures they employ, as well as the precautions they should take to protect their clients, themselves and the community.	The cost of registration and licence fees and the requirement of good premise standards, which may include ongoing maintenance and general upkeep.

Table 2: Places of Assembly

Council Responsibilities	Aim of legislation	Impact on business
<p>The places of assembly provisions in <i>the</i> Public Health Act recognise that places of assembly present particular health and safety risks to the public. As a result, a licensing requirement for classes of places of assembly is specified by the Director of Public Health.</p> <p>The current regulatory approach involves the places of assembly licensing provisions of the Public Health Act and the guidelines. Local Government administers the regulatory scheme.</p>	The Public Health Act contains licensing provisions for places of assembly, overcrowding provisions and a general provision to safeguard the health of the public. The places of assembly licensing provisions allow councils to impose conditions on a place of assembly licence to respond to particular health and safety risks and ensure the protection of public health.	<p>Section 127 of the Public Health Act provides that the owner and occupier of any premises to which the public has access must comply with any relevant guidelines relating to the safeguards of the health of any person likely to use the premises.</p> <p>The impact of this exercise of regulatory responsibility on business is the cost of registration and licence fees and the requirement of good premise standards, which may include ongoing maintenance and general up keep of the premises.</p>

Table 3: Registration of Regulated Systems

Council Responsibilities	Aim of legislation	Impact on business
Councils annually register regulated systems, including systems such as cooling towers and air conditioning systems, which may present a Legionella risk. The Director of Public Health has issued legally binding guidelines in relation to all the areas involving registration and licensing requirements.	The intention of the guidelines is to identify regulated systems and provide specific requirements about the maintenance and operation of these regulated systems to reduce public health risks and to ensure that they are operated in a manner that reduces the risk of the spread of Legionella.	The cost of registration and licence fees and the requirement of ongoing maintenance (including sampling) and general upkeep of regulated systems.

Table 4: Water (private water suppliers)

Council Responsibilities	Aim of legislation	Impact on business
Councils are responsible for registering persons who use or supply water from a private water source for any purpose relating to the provision of goods or services to the public.	To manage the provision of potable (drinking) water in a manner that does not pose a threat to public health.	The cost of registration and licence fees and the cost associated with a water monitoring program.

Table 5: Nuisances

Council Responsibilities	Aim of legislation	Impact on business
Councils have power under the <i>Local Government Act 1993</i> to control nuisances within their municipal area by issuing abatement notices requiring action to be taken to abate a nuisance. There are penalties for non-compliance with an abatement notice. If the abatement notice is not complied with, the council can issue a nuisance order or take remedial action itself.	The definition of nuisance includes anything that causes or is likely to cause danger or harm to the health, safety or welfare of any person, or is likely to cause a risk to public health.	The cost of the requirement of good premise standards, which may include ongoing maintenance and general upkeep of the premises.



### *State Policies and Projects Act 1993*

Councils have the responsibility to:

- enforce State Policies issued by the Government (as planning authorities under the *Land Use Planning and Approvals Act 1993*); and
- enforce permits approved by the Parliament (where applicable).

### *Strata Titles Act 1998*

Councils have approval functions under the *Strata Titles Act 1998*, which are largely covered in Division 9 – Council certificate of approval. Section 30 of the Act outlines the requirements for a council's certificate of approval in relation to strata plans and modifications to strata plans.

### *Vehicle and Traffic Act 1999*

Section 56C (2) of the *Vehicle and Traffic Act 1999* refers to councils issuing permits for certain activities prohibited on public streets.

### *Water Management Act 1999*

As a responsible water entity under the *Water Management Act 1999*, a council may administer a water district under Part 9, or a Water Management Plan under Part 4.

The Minister responsible for administering the Act may appoint council employees as authorised officers under section 237 for the purposes of the *Water Management Act*. The general powers given to authorised officers are set out in Part 12 of the Act.

Although the *Water Management Act* enables involvement by Local Government, no councils have been appointed as a responsible water entity to administer a water district or a water management plan, nor have any council employees been appointed as authorised officers.

### *Weed Management Act 1999*

The *Weed Management Act 1999* enables a council, with the approval of the Secretary of the Department of Primary Industries, Parks, Water and Environment (DPIPWE), to appoint a person as an inspector for the purpose of the Act (section 34(3)) within the municipality of that council (section 37(2)). Any payments made in respect of an infringement notice are payable to a council, if the notice was served by an inspector appointed under section 34(3).