

23 November 2011

Dr Warren Mundy
Business Regulation Benchmarking
Role of Local Government as Regulator
Productivity Commission
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Business
Council of
Australia



Dear Dr Mundy

BUSINESS REGULATION BENCHMARKING: ROLE OF LOCAL GOVERNMENT AS REGULATOR

The Business Council of Australia (BCA) welcomes the opportunity to provide input into the Productivity Commission's benchmarking study on the role of local government as a regulator. The BCA represents the CEOs of more than 100 of the top businesses in Australia and works to achieve economic, social and environmental goals that will benefit Australians now and into the future.

This letter has been prepared in response to the Productivity Commission's request for information from our member companies on local government issues, and includes a number of examples that go to their experiences dealing with local government. It also reiterates the BCA's position on the need to improve regulatory processes and the associated burden for business.

While acknowledging that there are a wide range of areas in which local governments have regulatory involvement, the examples provided in this letter generally cover the areas of greatest concern for our members: planning and land-use, building and construction, food safety and environmental assessments. We have not specifically identified any companies in this submission, however if you require further information on any of the examples we will contact them to confirm they are prepared to be identified and then put you in touch with the relevant company.

Conflicting and overlapping regulation across state and local governments

The lack of legislative and administrative coordination between state and local government jurisdictions can impose significant and unnecessary burdens on industry through inconsistent, overlapping and conflicting regulation. The following examples demonstrate some of the ways in which this is occurring.

- One company describes an instance where local government processes have crept into the remit of state government in regards to noise and environmental management at a refinery site. This has led to similar regulation being imposed at both the state and local levels resulting in additional complexity, time and costs for the associated business.

- Another example notes that in some cases there has been confusion as to whether state regulation overrides local government regulation. In this particular instance, the State Development Act and Petroleum and Gas Act in Queensland have given the impression that local government and other approval processes are not necessary when in fact they are.
- Another company raised a matter concerning the reprioritisation of site remediation at fuel stations that has occurred as a result of local government pressure, despite the prioritisation being originally approved by the NSW Office of Environment and Heritage. There is some concern that priorities of remediation activity will be driven by local government concerns and capabilities rather than the degree of potential environmental harm.
- One company stated that local zoning plans need to be consistent with the intent of the mining and petroleum state environmental planning policies. For example, connecting pipelines might not be permissible in a road corridor meaning the pipes must be located on rural or industrial land. Using road corridors in some instances may be preferable to the pipes being located on agricultural land, therefore connecting pipelines should be permissible in infrastructure corridors, particularly local roads.

Inconsistent advice and interpretation

The provision of inconsistent advice by local councils and conflicting interpretations of legislation by both state and local governments were also raised as issues by a number of our member companies, as outlined by the following examples:

- One company described the highly variable advice received from different states in regards to the interpretation of the word “meat” in the Uniform Trade Measurement legislation. In one state meat was defined as red meat only while in another it was defined as all animal flesh other than seafood.
- Similarly, the different interpretation and approaches that individual Environmental Health Officers have applied to the food safety legislation has in some cases resulted in considerably varied ratings for inspections in the one site.
- In terms of planning processes, examples highlighted the considerable uncertainty for business that can occur as a result of the differing approaches taken by councils and individual planners in processing planning permits and identifying issues. It was also noted that this occurs despite most development authorities and local councils having to comply with the same legislation and processes.
- A local council has requested that a fuel station comply with contaminated stormwater run-off requirements however the council will not approve the equipment that the company proposes to fix the problem with, as it is not listed as suitable technology in the NSW Government’s Liquid Trade Waste Regulation Guidelines. This is despite the fact that the technology is being used by other service stations in the state.

Complex processes and inadequate resourcing

The complexity involved in addressing regulatory requirements is becoming increasingly difficult for business to manage, resulting in a significant cost burden for many companies. This complexity is also relevant for local government resourcing, with companies highlighting the fact that there often appears to be a lack of knowledge and understanding regarding the guidelines that they are required to enforce.

- The increasing complexity is particularly evident in regards to planning and zoning where the documentation required to support development applications has continued to grow in volume and complexity. One of our member companies has indicated that a full Economic Impact Statement can often take up to six to eight weeks to prepare at an average cost of \$25,000 to \$38,000. Similarly, development delays have led to an average development time of 26 months for one of our members in the retail sector.
- A mining company provided us with some comments on their interaction with local government in the context of the integration of the fly in fly out (FIFO) workforce in the Pilbara. It was argued that the increasing pressure on local government for planning approvals had led to delays, inadequate planning decisions, and little thought about effective integration of FIFO workforces. Lack of strategic planning, alignment between government and industry and the pace with resource sector development timelines are all impacting on the potential benefits for the local community.
- Another company has argued that local government, in undertaking its role in reporting compliance or non-compliance of Environmental Impact Statement conditions for mining leases, has to become familiar with the science associated with environmental impacts in order to reach a position on the validity of the claims. While acknowledging that this can be difficult, this can lead to substantial delays with limited acknowledgment of the associated costs for business.
- Some companies have also argued that local government tends to approach things from a one size fits all perspective without recognising the needs of specific industry, another potential side effect of a lack of specialised knowledge on the part of local government officers.

The BCA's position

As stated in the BCA's submission to the Productivity Commission's benchmarking study on planning, zoning and development assessments, we support seamless national economy reforms that lead to the reduction of unnecessary inconsistency and duplication in all areas of regulation. A number of specific recommendations were made in regards to planning and zoning assessments that are also of relevance to this study. They include:

- The need for effective coordination and cooperation between all tiers of government particularly in instances where decisions affect a number of local councils.
- The importance of clearly defined roles and responsibilities across tiers of government, and the allocation of appropriate resources to support processes, including sufficient expertise.

- A reduction in the costs associated with planning, zoning and development processes that can arise as a result of delays and uncertainty. This is consistent with a number of the issues raised in this submission.

The BCA has a longstanding interest in supporting effective intergovernmental relationships for efficient government at all tiers. Should this benchmarking exercise lead to the Commission making recommendations to governments on policy and program development, some areas supported by the BCA that the Commission might like to explore include:

- Incentives that require local government authorities to come together and make decisions at a regional level which could potentially be achieved through regional planning authorities, the panel model that operates in a number of states or amalgamation of local government authorities.
- Reform to drive improved capacity amongst local government authorities to deal with complex matters.
- Specially designed institutions to drive urban renewal and major corridor developments, such as the East Perth Redevelopment Authority and Queensland's Urban Land Development Authority.

The BCA looks forward to the Productivity Commission's report and the valuable contribution that this study will make in highlighting opportunities to reduce the regulatory burden on business.

Yours sincerely



Jennifer Westacott
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