



25 May 2012

Our Ref: 05-099-03-0001WS:EF

Business Regulation Benchmarking  
Productivity Commission  
GPO Box 1428  
Canberra City ACT 2601

To Whom It May Concern

**Performance Benchmarking of Australian Business Regulation –  
The Role of Local Government as Regulator**

Thank you for the opportunity to comment on the above report. The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia (WA). The Association is an independent, membership-based group representing and supporting the work and interests of all Local Governments in WA. Due to meeting schedules, this Submission has not yet been endorsed by WALGA's State Council. The Commission will be informed of any changes to this Submission following consideration by the State Council.

The Association welcomes the initiation of the benchmarking project, and anticipates that the research will also highlight challenges Local Governments face in undertaking their regulatory functions, with the expectation that these concerns will be addressed. In particular, the Association supports the comment included in the Report that 'implementing and enforcing state and territory laws, rather than local laws, predominates LG regulatory activities' (pg. 2). Until Local Governments are adequately resourced to undertake these regulatory functions, or are at least empowered to effectively manage Local Laws to assist in delivery, there will continue to be unnecessary burdens placed on both business and Local Government.

**General Comments**

Overall, the Association is supportive of the project, but is concerned by the out-of-date references to legislation and regulations in WA. The study also appears to rely heavily on information and case studies from the eastern states that do not accurately represent the situation in WA. The representativeness of the business surveys is also a concern; throughout the Report the use of comments from business appear difficult to substantiate. Specifically, the Report mentions that there are over 2 million businesses within Australia but some of the surveys are based on participation from 500-1000 businesses. We would argue that this does not adequately represent the entire business sector in Australia.

**Specific Comments**

Leading Practices

- *'...the Commission is seeking further information on how the planning system currently caters for the land-use needs of tourism.'* (pg. 30)  
The WA Planning Commission has prepared Planning Bulletin 83/2011 to assist Local Governments in tourism matters. This Bulletin is supported by the WA Tourism Commission's guidelines for preparing tourism strategies. The recommendations of the tourism strategies are included into the local planning strategy and then into the local planning schemes, which is the most effective way of incorporating tourism planning into the Local Government planning framework.

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### Section 3 – Governance and regulatory frameworks

- Table 3.20 lists 'Regional Planning Panels' as an appeal pathway. WALGA is not familiar with these panels, and requests that the Commission correct the document or clarify what panels they are referring to.

### Section 4 – Capacities for local governments as regulators

- *'...in Western Australia, LG building surveyors must be registered with the Building Services Board.'* (p. 168)  
Amend document, replacing 'Building Services Board' with 'Building Commission'.

### Section 5 – Local government coordination and consolidation

- Amend Table 5.3 to include the recently launched 'CouncilsOnline' portal. CouncilsOnline is a centralised online portal developed specifically for WA Local Governments with funding assistance from the Commonwealth Government. CouncilsOnline enables the online preparation, lodgement and processing of Planning and Building Applications.
- *'A Local Government Reform Implementation Committee has now taken over to progress reform.'* (pg. 195)  
In June 2011, the Minister for Local Government announced a review of Perth metropolitan Local Government and broader governance structures. An independent panel was established to undertake the review. To date, the Metropolitan Local Government Review Panel has released an Issues Paper for public comment, and a document outlining their findings as a result of this consultation. The final report is due to the Minister in late June 2012.
- Amend document on page 206 to include CouncilsOnline as an example of leading practice.

### Section 7 – Building and construction

- *'To address the concerns raised by some jurisdictions of a move away from a mandatory inspection approach, the Commission invites comment from participants...'* (pg. 295)  
The inspection regimes mentioned within this section in regard to Buildings and Risk aversion, have not been adequately determined by the Building Commission in WA. Until the details are provided, it is therefore unclear whether this system will ultimately provide the best solution.

### Section 8 – Parking and road transport

- This section is quite critical of Local Government's role in limiting RAV access to its network but says little about the problem of structural damage and compensation, although this is mentioned in the Key Points. Unforeseen structural damage to the local road network is a major issue and can impose a huge financial burden on Local Government. Rural Access roads are particularly susceptible and have a far greater sensitivity to structural damage than higher order roads. The Association would like to see greater prominence of this issue in the text and possibly some examples of what has been done to negotiate compensation or calculate marginal costs across the sector.
- *'Good governance principles dictate that decisions about the level of parking contributions should be determined by elected representatives...'* (pg. 314)  
Disagree with this comment. As long as a Local Government has a clear process for dealing with cash-in-lieu, it should not matter who signs off on the negotiations for cash-in-lieu of parking, good governance will occur via either staff or elected members..

### Section 9 – Public health and safety

- The comments made with regards to public health areas of food safety, warm water testing, public swimming pools and noise and air pollution are supported. In progressing with these areas, the Productivity Commission should be aware that the Public Health Bill is anticipated to be tabled in State Parliament in mid-2012. The Bill creates provisions for Local Governments to develop Public Health Plans, and describes reformed conditions of authorisation for officers administering regulations.
- With respect to Noise and Air Pollution, amendments to the *Environmental Protection (Noise) Regulations 1997* are being progressed and will give Local Governments a greater role in the administration of noise legislation, along with delegated powers to Local Government's CEO's to approve local Noise Management Plans.



- *'At the time of drafting, Western Australia has a bill before parliament that would permit legal brothels in limited circumstances and require LGs to play a role in their regulation.'* (pg. 375).  
Amend this sentence to read 'require Local Government to play a limited role in their regulation, but this will be determined through the future preparation of specific regulations'.

#### Section 10 – Environmental regulation

- The review of regulatory arrangements in this section relies heavily on eastern states case studies, and does not adequately represent the situation in WA. For example, the Report states that 'most LGs have transitioned in recent decades away from the role of collector and disposer of rubbish to that of enforcing waste management regulation in pursuit of environmental objectives and targets' (p. 419). This is not the case in WA, where Local Government is still a primary provider of waste collection, recovery and disposal in many areas.
- Local Governments in WA also undertake regulatory responsibility for litter management; for example, litter clean ups in public open spaces and beaches, and dealing with rubbish bin vandalism, illegal dumping, and other forms of regulation enforcement as mandated in the *Environmental Protection Act 1986* and the *Litter Act 1979*.
- *'...many LGs have landfill bans in place on a variety of waste types such as e-waste, concrete and tyres.'* (pg. 420)  
Please note that this is not the case in Local Government landfills in WA.
- *'Businesses likely to be impacted by waste regulation include those generating... large volumes of waste, such as construction businesses, some primary producers (such as diaries) and some industrial sites...'* (pg. 421)  
In relation to construction sites, Local Governments do have power to regulate noise and dust, for example (under the *Environmental Protection Act 1986*), but are not responsible for regulating the waste from these activities.
- *'Some other costs which may be incurred by business which relate to waste generation rather than to waste disposal include...'* (pg. 422)
  - *'...preparation of waste management plans (WMPs) to accompany development applications'*  
In WA, this requirement is limited, and does not occur in all Local Government areas.
  - *'...LG conditions on planning or building permits relating to waste disposal or management on site'*  
The pro forma Waste Local Law has a range of provisions relating to waste management on site and requirements for appropriate disposal offsite. There is a concern, however, regarding the ability of Local Governments to regulate effectively as State Government has the power to remove or amend Local Laws. Local Government needs access to a variety of tools if it is to undertake further regulatory responsibility.
  - *'...applications for the transport of waste through some LG areas'*  
This is not really applicable in WA.

#### Section 11 – Planning, zoning and development assessment

- Amend document to include 'Local Planning Policies' in Figure 11.3 for WA (pg. 439).
- *'It would appear that Western Australia has a system which contains most of the leading practice features desirable in alternative assessment pathways.'* (pg. 442)  
As Development Assessment Panels (DAPs) have only been in operation for less than 12 months, this paragraph should be reworded. Until a review is undertaken on the efficiency of the new system, it should not be touted as a best practice example. In addition, DAP's only relate to a small proportion of applications, so their overall impact in development assessment within WA will be minimal.
- *'...fees for the assessment of development applications in Queensland and Western Australia are based on cost recovery principles.'* (pg. 450)  
WA planning fees are not based on a cost recovery model. The Planning Fees and Charges are due to be reviewed this year, and will include an investigation of a cost recovery model to outline the true costs for a Local Government to assess development applications. WALGA is currently undertaking research which will assist the Department of Planning in reviewing the fee structure for 2013/2014.



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- *'The Commission would welcome any evidence which further outlines the nature of the regulatory burdens and identifies councils which employ good regulatory practices in each of the following areas – telecommunications infrastructure; tourism; mining and extractive industries; and home-based businesses.'* (pg. 463)  
In order to provide evidence of Local Government's with good regulatory practices, WALGA would need to specifically survey members on the above areas, which would be outside the timeframes imposed by the Productivity Commission.

Thank you again for the opportunity to comment.

Yours sincerely

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