

Our Reference: 84280 / CU : CS

31 May 2012

Mrs Christine Underwood
Business Regulation Benchmarking
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear Christine

Performance Benchmarking of Australia Business Regulation: the role of Local Government as a Regulator

Thank you for the opportunity to comment on the above draft report. As per our earlier correspondence, formal consideration of our position relies upon internal processes, which require an extension beyond the deadline that you have established for comment. However, we also recognise the time constraints within which the Productivity Commission operates and the importance of this particular draft report to Local Government.

Therefore, in accordance with our recent telephone agreement, the LGA Senior Executive Committee of the Local Government Association provides our attached submission to you on a “without prejudice” basis recognising that there is still the need for final consideration when it meets 21 June 2012.

Once the submission has been formally considered and endorsed, it will be forwarded to you as a formal consideration in this matter.

Yours sincerely

Wendy Campana
Chief Executive Officer

Attach: Submission on the Draft Productivity Commission Report (84280)



SUBMISSION ON THE DRAFT PRODUCTIVITY COMMISSION REPORT

*Performance Benchmarking of Australian Business Regulation: the Role
of Local Government as Regulator*

June 2012

Submission on the Draft Productivity Commission Report

INTRODUCTION

Local Government Association of SA (LGA)

The Local Government Association of South Australia (LGA) welcomes the opportunity to provide this submission the Productivity Commission's inquiry into the role of Local Government as a regulator.

The LGA is a membership organisation for all Councils in South Australia and is the voice of Local Government in this State. The LGA is created by Councils and endorsed by the South Australian Parliament through the South Australian *Local Government Act 1999*. Local Government in South Australia (SA) comprises 68 Councils of which 19 are metropolitan Councils and 49 are rural or regional Councils. All are members of the LGA.

The LGA has a formal State/Local Government Relations Agreement with the Premier of South Australia, and is a constituent member of the Australian Local Government Association.

SUBMISSION

According to the draft report; ***Performance Benchmarking of Australian Business Regulation: the Role of Local Government as a Regulator***, South Australia has the smallest number of businesses by Local Government area, after Tasmania and the Northern Territory, in Australia.¹ As the draft report acknowledges, the main regulatory role of Local Government, particularly in South Australia, is to implement or enforce regulations made by the State Government, rather than to impose its own regulation on business.

The LGA therefore concurs with the findings of the draft report that “implementing and enforcing state and territory laws, rather than local laws, predominates Local Governments regulatory activities. While the Commonwealth cannot delegate regulatory responsibilities directly to LG, it influences them via national frameworks, such as food safety, where LG plays a role in implementing them.”

Local By-laws in SA

Although Local Government can make its own by-laws under the *Local Government Act 1999* (SA), the powers are limited. Apart from some powers to impose permit requirements, such as for outdoor cafes or for carrying out certain activities on Local Government land, Local Government by-laws in South Australia do not have a heavy regulatory impact on business. In addition, they are disallowable instruments that can be struck down by the Parliament. As a result, by-laws do not require a regulatory impact statement to be prepared. However, there is a significant public consultation process before by-laws are made and all by-laws are also required to comply with National Competition Principles. Councils receive reports on compliance with the Principles before making the by-laws.

The draft report is incorrect when it states (in a number of places)² that South Australian Councils are not required to publish by-laws on their websites. Section 132(3)(f) of the *Local Government Act* makes it mandatory for Councils to publish by-laws on their websites, together with a large number of other documents.

¹ Draft Report, p. 216.

² For example, p. 94.

Local Government Capacity to Regulate

The LGA supports the draft report's comments on the need for Local Government to be properly resourced by State Government to carry out the regulatory functions and for the State to consult on any proposed additional regulatory functions. The LGA reinforces the difficulties created for Local Government by unfunded mandates given to it by other spheres of government.

The LGA has a formal State/Local Government Relations Agreement which requires the State Government to consult with Councils through the LGA in relation to any legislative changes that affect Local Government. This has been the case, for example, in relation to major changes to the Planning system in 2008 and in relation to major changes to Public Health legislation in 2012.

In relation to the State providing guidance to Local Government, State and Local Governments already work closely together on key matters.

The LGA also plays a major role in providing model policies, guidelines and standard operating procedures for Councils to assist them in carrying out their regulatory functions.

Business Impacts

Streamlining, and therefore sometimes minimising, the cost of regulation to business is a direction that is generally supported as underpinning growth in economic development.

However, the LGA takes exception to the report's assertion that "most costs incurred (by business) are due to delays, requirements, restrictions, fees and penalties". This generalisation confuses the time taken for proper assessment and consideration of business proposals, and the imposition of reasonable restrictions or conditions on such things as development applications, as inefficiencies. This position fails to recognise the balance that is required between business interests and the community as a whole. It also fails to recognise the intrinsic value of regulation to community stakeholders that increasingly expects that Local Government manage more complex, and often completing, demands.

Regulation is one of the tools available to address competing interests for scarce resources as well as being able to control the quality of services and production upon which the community has come to rely. Understanding the objectives of the regulation is key to understanding the role that it could/should play in ensuring appropriate activity. It would, for example, be difficult to find support for the position that there was no public role in controlling the quality of food, housing, public health and safety or controlling the quality of the public realm but these are some of the examples of the types of activities that cause business interests to complain of delays, "red tape", and bureaucracy. The argument should not be about the need for regulation necessarily as these are decisions most often made by other spheres of government. Instead the focus should be the manner in which the regulation is executed locally. This can only be addressed when properly resourced by the government imposing the regulatory regime. The assessment of the value of a regulation should not only consider its impact on the business sector but should consider its net community value i.e. how well it balances and responds to the diverse interests of all stakeholders.

In South Australia, one of the tasks being addressed by a Joint Local Government/State Treasury Working Party is the indexation of statutory fee regimes. This addresses the need for Local Government to at least realise a fee that comes closer to cost recovery in the implementation of regulatory activities. This will not only enable the employment of more resources but also improve the capacity to recruit specialist resources.

It is also worthwhile noting that many Councils also contribute significant support for economic development and business success within the local community though the

provision of (regulated) parking controls, waste collection, stormwater management and the provision of local infrastructure.

LGA Activities with respect to Regulation

The LGA agrees with the position taken in the report that adverse business impacts can be minimised when the responsibility of regulation are well considered and discharged. To assist Councils in South Australia the LGA produced a self assessment tool available to all Councils; Local Government Good Governance Self Assessment program for Regulatory Services and this is attached for your information. It is also available to all Councils via the LGA web site www.lga.sa.gov.au .

The LGA also agrees that minimising unnecessary duplication and red tape not only reduces the cost to business but also to Local Government itself and, as a result has managed two projects as part of its Local Excellence Program to address this; one addressed the streamlining of Local Government processes that impact on the community in general and business specifically, the other addressed processes and the fee regime with the State Government through the work of the previously mentioned Joint Local Government/State Treasury Working Party formed by the President of the LGA and the Treasurer of South Australia.

Whilst the focus of the draft report is on the impact of the regulatory burden on business, it is also worth identifying the costs associated with the introduction and enforcement of business regulation on Local Government itself. This is particularly critical when resources are stretched to respond to many often competing policy responses (climate change, affordable housing, flooding and other natural disaster responses).

Benchmarking

One of the strengths of Local Government is its capacity to reflect very different local circumstances and priorities. This also results in a range of different capacities to address the requirement of State regulations. It does not seem sustainable (or sensible) to consider the benchmarking of small rural Councils with larger metropolitan Councils without also recognising the different resource constraints and roles that they perform.

This context needs to be fully understood when trying to determine the impact of regulation costs on business and further, when addressing possibilities for their reduction or management.