



14 May 2012

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RIA Benchmarking Study
Productivity Commission
GPO Box 1428
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To Whom It May Concern

Productivity Commission Issues Paper – Regulatory Impact Analysis: Benchmarking

Thank you for the opportunity to comment on the above paper. This Submission has been prepared through the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). MWAC is a standing committee of WALGA, with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management). Due to meeting schedules, this Submission has not yet been endorsed by MWAC, however it will be put before the Council at the earliest opportunity (Wednesday 20 June 2012). The Commission will be informed of any changes to this Submission following consideration by MWAC.

MWAC comments regularly on Regulatory Impact Analyses and Statements that have a potential impact on Local Government waste management activities. As the Productivity Commission Paper *The Role of Local Government as Regulator* highlights, Local Government functions have expanded well beyond the traditional 'roads, rates and rubbish' (2012, p. 8) and many Local Governments are finding that they do not have enough resources to effectively undertake their increasing responsibilities. The Productivity Commission comments that this may be due to 'state governments devolving additional regulatory responsibilities to [Local Governments] often without first ensuring they have sufficient resources – both in terms of finances and appropriately skilled staff' (2012, p. 10). The following comments are guided by concern for these recurring cost shifts to Local Government, and the view that Local Government should be appropriately consulted with when regulation is created or reviewed.

1. The effectiveness of a Regulatory Impact Analysis (RIA)

The Association supports the concept of RIA, but questions the value of such a process when RIAs are not mandatory, are included as an 'add on' function only, and have little impact on decision making. In Western Australia, RIAs are only carried out sporadically, and are often not open to public consultation. Considering the impact of new and existing regulation on a number of Local Government functions, this practice is of increasing concern to the Association.

There is also a concern that a RIA is only developed as an after-thought, once the decision has essentially been formulated. How effective can a RIA be if it is not included in the policymaking process from the beginning? The RIA should be utilised to present a number of potential options (including regulatory and non-regulatory), and should also include the potential impacts of each option, long before a decision has been made. Local Government expects that any potential impact on their operations will be flagged during this process.

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The Association would consider supporting the introduction of mandatory RIAs, if there is a genuine commitment from Commonwealth and State Governments to integrate RIAs into the policymaking process from the start, and that government staff are appropriately trained to be effective in their analysis.

Recommendation: That greater coordination of Commonwealth and State Government processes is guaranteed to ensure the effectiveness of the Regulatory Impact Analysis process.

2. Other forms of consultation necessary

As the Issues Paper outlines, regulation can be necessary to achieve a range of social, environmental and economic objectives. The RIA process however, pays too much attention to economic impacts, potentially ignoring the social and environmental impacts of a decision. The need to present social and environmental impacts in quantifiable, 'monetized terms' is not appropriate. There needs to be an acknowledgement that a RIA is not the only decision making tool available, and that other forms of analysis and consultation will be required. It also needs to be made clear to Ministers and other decision makers that a RIA is only an instrument to assist decision making, not a tool to make a decision.

There also needs to be a commitment guaranteeing that the public will be given appropriate time to comment, and that all will be done to ensure that they have the capacity to effectively engage in this process. Currently, the expertise stakeholders require to actively engage with the RIA process is significant. For example, what capacity does the public have to adequately question economic analysis? Most stakeholders are not economists, and would not have access to this knowledge base, and would therefore only have limited capacity to engage in this process.

Recommendation: That a RIA is undertaken in coordination with other forms of consultation, particularly those that assess social and environmental impacts.

Recommendation: That mandatory time periods for consultation be introduced for the Regulatory Impact Analysis process.

Recommendation: That more is done to ensure that stakeholders are able to actively engage with the Regulatory Impact Analysis process.

3. Costs associated with making incorrect decisions

The Issues Paper outlines the sources of unnecessary regulatory burden that can impact on business due to poor decision making. The Association recommends that the Productivity Commission acknowledges the significant burden placed on Local Government as well, especially considering that the State Government is increasingly devolving regulatory responsibility to Local Government, particularly in the area of environmental regulation. For example, provisions under the *Litter Act 1979*, and the *Environmental Protection Act 1986*, which see Local Governments responsible for reporting and fining people and companies who litter or dump-waste illegally. Another example is the increased role for Local Government in monitoring noise for their own services, as well as others within their boundaries, under the *Environmental Protection (Noise) Regulations*. The impact on Local Government could be minimised if decision makers engage with the sector during all aspects of the decision making process.

It is imperative that the right decisions are made, and that decision makers are given the correct advice to ensure that this is done. There is a concern that not all feedback is taken to account, and not only at the decision making stage. For example, the COAG Standing Council on Environment and Water recently released a Regulatory Impact Statement (RIS) on Packaging Impacts. While there were many issues with the analysis done for the RIS, the effectiveness of this assessment relied heavily on the correct identification of 'the



problem'. The consultation process during this phase of the RIS was limited to two workshops in the eastern states, and while comments were provided by those stakeholders who were able to attend, it was not made clear how these comments were incorporated into the assessment of the problem. Stakeholders were also not provided the opportunity to comment on this aspect of the assessment after this date. In regard to the RIS, the concern is that the proposed options to address the problem have not been developed appropriately as the scope of the issue is incorrect. At the comment stage for the RIS it was announced that it was too late to amend the problem, despite concern that the options proposed would not adequately address what some (including MWAC) believed the problem to be.

Recommendation: That Regulatory Impact Analyses are undertaken with appropriate regard for stakeholder comment, to limit unnecessary regulatory burdens caused by poor decision making.

4. Triggers

If it is considered too much of a burden to mandate that a RIA is undertaken for all regulation, the Association recommends that a RIA be triggered if Local Governments will be potentially impacted by any proposed decision. This includes for subordinate regulation and quasi-regulation.

The Association recommends that any RIA developed should include an assessment of the cumulative burden of regulation on Local Government, which will require greater coordination between State and Commonwealth agencies to identify overlaps and competing reporting requirements. This will ultimately ensure that the correct decision is made, and that any regulation introduced will be carried out appropriately, within Local Government capacity.

The Association also recommends that any RIA developed also identifies key areas of support needed, and the potential barriers, to ensure successful implementation of the proposed regulation. For example, many Local Governments are unable to regulate effectively as State Government has the power to remove or amend Local Laws. Local Governments need access to a variety of tools if it is to undertake further regulatory responsibility.

Recommendation: That the requirement for a Regulatory Impact Analysis is triggered if there is a potential impact on Local Government.

Recommendation: That a Regulatory Impact Analysis is developed in coordination with all government agencies to assess the cumulative burden of regulation on Local Government.

Recommendation: That the Regulatory Impact Analysis identifies potential barriers that may impact on the effective implementation of proposed regulation.

Yours sincerely

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