

ATTACHMENT 1



29 October 2012

Regulation Review – Local Government Compliance and Enforcement
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

Dear Sir or Madam

Regulation Review – Issues Paper

Thank you for the opportunity provided to Campbelltown City Council to make comment on the Regulation Review Issues Paper. Please find below comments on behalf of Council concerning those matters raised in the Issues Paper of direct relevance to Council's compliance/enforcement roles.

- **Exemptions provided by Local Government.**

Local Approvals Policies (LAPs) could be more extensively used to reduce the need for individuals or businesses to obtain specific approvals from councils by increasing the number of exemptions contained therein. LAPs could be used to define approval criteria for a range of activities such as the use of footpaths, mobile food vendors, operation of on-site wastewater management systems and wood heaters, however criteria would need to be clearly defined to minimise scope for uncertainty and misinterpretation.

The Division of Local Government (DLG) could potentially take a lead role in encouraging councils to more extensively adopt LAPs by promoting best practice industry based examples of LAPs and associated criteria.

- **Register of Local Government Regulatory Functions**

The development and maintenance of such a register may be of some value in assisting the community (in a one-stop scenario) to better understand the regulatory responsibilities arising from legislation. It would be essential that such a register be a 'live' document and structured in such a way to facilitate ease of use and understanding by the community.

- **Local Government and State Government Interactions.**

The Food Regulation Partnership between the NSW Food Authority and NSW councils serves as a good example of coordination between State and Local Government. Campbelltown Council is a strong supporter of the Partnership, which has been effective in improving coordination and demarcation in respect of food regulation responsibilities.

The Partnership and supporting legislation has resulted in the mandating of a clear inspection role for councils and the development of a package of standardised local government industry best practice guidelines, enforcement tools and training opportunities to achieve a greater level of consistency, efficiency and effectiveness in the delivery of food surveillance compliance and enforcement activities. This has had some benefits for both councils, the NSW Food Authority and food related businesses.

Legislative consistency in adopting best practice or efficient regulatory reform is another concern. Whilst the Food Act review was successful in adopting a food regulation partnership, which has led to increased efficiency and uniformity in regulatory enforcement across NSW councils, unfortunately the more recent reform of the Public Health Act did not adopt a partnership arrangement, rather a series of more conventional consultation steps, which has resulted in less consistent application of legislation and reduced networking opportunities between State and local authorities.

NSW Government agencies have a key role to play as an effective support partner to local councils in the delivery of new and shared compliance functions. By ensuring that there is a clear delineation of regulatory responsibility; that councils have the financial capacity and are adequately equipped with suitably skilled staff and best practice guidance, the potential for improved coordination and greater consistency will avoid unnecessary regulatory burdens upon business and improved regulatory outcomes will be increased. Therefore it is recommended that the Food Authority Partnership Model become the best practice approach for all State agencies to adopt when engaging with local government. This will encourage greater certainty and achieve a more uniform approach to regulation.

- **Local Government Capacity and Capability**

Councils such as Campbelltown are comparatively well placed in relation to other councils with respect to its ability to attract suitably skilled staff to carry out their regulatory responsibilities. However, competition for skilled staff, particularly with the introduction of private certification within the building and development industry, has made it increasingly difficult to recruit suitable staff (particularly within certain disciplines, for example environmental health officers, building surveyors, planners and development engineers). This obviously impacts on application processing times and service delivery. Council has also experienced difficulty in recruiting staff for building compliance roles which impacts on its capacity to regulate unauthorised building work and processing of building certificate applications.

The shortage in skilled staff could potentially be assisted by coordinated efforts amongst groups of councils such as Regional Organisations of Councils (ROCs) or industry networks such as AELERT (Australasian Environmental Law Enforcement and Regulatory Network) which can sometimes provide access to additional resources, best practice guidance or coordinate training opportunities to up-skill Council personnel.

Another issue impacting upon councils' ability to meet their regulatory responsibilities relates to a progressive devolution of responsibility from State Government to Local Government. This places an increased regulatory burden on Councils which should only occur if it is coupled with a capacity to effectively resource these additional responsibilities, otherwise this can progressively erode a council's capacity to deliver in other service areas. Amendments to the POEO Act and Food Act have included mechanisms (such as administration and notice fees) that serve as effective deterrents against non-compliant activity and allow councils the capacity to self-fund increased regulatory activity in areas where it is required.

Mutual recognition of business registration could be used to reduce regulatory burden upon business (such as mobile food vending or wastewater management system service agents) that extend across Council boundaries where the activity could be registered under a centralised state wide (e.g. NSW Food Authority/ Department of Health) administered register. This would be similar in principle to the existing Companion Animals Register (CAR) where the State agency (DLG) maintains and supports the computer software, while authorised agents within each council have the ability to update the data.

- **Identifying Unnecessary Regulatory Costs or Burdens**

The use of Orders under the Environmental Planning and Assessment Act to circumvent the need to obtain separate Council approval or consent can be an efficient means of resolving issues and sometimes where appropriate avoid approval requirements, consequential delay and the application costs as part of the process. Section 121 O of the Environmental Planning and Assessment Act provides:-

"121O Development consent or approval not required to comply with order

A person who carries out work in compliance with a requirement of an order does not have to make an application under Part 3A or Part 5.1 for approval or Part 4 for consent to carry out the work."

In such situations the regulatory authority may impose suitable requirements as part of the Order process to ensure relevant heads of consideration are addressed. For example an Order to suitably retain land can require a retaining wall to be erected without the need for separate development consent or Construction Certificate (CC) approval from a council. Council may require an engineer's certificate to be obtained to certify that the wall has been erected according to relevant standards and that the wall is structurally sound and suitable for its intended use. Many councils may not be aware of this legislative provision and may be unnecessarily imposing regulatory burden as a result. This option should only be used in special situations, where, for example, public safety is likely to be compromised.

In addition, the sharing of best practice or expertise across local councils would assist reducing delays in application or processing. Application processing times may be delayed or excessive requirements imposed as staff may sometimes not have the confidence to process unfamiliar or complex applications. If councils could more readily access expertise or specialist support through State agencies or industry networks efficiently, unnecessary delay and costs to business could potentially be avoided. Although there is a referral process to various state agencies with certain development applications, outside of this, some councils can act as "islands" and inefficiencies may arise as a result.

In terms of regulatory enforcement, improvements could be made in terms of ensuring that a risk based approach is utilised. Areas of highest risk need to be targeted. For example, as with any inspection program, such as food and health premises, fire safety or on-site waste water management inspection programs, more attention could be given to rewarding those premises which maintain a satisfactory standard (good compliance history) or comply with defined low risk criteria, by reducing inspection requirements and associated costs. This would in effect provide greater incentive for businesses to comply or maintain certain standards and thereby minimise operational risk. Best practice support networking and guidance through state and local government partnerships, such as the Food Regulation Partnership in NSW, may serve as an example of an appropriate mechanism to facilitate such arrangements, which could be rolled out into other regulatory areas such as public health, development compliance, environmental regulation etc.

These partnerships may be utilised to foster greater consistency in application of legislative requirements and uniform adoption of best practice regulatory enforcement across Councils.

Therefore it is recommended that the DLG develop a State wide standard/model enforcing policy to guide risk based decision making to encourage greater consistency in regulatory approach.

- **Best Practice Regulatory Enforcement**

It appears apparent that the principles of best practice in regulatory enforcement, although not taken up to any significant extent in NSW, have merit as a basis for assessing good compliance and enforcement practices and testing reform options. In terms of assessing the regulatory performance of individual councils and assisting the local government sector to more uniformly embrace the principles of best practice in regulatory enforcement, the NSW Government needs to take a leading role. Setting up a specific body, such as a Local Better Regulation Office and a statutory compliance code for local government regulators (as implemented in the UK), within the NSW Division of Local Government would appear to be an appropriate means to implement the necessary change between and within State government agencies and local councils. As an alternative to creating an additional government agency, each existing State agency that has an overlapping regulatory role with local government could establish a working partnership similar to that used by the Food Authority to progress industry based consistency.

- **Identifying Reform Opportunities**

Some examples of reform opportunities have been highlighted above. In terms of impediments that prevent councils from undertaking their compliance and enforcement activities more efficiently, the lack of uniform best practice implementation standards within and across local government is a major factor. The Issues Paper has identified that best practice in regulatory enforcement has not been taken up to any significant extent in NSW. In addition, the lack of effective working partnerships and resource sharing between State and local government and between councils themselves, geared to improving the efficiency of compliance and enforcement activities, is another significant impediment.

These impediments may possibly be overcome by implementing a range of strategies and best practice initiatives across the local government sector generally, as advocated in the Issues Paper. The establishment of a specific, sufficiently resourced and empowered office through the NSW Division of Local Government and a statutory code for compliance regulators to improve the quality and consistency of local government regulatory enforcement and compliance activities, could form the basis for this to occur.

Overall there is a case for regulatory reform in order to remove duplication and unnecessary impacts upon the community. However, Council believes that the high level of public health, safety, amenity and community expectation that has been established through the current regulatory regime should not be compromised by any amendments.

For improvements in regulatory enforcement within local government to succeed, the State Government must play a critical role in the facilitation of enforcement consistency across NSW.

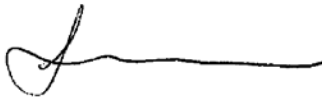
In order to make an immediate impact (from a time and cost perspective) the State Government should:

- adopt the Food Authority Partnership model for all state agencies who share a regulatory role with local government;
- establish and maintain state wide databases for all regulatory registration requirements similar to the CAR; and
- develop a State wide LAP and State wide Enforcement Policy in consultation with local government.

Please note that given the limited time available within which to prepare a submission, the elected Council has not been in a position to consider this matter. The submission will be presented to Council in due course, and should any amendments be necessary, I will advise you further.

Should you require any information or wish to discuss this submission please contact Council's Acting Manager Compliance Services Mr Paul Curley on 02 4645 4328.

Yours sincerely



Jeff Lawrence
Director Planning and Environment