



19 February 2016

Local Government Regulatory Burdens Review

Online submission at [www.ipart.nsw.gov.au/Home/Consumer\\_Information//Lodge\\_a\\_submission](http://www.ipart.nsw.gov.au/Home/Consumer_Information//Lodge_a_submission)

**Re: Review of reporting and compliance burdens on Local Government**

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The Southern Sydney Regional Organisation of Councils (SSROC) is an association of sixteen municipal and city councils. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member Councils covers a population of over 1.6 million, or one third of the population of Sydney.

Thank you for the opportunity to review the draft report. In order to make this submission within the timeframe of the review, it has not been possible for it to be reviewed and endorsed by the ROC. I will contact you if any issues arise as it is reviewed.

SSROC is generally supportive of the recommendations, and offers the following comments. Numbers in brackets refer to the relevant recommendation in the draft report.

**Regulatory functions of councils**

State government has shifted a considerable number of regulatory functions to councils in the past 20 years, without necessarily matching funding, skills or other resources. On occasion, these functions have exceeded council capacity. For example, contaminated lands regulation is complex and specialist; over time councils built their capacity through training or hiring of staff. But it is time-consuming and expensive, and strains councils' financial resources. SSROC therefore strongly supports the recommendation for better consideration of and collaboration with local government in regulatory proposals (1).

**Register of local government obligations**

The recommendation that the NSW Government maintain a register of local government reporting planning and compliance obligations (2) is strongly supported. With some 67 Acts to comply with, and 27 State Agencies to deal with, this register of obligations could be very beneficial to state and well as local government. Done well, the register could become heavily relied upon, so its establishment and maintenance would need to be appropriately resourced.

Furthermore, a single on-line portal for interactions between councils and state government would also be helpful (7). Councils would benefit from being able to submit all reports, returns etc. through one channel, and state government would benefit by being able to correctly direct those matters. SSROC would ask that the IPART consider recommending such a facility in its report.

For example, in relation to the provision of Out of School Hours Care (OOSH), councils are required to submit plans and a soil report to both the regulatory section and the schools section of the Department of Education and Communities (DEC). It would be more efficient for councils if the information could be submitted once and distributed automatically to the relevant sections of DEC.

Where appropriate, the State Government should provide advice to councils to help them to with regulatory duties, and to comply with legislation or reporting requirements. For example, the United Kingdom has a Better Regulation Delivery Office to perform this function.

### **Fees for statutory approvals**

The removal of restrictions of fees for statutory approvals and inspections (3) is supported in principle. However, without clarification of the monitoring and benchmarking to which they are subject, it is not possible to comment further.

SSROC strongly supports the recommendation that councils should be reimbursed for the shortfall in efficient costs if statutory fees are capped below cost-recovery level (5).

### **Grant administration**

SSROC supports the recommendations for amendment to the Good Practice Guide for Grant Administration (6). The changes in relation to acquittal requirements could go further, for example by the introduction of exception audits instead of full audits.

### **Department of Planning and Environment (DPE)**

SSROC broadly supports the recommendations in relation to the DPE (15-20), although feedback from our member councils suggests that implementation would be challenging. There will be substantial system integration issues, and councils will need adequate financial and skill resources in order to achieve the required changes.

Any variation to a Local Environmental Plan (LEP) requires approval from the DPE and can take months, even for a minor amendment. Sometimes changes are needed to align the LEP with Development Control Plans (DCP), so this delay results in a period where DCP and LEP are not aligned, which in turn hinders timely DA assessment. SSROC urges the IPART to consider removing the need for DPE approval of minor amendments to LEPs. Further, often minor amendments to the LEP require re-advertising, which adds an administrative and financial burden on council.

A new LEP takes time to be gazetted, and again can lead to uncertainty in assessing DAs and undertaking other operations during this period. SSROC urges IPART to look at how this process could be streamlined in order to minimise the impact this has on councils day-to-day operations.

### **Administration and governance**

SSROC is generally supportive of the recommendation to provide councils with a common set of performance indicators (22), but strongly of the view that there should be no associated additional costs to councils.

There is a risk that they might actually increase the regulatory burden on councils, and it is important that the indicators are designed to avoid this. There is also a risk of the indicators being used to create something like a league table of councils, which would not be valid as the indicators are unlikely to be directly comparable between councils.

The indicators could, however, be useful for a council in monitoring its own performance over time. Therefore councils themselves should be the key stakeholders in the development of the indicators, with input from their own local communities. Integrated Planning and Reporting should be

considered as a tool for engaging with the community, and not a tool for the benefit of state government agencies.

SSROC offers qualified support for the recommendation to remove requirements for reporting more in the General Purpose Financial Statements than is needed according to accounting standards (24). We would ask that IPART consider the reporting requirements of Special Schedule 7 in relation to asset registers, which require considerable effort to prepare but which is not commensurate with the value of the report.

The recommendation to remove any Ministerial approvals that are not justified (26) is supported. The current process is inefficient, especially when the turnaround time is too long for Council timeframes, and projects are cancelled for no reason other than an approval being too late.

SSROC urges that the requirement for Ministerial approval in all these cases should be reviewed. Where Ministerial approval is considered appropriate, guidelines should be formulated stating how long the Minister has to respond, to ensure that certainty is at the forefront of this process. The guidelines should set out criteria to be met by councils in an easily accessible manner. The timeframes should also be clear so as to avoid confusion for councils when lodging documents to be approved by the Minister for Local Government. This would at least enable councils to plan around the approval period.

Extending the maximum period for temporary employment (30) would be appropriate in some circumstances, such as where a council requires specialist expertise in relation to a particular works, but that need will cease once the works are completed.

### **Tendering and procurement**

SSROC is broadly supportive of increasing the threshold for formal tendering to \$250,000 as the current \$150,000 is far too low (24). We would prefer to see an annual increase that reflects the Consumer Price Index (CPI), with a full review of the threshold value every five years. However, we note that, for large councils of the scale likely to emerge from the current Fit for the Future process, \$250,000 will rapidly become too low a threshold again.

The draft report does not go into the derivation of the \$250,000 threshold recommended. We believe that the threshold should be set in a reasoned and transparent way that fulfills the broad aims of procurement, such as ensuring competition and value for money. In considering the level of the threshold, we would emphasise the need for it to cover not only the value of the initial spend, but also associated on-going costs such as maintenance of special vehicles and equipment, incorporating the total cost of ownership throughout the contract lifecycle. One alternative that we would ask the IPART to consider would be setting the threshold at a percentage of councils' budgets rather than at a specific figure.

All councils should be allowed to adopt the higher threshold for formal tendering, rather than the Office of Local Government (OLG) making a determination for each council. Such a role for the OLG would conflict with the intent of the review, and would not align well with the recommendation to allow delegated acceptance of tenders.

SSROC supports the draft recommendation that a Council be allowed to delegate the acceptance of tenders (25). However, we would strongly urge the IPART to recommend that the OLG extend the delegation to Regional Organisations of Councils (ROCs) and Joint Organisations (JOs) and not to limit it to senior council staff. This would help SSROC to improve the efficiency of tender processes that it delivers on behalf of its member Councils, where Councils deem it appropriate.

On behalf of its member councils, SSROC currently manages more than 30 contracts with a value in excess of \$100 million per year. SSROC has the function of a tendering agent, and performs an ongoing contract management role, but this process currently has to be disjointed, with acceptance of tenders being required by each individual participating council. This makes the procurement process less efficient than it could be and potentially less effective. While allowing Council to delegate the acceptance to a senior officer would improve the process, it would be much more efficient and effective if SSROC could accept a tender on behalf of its member Councils.

An example of the constraints of the current process is the tender that was undertaken for the SSROC electricity contract on behalf of 17 councils, where the prices tendered are only held for a very short period of time, a matter of days in the energy sector. SSROC overcame this risk by partnering with a prescribed organisation to ensure the tender bid was accepted and the contract could be executed within the time constraints. However, the additional costs associated with this method could be avoided if SSROC (and other ROCs and JOs) were allowed to be a 'prescribed person' for the purposes of section 55 (3) (a) of the current Act.

Although allowing Councils to delegate acceptance of tenders would address this issue, SSROC would still prefer to be a prescribed person under the Local Government (General) Regulation 2005 (the Regulation). As a prescribed person ROCs (and future regional JOs) could conduct group purchasing by councils and enter into contracts on behalf of councils, without the need to go back to each individual council for endorsement. The absence of a requirement for delegation from multiple councils would eliminate a further inefficient step in the process.

Beyond these recommendations, SSROC is disappointed to see tendering and procurement (section 8.3) given such scant attention, addressing only the tendering threshold and largely omitting any comment or recommendation on broader procurement matters. Councils should be resourced to ensure effective contract management throughout the lifecycle of all contracts. This involves procurement planning, ensuring that Council's procurement strategy aligns with its operational needs and budgets, sourcing goods and services including ordering, delivery and payments, and contract management including negotiation, variations and extensions. The draft recommendations do not address any of these supporting processes, which are as critical to efficient procurement as the tendering process, of which the threshold value is just one element.

In our earlier submission SSROC pointed out that in some circumstances the benefits of tendering are outweighed by costs, and that the process could be much more efficient if councils were allowed to enter into direct negotiations with suppliers. Whilst councils would certainly follow the ICAC guidelines for direct negotiations, this is not a solution to this inefficiency as councils must follow the Regulation and the OLG tendering guidelines. This prevents them entering into direct negotiations unless Council has rejected all tenders.

We ask that councils should, in appropriate circumstances, be allowed to avoid the mandatory tendering requirements currently imposed on them, and that councils should be allowed to enter into negotiations with short-listed suppliers. Whilst the spirit of current legislation aims to drive best value, in practice it can force councils into inefficient procurement activities where the cost of procurement is higher than the benefit that the process brings. Examples of appropriate circumstances for relaxing the mandatory tendering requirements include where:

- long-term suppliers have a deep understanding of council needs, are trusted and councils can demonstrate they deliver the best value for money,
- a limited supplier market exists,
- a council has a preference for local suppliers which can strengthen the value a council provides to its local community.

Allowing councils to use waivers to avoid inefficient tendering requirements (as other levels of government can) would streamline the way councils acquire infrastructure and services and improve value for them and the local communities that they serve.

SSROC has also highlighted that the legislative requirement to accept tenders by way of a physical tender box is burdensome on customer service staff and on tenderers and no longer necessary. We strongly urge that the IPART recommends that councils be given the option of accepting tenders by electronic means only.

SSROC strongly supports the removal of the requirement for councils to advertise tenders in newspapers by allowing them to use broader options. The recommended amendments would allow councils to use their website, newspapers or 'such other manner as the council considers appropriate for the purposes of bringing the advertised matter to the attention of all potentially interested persons.'

SSROC would also ask that the IPART consider allowing councils to purchase goods and services from approved Australian Disability Enterprises on the basis of a single quote. State agencies are already able to make this exception. This would allow councils to support the NSW government's policy of simplifying the purchase of goods and services directly from approved Australian Disability Enterprises.

Further efficiencies could be gained from Councils being able to procure under the standing offer or prequalifications schemes established by the Federal and NSW governments without the need to go to tender. In recent years, the decreased ability to use these schemes has considerably increased the number of procurement and administration tasks that councils must undertake,

### **Public Notices**

SSROC welcomes the recommendation (9) that the "Department of Planning and Environment (DP&E), including through the Office of Local Government (OLG), review public notice print media requirements" which is an unnecessary cost to councils, creates artificial time delays or pressures depending upon print deadlines, and is increasingly anachronistic in a world where more people get their information online than from printed material.

Furthermore, it is more appropriate now to deliver public notices online. This form of publication can increase transparency (for example, by providing hyperlinks to relevant references and forms), reach more people, and improve timeliness, as well as saving the cost of print publication.

### **Public interest disclosures**

SSROC supports the recommendation to change public interest disclosure report requirements (31), so that they can be reported in annual reports instead of requiring a separate report to the Minister at a different time.

### **Building and construction**

In general in relation to the draft recommendations on building and construction (34-37) SSROC reserves judgement pending the results of the Lambert Building Review process. There is strong support for a new online system for submitting annual fire safety statements (35), and for the clarification of what constitutes a "significant fire safety issue" (36).

## **Public land and infrastructure**

SSROC would support the transfer of Crown reserves with local interests to councils (39) on condition that the transfer only takes place with the agreement of the relevant council. Streamlining the process for closing Crown roads (40) would be welcome, as it is currently very slow and any improvement would be helpful.

We would ask that the IPART reconsider the suggestion in our earlier submission to establish a position in the OLG to manage development applications by tenants of Crown reserves. This process requires owner's consent, Trust Manager's support and a letter to the Department of Primary Industries informing them of any works being considered. Capital works over \$500,000 must follow OLG Guidelines which can be challenging for a tenant required to make a compliant submission. The approval process places a burden on council and the tenant, as works are often unnecessarily delayed. If the OLG had a specialist focused on these matters, it would reduce unnecessary delays, and provide tenants support to ensure they make a compliant submission under the Guidelines.

SSROC supports the recommendation relating to plans of management for community land (42), although the report lacks detail as to how the provisions of the Local Government Act 1993 might be streamlined. Currently site-specific plans of management are complex, expensive, and become a barrier to future options for the site: SSROC would ask that the aim of the streamlining should be to ensure that plans of management can be amended where required without significant cost to councils.

## **Animal control**

The recommendations in relation to the Register of Companion Animals (45) are welcome. The redevelopment of the register would make it more user-friendly for owners, making compliance easier. Registering owner details (46) would also improve its usability.

## **Other comments**

The following comments relate to matters that have been identified by Councils in relation to reporting and compliance burdens, but which are not covered in the draft recommendations. SSROC would ask that the IPART consider addressing these concerns in the final report.

## **Recognition of Regional Organisations of Councils/Joint Organisations**

Regional Organisations of Councils (ROCs) can contribute significantly to the efficiency of councils by support their collaboration with each other and with other organisations. The Fit for the Future reform program is introducing Joint Organisations (JOs), which could perform similar functions. SSROC would therefore suggest that IPART give greater consideration in its report to the potential for ROCs (and JOs in the future) to contribute to the reduction of reporting and compliance burdens on local government. For example, by providing specialist expertise in contaminated lands as a shared service.

## **Transport of Commercial Waste**

Sydney metropolitan area councils have expressed frustration over limited powers to regulate the transport and collection of commercial waste in local government areas. Clause 48 of the *Local Government (General) Regulation 2005* states that the transport of commercial waste can be carried out without Council approval in the Sydney metropolitan area.

The key issues of unregulated commercial waste collection are amenity impacts such as noise and obstruction of the street, associated with the timing of waste collection services in high-density mixed residential and commercial areas. An amendment to Clause 48(a) of the *Local Government (General) Regulation 2005* would improve councils' abilities to compel waste contractors to comply with the approved collection times stipulated in their LAPs.

Alternatively, some provisions could be made for the role of ROCs (and JOs in the future) to negotiate collection times with the commercial waste collection industry on behalf of member councils. This would assure the industry of collection time consistency across broader sections of the Sydney metropolitan area and help lead to more efficient and cost-effective operations. Reform at some level is required to help enable councils to effectively regulate commercial waste activities by enforcing approved hours for waste collection while helping to balance the needs of businesses and residents in Sydney metropolitan local government areas.

## **Ticketless Parking**

Roads and Maritime NSW paid parking guidelines require that all paid parking systems on public roads provide a cash payment option for motorists, unlike cashless toll-roads. This requirement prevents a transition to the ticketless pay-by-phone and on-line subscription parking systems widely used in many other countries. Councils are unnecessarily burdened with parking meter maintenance, coin collection, hardware depreciation, banking fees, vandalism and streetscape clutter. Removal of the cash payment requirement and a move to ticketless parking would improve customer service, support effective traffic management, better manage compliance and greatly minimise costs.

## **Electronic Funds Transfer**

Some NSW Government Departments require payment by cheque and will not accept payment via electronic funds transfer. This approach is anachronistic, and imposes an unnecessary administrative burden on councils. This would be a simple and cost-effective change.

## **Electronic Documents**

The inability of some state agencies to take electronic documents is similarly anachronistic and unnecessarily costly. Electronic transmission of documents is quick, simple and when properly controlled, secure. Paper documents are more costly to produce and to post, necessitate multiple administrative actions, introduce a time delay, and can get lost.

## **Contractor Registration**

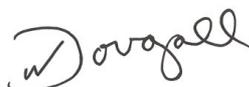
OLG could keep a register of councils' contractors, removing a compliance burden on councils and contractors holding their details and appropriate certificates once in a central point. The Contractor Insurance Management System (CIMS) maintained by Statewide Mutual is an example of a similar application.

## Conclusion

In general SSROC supports the recommendations of the IPART draft report, and I hope that you will find our comments useful. Should you wish to discuss any of the points made, please feel free to contact me or SSROC Program Manager, Helen Sloan on 8396 3800 or by email [ssroc@ssroc.nsw.gov.au](mailto:ssroc@ssroc.nsw.gov.au).

As this consultation is taking place at the same time as that for the proposed changes to local government legislation by the OLG, SSROC asks that the IPART recommendations should be considered in relation to the relevant legislative changes, and should be consistent with them.

Yours faithfully,



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