

Local government compliance and enforcement
Regulation Review — Draft Report
SUBMISSION
July 2014



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Centroc's Mission is to be recognised as the lead organisation advocating on agreed regional positions and priorities for Central NSW whilst providing a forum for facilitating regional co-operation and sharing of knowledge, expertise and resources; effectively nurturing sustainable investment and infrastructure development.

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4 July 2014

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

To the Manager,

Re: Local government compliance and enforcement, Regulation Review — Draft Report

Central NSW Councils (Centroc) represents over 220,000 people covering an area of more than 64,000sq kms comprising the Local Government Areas of Bathurst, Blayney, Boorowa, Cabonne, Cowra, Forbes, Lachlan, Lithgow, Oberon, Orange, Parkes, Upper Lachlan, Weddin , Young and Central Tablelands Water.

Thank you for providing the opportunity to respond to the draft Local government compliance and enforcement regulation review. It should be noted that Centroc views may not reflect those of individual Councils and this response should be read in conjunction with those from our members.

Firstly, this region welcomes reduction in red tape and has a long and proud history of delivering efficiencies through collaboration between Councils. Having said that, collaborative effort in the regulatory space has not had a great deal of attention in Central NSW Councils and some of the ideas in the draft report are welcomed and will be further investigated for application.

Overall, the region makes the following points:

- Improving partnership arrangements between State and agencies and between Local Government and State agencies is welcomed. The Food Authority model is supported in this region.
- The region also welcomes a risk management based approach but cautions that such an approach is about the management of risks and risk tolerances and not about the elimination of risk. Concerns have been expressed in this region that productivity will reduce when Government entities become too risk averse.
- This region welcomes investment at the regional level to assist with improving a consistency of approach to regulation and to seek cost savings to Councils and the community through the application of regional effort. Indeed investigation of suitable activities in this space is anticipated in the near future as part of a regional planning network under development, but concerns have been expressed that this effort should remain voluntary rather than mandatory.
- Concern has been expressed regarding the potential impacts on councils should there be a limitation on time to resolve a dispute between a private building surveyor and their builder; (Council becomes a mediator with a regulatory role, but no financial assistance to do this) already this is a problem for members and if its formalised, it will be worse.

A more detailed response to the recommendations follow where the findings are being examined in this region with a view to implementing those that have applicability as more effective and efficient was to manage the compliance burden in Central NSW.

A new partnership between State Government and local government

1 Subject to cost benefit analysis, the NSW Department of Planning and Infrastructure (DoPI) should engage in a Partnership Model with local government, similar to the Food Regulation Partnership, to enhance the capacity and capability of councils to undertake their regulatory functions.

This should include:

- enshrining the partnership model in legislation
- clear delineation of regulatory roles and responsibilities
- a risk-based approach to regulation supported by a compliance and enforcement policy
- use and publication of reported data to assess and assist council performance
- a dedicated consultation forum for strategic consultation with councils
- ability for councils to recover their efficient regulatory costs
- a system of periodic review and assessment of the partnership agreement
- a dedicated local government unit to provide:
 - a council hotline to provide support and assistance
 - a password-protected local government online portal
 - guidelines, advice and protocols
 - standardised compliance tools (eg, forms and templates)
 - coordinated meetings, workshops and training with councils and other
 - stakeholders.

Agreed

2 Subject to cost benefit analysis, the NSW Environment Protection Authority should engage in a Partnership Model with local government, similar to the Food Regulation Partnership (as per Draft Recommendation 1). 55

Agreed in principle though care would need to be undertaken in the application to ensure that “fees for training” and the like to ensure that this meets the needs for regional NSW (so often this type of activity is undertaken in Sydney at significant costs) and does not become part of a gravy train style income stream for a regulator.

Improving the regulatory framework at the State level

3 The Department of Premier and Cabinet should revise the NSW *Guide to Better Regulation* (November 2009) to include requirements for developing regulations involving regulatory or other responsibilities for local government, in particular:

- consideration of whether a regulatory proposal involves responsibilities for local government
- clear identification and delineation of State and local government responsibilities
- consideration of the costs and benefits of regulatory options on local government

- assessment of the capacity and capability of local government to administer and implement the proposed responsibilities, including consideration of adequate cost recovery mechanisms for local government
- consultation with local government to inform development of the regulatory proposal

- if establishing a jointly provided service or function, agreement with local government as to the objectives, design, standards and shared funding arrangements, and
- development of an implementation and compliance plan.

Agreed though it is noted that activities such as consultation with Local Government need thought to ensure it is given the proper time and attention.

4 The NSW Government should establish better regulation principles with a statutory basis. This would require:

- amendment of the *Subordinate Legislation Act 1989* (NSW) or new legislation, and
- giving statutory force to the *NSW Guide to Better Regulation* (November 2009) and enshrining principles in legislation.

There is some concern in this region that while enshrining principles is a good thing, increasing prescription is not. Some flexibility should remain to enable local communities self-determination and distinctiveness in their development.

5 The NSW Government should maintain the register of local government regulatory functions (currently available on IPART’s website) to:

- manage the volume of regulation delegating regulatory responsibilities to local government
- be used by State agencies in the policy development of regulations to avoid creating duplications or overlaps with new or amended functions or powers.

Agreed

6 The Department of Premier and Cabinet should:

- Develop a Regulators’ Compliance Code for local government, similar to the one currently in operation in the UK, to guide local government in undertaking enforcement activities. This should be undertaken in consultation with the NSW Ombudsman and State and local government regulators.
- Include local government regulators in the former Better Regulation Office’s Regulators’ Group or network.
- Develop simplified cost benefit analysis guidance material for local government to undertake proportional assessments of the costs and benefits of regulatory actions or policies, including consideration of alternatives.
- Develop simplified guidance for the development of local government policies and statutory instruments.

This would require a dedicated resource. At the moment the Department of Premier and Cabinet is significantly under resources to achieve its current workload. This recommendation should be changed to: The Department of Premier and Cabinet should **be provided with dedicated resource to:**

7 The NSW Ombudsman should be given a statutory responsibility to develop and maintain a more detailed model enforcement policy and updated guidelines for use by councils to guide on-the-ground enforcement:

- The model policy should be developed in collaboration with State and local government regulators.
- The model policy should be consistent with the proposed Regulators’ Compliance Code, if adopted.
- The NSW Ombudsman should assist councils to implement the model enforcement policy and guidelines, through fee-based training.

All councils should adopt the new model enforcement policy, make the policy publicly available and train compliance staff in exercising discretion and implementation of the policy.

Some flexibility should remain to enable local communities' self-determination and distinctiveness in their development.

8 The *Local Government Act 1993* (NSW) should be amended to abolish Local Orders Policies (LOPs), as the function of LOPs will be replaced by adoption of the new model enforcement policy.

Some flexibility should remain to enable local communities' self-determination and distinctiveness in their development.

9 The NSW Government should publish and distribute guidance material for:

- councils in setting their regulatory fees and charges (to apply to fees and charges, where councils have discretion), and
- State agencies in setting councils' regulatory fees and charges.

This guidance material should include principles and methodologies for estimating efficient costs, setting fees and charges, and reviewing and updating these fees and charges over time.

Agreed

Enhancing regulatory collaboration amongst councils

10 The *Local Government Act 1993* (NSW) should be amended to remove any impediments to, or facilitate the easier use of, shared regulatory services. In particular, consideration should be given to:

- removing or amending section 379 – which currently restricts the delegation of a council's regulatory functions under Chapter 7 of the Local Government Act, including to shared services bodies
 - amending section 377, which prohibits any delegation by a council of the acceptance of tenders.
- If Regional Organisations of Councils (ROCs) continue as the preferred form of council collaboration, consideration should also be given to whether the Act should specify how and in what form ROCs should be established (including whether management frameworks should be prescribed).

There is an unfortunate tendency in discussions about reform and effectiveness to view ROCs or regional collaboration by Councils as the panacea to a series of often ill-defined problems. Local Councils are elected by communities and great care should be undertaken when tampering with this democratic relationship.

Further, there appears to be a school of thought that ROCs or their equivalent will somehow absolve the State Government or its agencies of having to deal with 152 Councils.

While there is no doubt that ROCs deliver excellent work they are no more than the collective effort of Local Government. Enabling legislation for ROCs to grow in their ability to provide support services to member Councils is welcomed.

Great care should be taken with suggesting prescribed or mandatory frameworks for ROCs. The current voluntary arrangements offering incremental growth in the delivery of services that members believe will add value is a slow but sure methodology for ensuring no "fat" in the system. Making ROCs mandatory could have unintended consequences for the representation of

communities and further increase the likelihood of bureaucratisation of ROCs leading to more red tape.

11 The NSW Government should encourage and develop incentives to form collaborative arrangements in relation to regulatory functions. This should include training, guidance and promotion of leading practice collaborative arrangements, and the establishment of a small repayable fund to assist in setting up shared regulatory services. Councils could obtain a loan with a concessional rate of interest that is repayable within a specified period. This should tend to be cost neutral over time, as cost savings to councils would be achieved from the collaborative arrangements.

Agreed, though again care needs to be taken in the structural arrangements to ensure Councils retain sovereignty. Further, incentives need to be realistic. Chicken feed funding like the recent offering from the EPA on Contaminated Lands does not encourage a regional approach in Central NSW.

Improving the regulatory framework at the local level

12 The *Local Government Act 1993* (NSW) should be amended to:

- remove duplication between approvals under the *Local Government Act 1993* (NSW) and other Acts, including the *Environmental Planning & Assessment Act 1979* (NSW) and *Roads Act 1993* (NSW) in terms of:
 - footpath restaurants; mobile vendors; installation of amusement devices;
 - installation and operation of manufactured homes;
 - stormwater drainage approvals
- remove low-risk activities from the list of activities currently requiring approval under section 68 of the *Local Government Act*, including:
 - Busking;
 - Set up, operation or use of a loudspeaker or sound amplifying device; and
 - Deliver a public address or hold a religious service or public meeting
- allow for longer duration and automatic renewal of approvals
- provide more standard exemptions or minimum requirements from section 68 approvals, where possible, initially in the areas of:
 - footpath restaurants;
 - A-frames or sandwich boards;
 - skip bins;
 - domestic oil or solid fuel heaters
- abolish Local Approvals Policies (LAPs) or, alternatively:
 - reduce the consultation period to 28 days in line with Development Control Plans;
 - remove sunset clauses;
 - require Ministerial approval only for amendments of substance; centralise LAPs in alphabetical order in one location on DLG's website;
 - consolidate activities within 1 LAP per council;
 - and DLG to provide a model LAP in consultation with councils
- enable councils to recognise section 68 approvals issued by another council (ie, mutual recognition of section 68 approvals), for example with mobile vendors and skip bins.

Agreed that duplication should be removed. Also consideration should be given to the above forming part of exempt and complying codes.

13 The NSW Government, as part of its reforms of the *Local Government Act*

1993 (NSW), should amend the Act to provide a modern, consolidated, effective suite of compliance and enforcement powers and sanctions for councils and council enforcement officers. The powers would be applicable to all new State Acts or regulations. This suite should be based on the best of existing provisions in other legislation and developed in consultation with the NSW Ombudsman, Department of Premier and Cabinet, State and local government regulators. This should include effective cost recovery mechanisms to fund enforcement activities.

Agreed

14 Councils should support the use of alternative and internal review mechanisms (for example, the NSW Ombudsman, NSW Small Business Commissioner, and private providers of ADR services) to provide business and the community with a path of redress for complaints (not including complaints concerning penalty notices) that is less time-consuming and costly than more formal appeal options.

This recommendation would need to be more thoroughly explored and trialled in this region before 100% support could be provided though on the face of it has merit. The Department of Fair Trading should also be included in this approach.

Improving regulatory outcomes

15 As part of the State's Quality Regulatory Services initiative, the NSW Government should require all State agencies that devolve regulatory responsibilities to local government to:

- consider councils' responsibilities in developing their risk-based approach to compliance and enforcement
- consider councils' responsibilities in defining the regulatory outcomes and setting monitoring mechanisms to measure the outcomes, and
- identify what information needs to be obtained from councils in relation to their regulatory activities to measure regulatory outcomes and how this data will be used or published to assess and assist council performance. These requirements should be developed in consultation with local government regulators and commence by the end of 2014.

This recommendation would need to be more thoroughly explored and trialled in this region before 100% support could be provided though on the face of it has merit. Concerns in this region have been raised regarding how data is used. This is based on the media activity around the regulatory reforms in food handling.

Planning

16 DoPI, in consultation with key stakeholders and on consideration of existing approaches, should:

- identify which development consent conditions may be applied across council areas, including regional groupings of councils, and which conditions will vary across council areas
- then develop (where appropriate) a standardised and consolidated set of development consent conditions for councils to utilise for different forms of development.

This recommendation would need to be more thoroughly explored and trialled in this region. Of great concern in our region is to ensure that Local communities retain control over their local environment. Members have also raised the issue of needing to conduct cost benefit, which could become quite an expensive activity.

17 The NSW Government (eg, DoPI) should enable building owners to submit Annual Fire Safety Statements online to councils and the Commissioner of the Fire and Rescue Service.

Agreed

Building and Construction

18 The NSW Government should:

- subject to a cost benefit analysis, create a stronger, single State regulator, the Building Authority, containing, at a minimum, the roles of the Building Professionals Board and the building trades regulation aspects of NSW Fair Trading, and
- create a more robust, coordinated framework for interacting with councils through instituting a ‘Partnership Model’ (as discussed in Chapter 2).

Agreed

19 The Building Professionals Board or Building Authority (if adopted) should:

- initially, modify its register of accredited certifiers to link directly with its register of disciplinary action
- in the longer term, create a single register that enables consumers to check a certifier’s accreditation and whether the certifier has had any disciplinary action taken against them at the same time.

Agreed

20 Councils seeking to impose conditions of consent above that of the Building Code of Australia (BCA) (now part of the National Construction Code (NCC)) must conduct a cost benefit analysis (CBA) justifying the benefits of these additional requirements and seek approval from an independent body, such as IPART, under a ‘gateway’ model.

It is suggested that further investigation be undertaken by IPART regarding this item. There is more to a development than BCA compliance. It is suggested the further investigation include a review of the prescribed conditions provided in Clauses 98, 98A, 98B, 98C, 98D and 98E of the Environmental Planning and Assessment Act.

21 Certifiers should be required to inform council of builders’ breaches if they are not addressed to the certifier’s satisfaction by the builder within a fixed time period. Where councils have been notified, they should be required to respond to the certifier in writing within a set period of time. If council does not respond within the specified period, then the certifier can issue an occupation certificate.

It is suggested that further investigation be undertaken by IPART regarding this item. There may be major legal, financial and resource implications to this recommendation.

Councils may not have even been on the site, but must attend if a Principal Certifying Authority cannot manage a builder, otherwise Council will be inadvertently responsible for the Principal Certifying Authority issuing an Occupation Certificate on a building they identified as being non-compliant for a particular reason. There is also no ability to recover costs with this regulatory work. The Building Professionals Board has been considering for some time whether the Principal Certifying Authority’s powers should be expanded to serve Orders.

22 The Building Professionals Board (BPB) or Building Authority (if adopted) should incorporate into the current Principal Certifying Authority signage information setting out contact details for specific complaints (eg, off-site impacts like building refuse or run-off and onsite issues). The BPB or Building Authority should trial the use of such a sign in a specific local government area to see if time is reduced in redirecting complaints for councils, the BPB/Authority and certifiers.

It is agreed that wording can be reviewed, but it should be highlighted in the changes that the Principal Certifying Authority is responsible for the site

Public health, safety and the environment

23 All councils should adopt the NSW Food Authority's guidelines on mobile food vendors. This will allow for food safety inspections to be conducted in a mobile food vendor's 'home jurisdiction', which will be recognised by other councils.

This seems like 152 Councils doing the work of one NSW Food Authority. There must be a more streamlined approach than this.

24 The NSW Food Authority, in consultation with councils, should stipulate a maximum frequency of inspections by councils of retail food businesses with a strong record of compliance to reduce over-inspection and costs.

Agreed though Centroc members suggest this already exists.

25 The NSW Food Authority should finalise its internal review and work with councils to implement its reforms within 18 months of its review being completed to:

- remove any regulatory overlap (eg, of related retail and non-retail food business on the same premises)
- develop a single register of notification for all food businesses, or a suitable alternative, to avoid the need for businesses to notify both councils and the Food Authority
- review the notification system to determine whether negligible risk food businesses should be exempt from the requirement to notify
- ensure the introduction of the standard inspections template for use by all councils in NSW, to enhance the consistency of inspections across the State.

Agreed

26 DLG should:

- develop a 'model' risk-based inspections program to assist councils in developing their own programs under the *Swimming Pools Act 1992* (NSW)
- issue guidance material on the implementation of amendments to the *Swimming Pools Act 1992* (NSW)
- provide a series of workshops for councils (by region) on how to implement and comply with their new responsibilities under the *Swimming Pools Act 1992* (NSW)
- promote the use of shared services or 'flying squads' for swimming pool inspections, if a backlog becomes apparent under the new regulatory regime
- review the *Swimming Pools Act 1992* (NSW) in less than 5 years to determine whether the benefits of the legislative changes clearly outweigh the costs.

Agreed, where swimming pools compliance has become the latest in a series of compliance fiascos. When specialist services are being offered through the media to turn swimming pools into fish ponds and thereby avoid compliance, it is clear that more work needs to be undertaken.

27 Ageing, Disability and Home Care, Department of Family and Community Services, in consultation with the Division of Local Government, should:

- develop a ‘model’ risk based inspections program, including an inspections checklist, to assist councils in developing their own programs under the *Boarding Houses Act 2012 (NSW)*
- issue guidance material on the implementation of the *Boarding Houses Act 2012 (NSW)*
- co-ordinate a series of workshops for council employees (by region) on how to implement and comply with responsibilities under the *Boarding Houses Act 2012 (NSW)*.

Agreed

28 DoPI, in consultation with the EPA and other relevant stakeholders, should:

- develop standard waste management requirements for inclusion in the NSW Housing and NSW Industrial and Commercial Codes, which establishes site waste management standards and requirements for exempt and complying development, and
- remove the need for applicants to submit separate Waste Management Plans to councils for these types of developments.

Agreed

Parking and road transport

29 Councils should either:

- solely use the State Debt Recover Office (SDRO) to handle parking fine requests for review or appeals to remove current confusion, duplication and reduce costs, or
- adopt the SDRO’s guide for handling representations where a council is using SDRO’s basic service package and retains the role of handling parking fine requests for review or appeals, to ensure consistency and fairness across the state.

Agreed

30 DLG should review and, where necessary update, its free parking area agreement guidelines (including model agreements). Councils should then have a free parking area agreement in place consistent with these guidelines.

This may not be applicable to all Centroc members and care should be taken to ensure the State is blanketed with a mandatory approach where it is not warranted.

31 That the NSW Government:

- notes the potential red tape savings and net benefits that could accrue to NSW through the National Heavy Vehicle Regulator (NHVR) providing:
 - o technical assistance to councils in certifying local roads for access by heavy vehicles, and
 - o guidelines to councils for assessing applications for heavy vehicle access to local roads in relation to potential amenity and safety impacts; and
- in the event of delay in the NHVR providing these elements of the national reforms, funds an interim unit to provide this assistance to local government.

Given the estimated savings around Heavy Vehicles, this is an area worthy of reform.

Companion animal management

32 DLG should allow for an optional 1-step registration process, whereby:
– the owner could microchip and register their pet at the same time
– the person completing the microchipping would act as a registration agent for councils either by providing access to online facilities (per recommendation below) or passing the registration onto councils (on an opt-in, fee-for-service basis).

This is worth trialling.

33 DLG should allow for online companion animals registration (including provision to change details of registration online).

Agreed

34 DLG should implement targeted, responsible pet ownership campaigns with councils in particular locations/communities of concern with the input of industry experts, providing accessible facilities for desexing where these campaigns are rolled out.

Agreed

35 DLG should amend the companion animals registration form so an owner's date of birth is mandatorily captured information, as well as other unique identifiers such as driver's licence number or official photo ID number or Medicare number.

This is worth trialling.

36 DLG should amend the *Companion Animals Act 1998 (NSW)* to enable fees to be periodically indexed by CPI.

Agreed

Other areas

37 The NSW Government should amend section 125 of the *Roads Act 1993 (NSW)* to extend the lease terms for footway restaurants to 10 years, subject to lease provisions ensuring adequate access by utility providers.

Agreed

38 DLG should collect data on the time taken for Section 68 approvals to be processed by councils. This data should be collated and reported as an indicator of performance in this area to reduce delays.

Data collection takes time. This would need a cost benefit analysis in the first instance.

39 Councils should issue longer-term DAs for periods of 3 to 5 years for recurrent local community events (subject to lodging minor variations as

section 96 EP&A Act amendments).

Agreed

Once again, thank you for this opportunity and for the ideas collated in the draft report for this region to consider.

For further advice in regards to this submission please contact the Executive Officer Ms Jennifer Bennett on 0428 690 935 or jenny.bennett@centroc.com.au

Yours sincerely,

A handwritten signature in black ink that reads "Ken Keith". The signature is written in a cursive style with a horizontal line underneath the name.

Cr Ken Keith OAM

Chair

Central NSW Councils (Centroc)