
**A SUBMISSION ON THE PRODUCTIVITY COMMISSION'S
ISSUES PAPER - LOCAL GOVERNMENT REGULATORY
PERFORMANCE**

1. Purpose of report

This report provides a Wellington City Council response to the Productivity Commissions call for submissions on their Local Government Regulatory Performance Inquiry Paper.

2. Recommendations

Officers recommend that the Strategy and Policy Committee:

- 1. Receive the information.*
- 2. Approve the draft submission (attached as appendix one) to be forwarded to the Productivity Commission.*
- 3. Agree to delegate to the Chief Executive and the Governance Portfolio Leader, the authority to amend the proposed submission from Wellington City Council to the Productivity Commission to include any amendments agreed by the Committee and any associated minor consequential edits.*

3. Background

The Government has asked the Productivity Commission to look at what local government regulates, how they do it, and to identify improvements, particularly in regard to whether regulations are best made and implemented locally or nationally. The Productivity Commission's inquiry into local government regulation is about three broad areas:

- How could the allocation of regulatory functions between central and local government be improved?
- How can central and local government improve regulatory performance in the local government sector?
- How can the regulatory performance of the local government sector be measured in order to make improvements in the future?

The Productivity Commission has approached the task of answering these questions by putting out an issues paper and asking for submissions. It will then produce a draft report in December 2012 and seek submission by February 2013. The Commission will then produce a final report for Government in April 2013.

This inquiry provides a good opportunity for local government to highlight how it feels regulation it works with and implements can be improved.

The inquiry specifically rules out looking at:

- how local government should be funded
- local government boundaries or amalgamation.

4. Discussion

Approach

The submission makes clear that Wellington City Council wants to take a proactive forward looking approach to ensure an effective and efficient regulatory environment. An effective and efficient regulatory environment will be an important part of demonstrating Wellington is 'open for business.'

It is quite clear that the issues paper is an information gathering exercise. We have summarised the report into some key issues and addressed those. The submission is based around the benefits of local government working collaboratively with central government to improve regulation at the drafting stage and improve existing regulations. The submission highlights the need for regulations that allow local government the flexibility to ensure that when it enforces regulation the objectives are met.

Summary

The questions and issues raised in the Productivity Commission issues paper seek a better understanding of the implications of regulation on local government and how to ensure it meets its intended purpose. To achieve this there needs to be a closer and more collaborative relationship between central and local government. This collaboration can bring together collective expertise and understanding of the complexities of regulation so that the desired outcomes are achieved.

Regulation and the way various regulations work together is complex, work to improve regulation needs to start when it is drafted, and that there is a process for it to be reviewed and changed where necessary to ensure that it is meeting intended objectives. Communities are dynamic with social, economic and technological changes, we need to be agile and flexible to ensure changes can be made and regulation stays current and that councils are effective and efficient in their delivery.

Where enforcement is conducted by local government this will mean central and local government working together closely. It is likely that local government

officials who deal with enforcing regulations every day are in a strong position to advise when regulations are not working and identify possible changes.

Wellington City Council suggests creating a forum and process where Council officers can raise regulations that aren't working and work towards improvements with the relevant Government Departments. This could even be linked to space on the legislative agenda for an annual amendments bill that addresses less-contentious fixes for regulations that are not working effectively but might not have the profile on their own to make the legislative agenda.

The submission recommends that Government includes local government in the consultation process with other Government Departments as policy and legislation is being considered.

The submission suggests that working collaboratively can help to solve a number of issues that regulation can present. A collaborative approach can improve understanding and work to develop solutions to address:

- out of date legislation, though changing social, economic or technological trends, such as the registration requirement in the dog control act
- overly prescriptive legislation, such as prescribing processes in detail to the point where they are inflexible
- little understanding of costs imposed, where little understanding of administrative costs does not allow the costs to be understood in relation to the benefit
- legislation that restricts innovation
- legislation that does not incorporate a local perspective, such as regulations that impact locally but do not allow policy setting at a local level.

5. Conclusion

This submission is part of the first stage of the Productivity Commission process, the issues paper that this submission responds to is seeking direction and an understanding of what is important to local government. This submission emphasises that the most effective way to improve regulation will be for central and local government to work together.

Local Government New Zealand has also made a submission to the Productivity Commission on behalf of councils, in their submission they give answers to the 65 questions posed by the Commission.

The Productivity Commission will release a draft report in December; this report will make findings and recommendations for improving regulatory performance. The Council will have the opportunity to make a submission, it will be important to consider this report carefully.

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SUPPORTING INFORMATION

1) Strategic fit / Strategic outcome

The Long Term Plan recognises that our decisions are influenced by legislative, regulatory and contractual requirements. This submission aims to contribute to improving the regulatory environment we work to.

2) LTP/Annual Plan reference and long term financial impact

3) Treaty of Waitangi considerations

4) Decision-making

A decision is required on whether to submit the above draft to the Productivity Commission

5) Consultation

a) General consultation

No public consultation

b) Consultation with Maori

No public consultation

6) Legal implications

7) Consistency with existing policy

The submission is consistent with previous Council positions, particularly the desire to work closely with Central Government

DRAFT - Submission from Wellington City Council

Productivity Commission Issues Paper
Local Government Regulatory Performance

Submission to: **Productivity Commission**

Issues paper: **Local Government Regulatory Performance**

From: **Wellington City Council**

Submission date: **14 September 2012**

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1. Introduction

Wellington City Council welcomes the opportunity to comment on the Productivity Commission Issues Paper - Local Government Regulatory Performance.

Wellington City Council wants to take a proactive forward looking approach to ensure an effective and efficient regulatory environment.

2. Regulation

The challenge for all levels of government is to deliver effective and efficient regulation – regulation that is effective in addressing an identified problem and efficient in terms of maximising the benefits to the community, taking account of the costs. Local authorities are a significant regulator in New Zealand through their role in administering various Government Acts.

Regulations can have a significant impact on businesses, both through the regulations they impose and/or administer on behalf of the Government, as well as through direct engagement with business. The overall environment should encourage innovation, while reducing potential negative impacts.

3. Improving Regulation

The questions and issues raised in the Productivity Commission issues paper seek a better understanding of the implications of regulation on local government and how to ensure it meets its intended purpose. To achieve this there needs to be a closer and more collaborative relationship between central and local government. This collaboration can bring together collective expertise and understanding of the complexities of regulation so that the desired outcomes are achieved.

It is clear from the issues document and questions asked that the Commission is seeking to better understand the role of local government in the regulatory process. The Council believes that by working together and better understanding the roles local government plays and by collaborating that the answers to these questions can be found.

The Council is happy to offer access to staff if the Commission wishes to understand the function of regulation in any particular area.

As a first step the Council would like to discuss what good regulation looks like; at the highest level good regulation achieves the objectives that it sets out to in the most efficient way possible. Regulation is also not always the most efficient way to achieve objectives.

Regulation and the way various regulations work together is complex. Work to improve regulation needs to start when regulation is drafted, but more importantly regulations have to be reviewed and changed where necessary to ensure that they are meeting their original objectives or relevant new objectives. It is likely that local government officials who deal with enforcing regulations every day will be in the best place to notice when regulations are not working and identify possible changes.

Wellington City Council suggests creating a forum where Council officers can identify regulations that aren't working and work towards improvements with the relevant Government Departments. This could even be linked to space on the legislative agenda for an annual amendments bill that addresses less-contentious fixes for regulations that are not working effectively but might not have the profile on their own to make the legislative agenda.

4. What does good regulation look like

A useful starting point for the Commission's report would be to identify what good regulation looks like. Wellington City Council recommends the Commission consider defining a list of the characteristics of good regulation. Bad regulations can impose unneeded costs on ratepayers and business, hold back economic growth and stifle new and better ways of doing things.

The Council's position is that good regulation is regulation that solves the problem it was designed to solve in the most effective way, taking into account the costs imposed by the regulation.

We suggest that regulation:

- Needs to be set to the minimum level necessary to achieve objectives and avoid unnecessary restrictions.
- It should be integrated and consistent with other laws, agreements and international obligations.
- Should not be unduly prescriptive and, preferably, be specified in terms of performance or outcomes.
- Should be accessible, transparent, just, and easy to understand and consistently administered and enforced.
- Must be clear, concise and communicated effectively.
- Should be mindful of the compliance burden imposed, proportionate to the problem being addressed and set at a level that minimises compliance costs while still achieving the set objective.
- Be enforceable.¹

Good regulation also needs to be enforced well, Regulation should be designed to:

- maximise the potential for voluntary compliance by:
 - avoiding unnecessarily complex regulation
 - ensuring regulation is effectively communicated
 - minimise the costs of compliance (in terms of time, money and effort)
 - ensure regulation fits well with existing market incentives
 - consider providing rewards and incentives for voluntary action and high compliance outcomes — for example, by reducing the burden of routine inspections and granting penalty discounts when minor lapses occur
 - nurture compliance capacity in business — for example, by providing technical advice to help businesses to comply with regulation.
- maintain an ongoing dialog between government, councils and the business community to ensure that regulators have a good understanding of the types of businesses they are targeting
- adequately resource regulatory agencies

¹ Coghlan, P. 2000, 'The principles of good regulation'

- use risk analysis to identify targets of possible low compliance
- develop a range of enforcement instruments so that regulators can respond to different types of non-compliance
- monitor compliance trends in order to gauge the effectiveness and efficiency of enforcement activities.

5. Local and National Collaboration to improve regulation

In response to the Commission's question on focus, Wellington City Council suggests that the most effective way to improve regulation outcomes is to set up a way of reviewing and updating regulation.

Regulation can only be improved when local and central government work together on regulation formation and upkeep. Currently the regulatory impact analysis allows some consideration of the impacts of regulation on those that implement it. The Regulatory Impact Analysis Framework provides a significant opportunity and benefit for central government to engage with local government, in addition to Local Government New Zealand (LGNZ).

Consultation promotes regulatory quality as it allows affected parties and other stakeholders to provide feedback on the design and the effects of a regulatory proposal. It also builds legitimacy around a regulation, increasing the likelihood of compliance and decreasing enforcement costs.

We recommend that Government includes local government in the consultation process with other Government Departments as policy and legislation is being considered.

The forum suggested in this submission could identify regulations that aren't working and work towards improvements with the relevant Government Departments. This could even be linked to space on the legislative agenda for an annual amendments bill that address non-contentious fixes for regulations that are not working effectively but might not have the profile on their own to make the legislative agenda.

To ensure that the councils' approach to regulation remains current while the context is changing, the Commission should consider the establishment of a collaboration mechanism whose purpose would be to:

- ensure that central and local authorities have an ongoing shared understanding of the regulatory outcomes that central government is seeking, their relative importance to the Government, and the respective accountabilities of the two levels of government in administering and enforcing regulation to achieve these outcomes.
- identify specific challenges facing councils in achieving these outcomes (for example with respect to resources or capabilities) and accountabilities for addressing them.

The Council cooperates with central government agencies in a number of ways to enforce both local and central regulations. Cooperation is already effective in a number of areas, examples include:

City safety officers work with the police to help enforce central regulations. This cooperation ranges from collecting evidence on crimes such as graffiti to monitoring CCTV cameras to prevent crime.

City parking enforcement officers work in cooperation with central government on vehicle tax and safety. City safety officers issue infringement notices for out of date warrant of fitness and car registration. This role is shared with the Police.

6. Examples of current problems that collaboration can improve

Problems	Issue				
	Building Act	Alcohol	RMA	Dog Control Act	Encroachments, LGA
Overly prescriptive				X	X
Excessive costs to LG and business	X	X	X	X	X
Prevents innovation	X		X	X	
Limited local decision making	X	X		X	
Limited review possibility				X	X

6.1 Overly prescriptive legislation and inflexible mandatory processes

The forum would be an opportunity to identify and examine options to improve overly prescriptive legislation that is not achieving its desired outcomes.

For example the Dog Control Act is highly prescriptive legislation that sets out the processes Councils must follow. This prescription limits any innovation in processes and/or practices. As an example every dog must be re-registered on 30 June every year, this means that Councils must deal with thousands of re-licence requests once a year. This process happens even if there is no change in the status of the dog. It would be hard to find a defender of the current process. However, there is little chance of change as users and councils bear the costs, and the issue on its own is not deemed as large enough for its own corrective legislation.

6.2 Excessive costs- Understanding legislative costs

The costs of legislation are not always apparent to Central Government with the transfer of implementation, monitoring, enforcement and compliance roles to local government. There are many examples where local authorities take on responsibility for both the decision and costs of regulation. To use the same example, under the Dog Control Act, dogs must be re-registered with the council every year on a prescribed date. Under this Act, council is also responsible for prosecution and enforcement costs – for which the administrative costs are mostly not recoverable.

Another example of legislation that imposes regulatory costs that may not always be justified is the Resource Management Act. The Act imposes significant costs and time through the requirements of the First Schedule, which defines the manner in which district plans are prepared. These can be seen as entirely justified when Councils make changes with large impacts on people; however there is currently no flexibility in the First Schedule to recognise the scale and scope of issues. Due to the inflexible nature of the provisions the same requirements apply whatever the scale of the change.

Minor Amendments Plan Change

Every 12-18 months, the Council notifies a "Minor Amendments" plan change. Typically this plan change contains minor matters such as amendments to zone boundaries to reflect development on the ground (for example, to zone land that has been already developed for residential use, to a residential zoning) or updating references and quotes in the Plan to reflect changes to recent legislation. These changes have little or minor impact on the community, and attract very few submissions (if any). However, the RMA First Schedule requires this type of plan change to go through exactly the same costly process as an extensive review (major plan change) which potentially affects large numbers of people and properties.

While the RMA First Schedule process may be entirely appropriate for most plan changes, there is no ability for local authorities to modify the process consistent with the nature and importance of the change and its impacts. Wellington City Council would encourage the Commission to consider the merits of a regulatory regime that provides flexibility as a way of avoiding unnecessary costs and delays in a variety of areas.

Local Government Act

The Local Government New Zealand – Costs of Regulation on Local Government (2009) report by Price Waterhouse Coopers provides an insight into the transferred costs associated with four pieces of central government legislation. Key findings from the report were:

- The long term plan components of the Local Government Act took up 620,000 staff hours and \$48 million in consultants for 56 Councils
- The Health (Drinking Water) Amendment Act has resulted in more than \$43 million of local government expenditure on external help
- 50% of Council Costs would not have been incurred without legislation being a key driver
- Some of the cost burdens arising from new legislation could be relieved by less onerous legislation; this can be identified by working more collaboratively.

These costs are not necessarily excessive; the report demonstrates the magnitude of the costs involved.

6.3 Innovation

The Commission asks for examples of innovation. The Council is often confronted with community concerns around how to interpret regulations and/or regulatory provisions changing or changes not being well documented or understood by users. The formation of a forum could identify regulations that are not well understood and target public education of regulation provisions and any changes to regulation provisions. Another more innovate option would be to establish a service or role to

assist users in navigating regulation where the costs of the ambiguity are higher than the costs of providing an interpretive service.

An example of this kind of service is Film Wellington where a service navigates the various interactions with Council required when in the process of filming, such as road closures and permits.

Innovation can be stifled when Councils who enforce regulation cannot alter the process. This can be seen with building consents and inspections where small easily fixed faults result in a re-run of process. Work can be significantly held up for minor issues such as a missing handrail, smoke detector, or documentation such as an energy works certificate, this has resulted in more expense for business. If Councils were given more flexibility maybe an approach where agreement is given subject to addressing the fault could be used on a common sense basis.

6.4 Local Perspective leads to good regulation

The Commission's Issues Paper raises concern that inconsistencies between local authorities add to costs faced by individuals and businesses. While the word, 'inconsistency', has negative connotations, there can also be cases where some variation is desirable. The differences between local authorities in terms of their priorities and their geographic size, population density, social demographics, resources and capacity mean that some level of inconsistency between local authorities is both desirable and inevitable. The local government sector is extremely diverse in the communities it serves, the challenges it faces, and the resources that are available to it.

The Council believes that the ability for councils to be flexible in responding to local issues is desirable and essential.