

Towards better local regulation

Final Report – May 2013



This *Cut to the chase* provides a summary of the Commission's inquiry report on opportunities to improve the regulatory performance of local government.

What the Commission has been asked to do

The Commission was asked to identify opportunities to improve the regulatory performance of local government. This includes regulation-making processes, appropriate principles for the allocation of regulatory roles between central and local government, and better ways to assess councils' regulatory performance.

The Commission's approach

To fully understand the regulatory performance of local government, the Commission has looked at how well the regulatory system is functioning as a whole. This approach recognises that the key elements of the regulatory system are interconnected, and that good regulatory outcomes require all elements to be operating and interacting effectively.

For example, initiating and shaping regulatory proposals, generally done by central government, determines what has to be implemented by local government. Interdependencies such as this highlight that achieving good outcomes is an on-going responsibility of both levels of government.

Adopting a 'whole of system' approach has enabled the Commission to better understand where the regulatory system needs improvement and to tailor its recommendations accordingly.

Local government's role in the regulatory system

The Commission has identified around 30 pieces of primary legislation that confer regulatory responsibilities on local government, with many more regulations found in secondary instruments. The powers these statutes confer on local authorities are extensive and diverse. They span a spectrum from devolved powers that confer substantial discretion and autonomy on local authorities, to delegated powers to implement regulation with little or no discretion. Local government's structures and powers reflect its dual role as a provider of local public services and an enabler of local democracy.

The Commission has found that local authorities have made only limited use of their power of 'general competence' under the Local Government Act 2002 and that most bylaws are made under enabling statutes rather than under the more general provisions of the Act.

Local pressures on the regulatory system

Local authorities undertake their regulatory roles in an increasingly challenging environment. More and more, councils experiencing population growth are being asked to make difficult trade-offs between the economic, social and environmental priorities of their communities. Conversely, councils in areas with static or declining populations are facing difficulties in maintaining services—including regulatory services.

Increasing pressure on the physical environment is also generating a greater need for councils to have access to technical information and expertise in order to make well-informed decisions.

These challenges exist within a legislative environment that is becoming ever more complex. A steady flow of new statutes over the last decade has placed new or different demands on local government regulatory activities.

Managing regulatory pressures is important for business

Poor regulation creates cost pressures for businesses that affect productivity and profitability, and ultimately the economy. These include the compliance costs of meeting regulatory obligations, delays in obtaining responses from local authorities and holding costs associated with multiple regulatory requirements.

The Commission's survey of business indicates that regulatory cost pressures are a concern for many businesses. Of those businesses that dealt with local government on regulations, 39% reported that local government regulation is a significant financial burden. A big issue for business is perceived inconsistency in the application and administration of regulatory standards within the same council.

Think hard about who does what

Pressures on the system increase the importance of ensuring that regulatory roles are allocated to the right level of government.

To this end, the Commission has developed a framework to guide the allocation of regulatory roles. The framework addresses two key allocation questions: Who should be responsible for setting the regulatory standard and who should implement and administer the regulation?

Things to consider when choosing who should set the regulatory standard include where the costs and benefits are likely to fall; how those responsible for setting the regulatory standard can be held to account for decisions; and the pros and cons of accepting that regulatory outcomes may vary between regions.

Things to consider when choosing who should implement and administer the regulation include if there are potential cost-efficiencies through economies of scale or scope; if incentives exist for the regulator which might hamper the effective delivery of regulation; and who has the knowledge and capability to implement the regulation.

Get the design right

In the context of local government regulation, central government regulation making is often below the standard set for the public sector. Issues include the level and quality of engagement with local government, the rigour and content of implementation analysis and the performance of quality assurance processes.

Changes are needed to improve:

- the interface between central and local government, with local government recognised as 'co-producers' of regulatory outcomes;
- the incentives on central government agencies to undertake rigorous policy analysis prior to recommending changes to local government regulatory functions;
- central government agencies' knowledge of the local government sector and capability to undertake robust implementation analysis; and
- the quality of engagement with local government early in the policy process.

It is also important to ensure that local authorities have access to the regulatory tools needed to achieve the desired outcomes of regulation.

Strengthen local regulatory processes

For local authorities to be good regulators, they need high-quality internal decision-making processes and adequate capability to administer regulations. During the course of the inquiry it has become clear that weaknesses exist in the way in which some regulations are being implemented, administered and enforced. The required improvements include:

- Local authorities need to take greater responsibility for ensuring the regulatory decisions made by their staff are consistent and accurate. This will require stronger quality management systems.
- Risk-based approaches to compliance monitoring need to be used more effectively. For example central and local governments need to share information to identify trends and patterns in compliance.
- The local government regulatory process should be free from local political influences. Robust systems are needed to separate the governance and advocacy roles of councillors.

Address system-wide weaknesses

The inquiry has uncovered a number of broader weaknesses in the regulatory system.

One key weakness is the poor relationship and interaction between central and local government. This is, in part, due to the different views and understanding of the roles, obligations and accountabilities of the two spheres of government. The Commission believes this poor interaction is having a detrimental impact on New Zealand's regulatory system and is resulting in regulations that are below the quality that could be achieved. A more productive interface between New Zealand's two spheres of government is needed.

There are weaknesses in the way that councils' regulatory performance is reported. Current arrangements focus on a limited range of performance indicators and provide little feedback to help councils improve the way they deliver regulatory functions.

The regulatory system is also affected by significant gaps in capacity and capability. Central government agencies have few senior officers with an in-depth understanding of the local government sector, while many local authorities struggle to maintain the technical capability needed to administer complex regulations. In addition, the current system for including Māori in decision making may rely too heavily on a level of capacity that often is not available in Māori organisations. If the system relies on participants possessing a level of capability and capacity that they do not have, then the desired outcomes are unlikely to be achieved.

Moving forward

The inquiry report contains 29 recommendations. Taken together these represent a comprehensive package of measures that the Commission believes would make a significant contribution to how local regulations are delivered in New Zealand. The Commission's recommendations can be grouped into three key themes:

- **Setting the 'rules of the game':** These recommendations focus on ensuring that central and local government have a common understanding of each other's roles, duties and accountabilities. To promote this, the Commission recommends the development of a central/local government protocol to agree a set of principles to govern the development of regulations affecting the local government sector.
- **Strengthening institutions:** A number of recommendations focus on strengthening the institutions involved in the development, implementation and enforcement of local regulations. Here the Commission raises the need to closely examine existing institutions and suggests that new institutional arrangements may be required to help manage the interaction between central and local government and drive improvements in the regulatory system.
- **A forward work programme:** The final group of recommendations provide a work programme to put into practice improvements to the regulatory system. These include measures to strengthen current performance reporting and ways to improve quality assurance processes within both central and local government.

The full report *Towards Better Local Regulation* is available from www.productivity.govt.nz

The New Zealand Productivity Commission

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