



LOCAL GOVERNMENT NEW ZEALAND SUBMISSION

Towards Better Local Regulation

To the Productivity Commission

*Local Government
New Zealand*
te pūtahi matakōkiri



Submission by Local Government New Zealand

IN THE MATTER OF:

TOWARDS BETTER LOCAL REGULATION

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Introduction

1. *Local Government New Zealand* (LGNZ) welcomes the opportunity to submit on the Towards Better Local Regulation Report by the Productivity Commission.
2. LGNZ is a member based organisation representing all 78 local authorities in New Zealand. LGNZ's governance body is the National Council. The members of the National Council are:
 - Lawrence Yule, President, Mayor, Hastings District Council
 - John Forbes, Vice-President, Mayor, Opotiki District Council
 - John Bain, Zone 1, Deputy Chair, Northland Regional Council
 - Richard Northey, Zone 1, Councillor, Auckland Council
 - Meng Foon, Zone 2, Mayor, Gisborne District Council
 - Jono Naylor, Zone 3, Mayor, Palmerston North City Council
 - Adrienne Staples, Zone 4, Mayor, South Wairarapa District Council
 - Maureen Pugh, Zone 5, Mayor, Westland District Council
 - Tracy Hicks, Zone 6, Mayor, Gore District Council
 - Len Brown, Metro Sector, Mayor, Auckland Council
 - Dave Cull, Metro Sector, Mayor, Dunedin City Council
 - Stuart Crosby, Metro Sector, Mayor, Tauranga City Council
 - Brendan Duffy, Provincial Sector, Mayor, Horowhenua District Council
 - Stephen Woodhead, Regional Sector, Chair, Otago Regional Council
 - Fran Wilde, Regional Sector, Chair, Greater Wellington Regional Council.
3. This submission has been prepared under the direction of the National Council. Councils may choose to make individual submissions. The LGNZ submission does not derogate from these individual submissions. Many councils have indicated that instead of submitting in their own right, they will rely on this LGNZ submission.
4. The final submission was endorsed under delegated authority by Lawrence Yule, President, Local Government New Zealand.
5. The Productivity Review report Towards Better Local Regulation examines some of the fundamental regulatory services provided by local authorities. The Productivity Commission has identified that regulations developed by central government flow through to local government in a variety of ways. It is welcoming to see that the Commission has gained a sound understanding of the regulatory framework in local government and has come to the conclusion that almost all regulations made or administered by local authorities are undertaken on the direction of Central Government, as opposed to local government developing regulation under the Local Government Act 2002. LGNZ believes the title including "local regulation" is misleading. The title "Towards better design and implementation of regulation" would better reflect the real regime under examination.
6. LGNZ applauds some of the changes proposed regarding the early engagement between central government and local government and the need for a framework to guide decision-making at the two spheres of government. The principles upon which the allocation of roles should be determined need to be explicit; noting that local authorities are often best placed to provide decisions such as those under the Resource Management Act 1991 (RMA) to reflect local conditions.

7. LGNZ supports the following approach to a framework which:
- Adopts the principle of devolution to the appropriate lowest or least centralised form of responsible government;
 - Has consideration of the future constitutional place of local government in New Zealand; and
 - Considers the place of diversity within the framework which avoids unnecessary centralisation.
8. Where conditions and outcomes are not local specific there is the opportunity for central government to set a more prescriptive framework. A parallel principle of “supplementarity” is important. Centralised arrangements should work to supplement, and hence improve, the performance of local government implementation of regulation. LGNZ welcomes the Commissions Draft Report and agrees with most of the findings. We would recommend that these are translated into clear recommendations to central government.

Productivity Review Report “Towards better local regulation.”

Local government in New Zealand F2.1 – F2.3

9. The findings outlined in the Productivity Commission report Towards Better Local Regulation would enable regulation(s) to be made within the context of a framework of devolution from central government to local government.
10. The critical change must involve a more analytic approach to determining whether the regulation is one that should be decentralised to councils, and if so, the degree of discretion that should be given to councils. Local government supports recommendations that would strengthen the regulatory impact analysis process and the quality of regulatory impact statements and specifically support options 1, 2 and 3 in Table 7.1. We are not sure whether option 10, a Select Committee to consider issues concerning local government regulation, is practical. However, we do support Option 8, the suggestion of an independent statutory body to undertake quality control of Regulatory Impact Statement (RIS).
11. One of the issues faced with regulatory impact statements concerns the willingness of government to actually take them into account. We would note that the RIS accompanying the recent LGA 2002 Amendment Act 2012 in the Better Local Government reforms was highly critical, not only of the information on which the Bill was based, but also some of the policy prescriptions. Decision-makers appeared to have ignored the RIS in its entirety.
12. The compression of timing which results in legislative and regulatory drafting being rushed, ultimately affects the overall “quality” of the product. The division of regulation into “tranches” is often a problematic way of proceeding as each tranche may be inconsistent with the last. This piecemeal approach results in unintended consequences. All of these issues will affect the way that central government and local government can engage in a meaningful way and produce “good quality” regulation which is well received by users.
13. *Local Government New Zealand* also believes that government Ministries should have included within their own Performance Improvement Frameworks (PIFs) a performance measure which would measure the level of engagement and involvement with local government in the early stages of regulatory reform, design and implementation.

Recommendations:

- Regulations should be developed and designed collaboratively with local government and a framework for the devolution of regulation should be established based on the principles of subsidiarity;
- The Regulatory Impact Statement should be consistently applied and reviewed by an independent statutory body;
- There is a need for clarity in terms of the constitutional place of local government and in order to improve the relationship between central and local government; and
- Protocols for central government Ministries relating to their engagement with local government should be included in all Ministry PIFs.

Diversity across local authorities

Clauses F3.1 – F3.7

14. The Commission asks the question: “To what extent should local government play an active role in pursuing regional economic development?”
15. The demographic changes predicted in New Zealand will result in differences across local authorities and is likely to drive different regulatory needs and capacity in different areas. Diversity in industrial specialisation, economic growth will all have an affect at the local level.
16. Councils can only provide those services where the benefits are confined to citizens within their jurisdictions, they could collaborate at a regional level in terms of strategic planning and delivery of economic objectives if they so choose.
17. The contribution of regional governance to economic growth appears widely accepted by policy makers and is best illustrated by the Government’s decision to consolidate the Auckland councils. The reform of Auckland was premised on the need for stronger regional leadership and the contribution that this was likely to have on economic growth. Councils exercise a range of policy levers that can either encourage or diminish economic activity within their regions. How these levers are exercised is ultimately a question best left to voters to decide.
18. Bearing in mind that almost every decision councils make will have an impact on economic growth, either positive or negative, the answer to whether local government should play an active role in pursuing economic development is one that only local and voters can determine. It is a fundamental tenet of democracy that voters will chose candidates that reflect their preferences. Consequently, councils will take very different views on whether or not to pursue economic development and how this might be done, whether through specific initiatives or simply providing good quality infrastructure efficiently.
19. Where councils have discretion, attitudes to economic growth, as opposed to environmental protection or sustainability, are likely to impact on the service levels for regulatory activities. A number of regulatory regimes, such as the RMA, allow citizens, through their elected members, to make trade-offs between economic, environmental, cultural and social outcomes – essentially the “*raison d’etre*” of local government.

Recommendations:

- Retain council discretion to respond to their communities and allow citizens, through their elected members to make decisions which balance economic, environmental outcomes on the basis of sound evidence and community preference – local democracy at work.

Allocating regulatory responsibilities

Clauses F4.1 – F4.13

20. Although Chapter 4 is fundamentally referring to the guidelines for allocation as set out in the report it is intrinsically linked to the framework outlined in Chapter 2. The framework for central government local government engagement and devolution is part and parcel of this guidance.
21. Overall the guidelines appear to contain the full range of necessary elements to sensibly allocate regulatory responsibilities between central and local government, however, the framework may need to

differ depending on whether we are dealing with delegated regulatory functions from central government or regulatory functions given to local government directly by Parliament. This is particularly relevant to the issue of capability.

22. The Guide asks, “Who has capability to make regulatory decisions and implement regulations?” It further asks, “How capability will be maintained?” This is a complex question and may lend itself to practical application. Capability is determined by the investment made by a local authority. Given that the question relates to activities limited in scale by a local authority’s jurisdiction the required capability is also likely to be determined by population and size of a jurisdiction, creating a circular proposition. There is a need to consider this question of capability in the design of regulatory delivery models. Sharing expertise across more than one council can be a way of spreading the cost of highly skilled personnel.
23. The critical point might be the cost to residents (or those subject to the regulation) and whether or not that cost is reasonable, given the cost to residents/users in larger jurisdictions may be more acceptable. Even then, when people choose to live in small and isolated communities they do so with the knowledge that public goods are likely to be more expensive. The key principle here might be one of ‘appropriate to circumstance.’
24. The case studies are helpful as an indicative guide to the analyses that could be undertaken.
25. In regards to the Regulatory Impact Statement (RIS) being the place for initial analysis to be required, local government’s experience with the regulatory impact statement for the Better Local Government and Local Government Act 2002 Amendment Act 2012, suggests that the RIS is too late to inform the final legislation. Even more problematic, is that it is likely to be ignored if inconsistent with government policy. Our preference is for the discussion to occur as soon as a regulatory response is being considered. Local government should have involvement at the early stages of conceptual thinking and deciding whether regulation is the appropriate tool to address a problem.
26. We do agree that guidelines should be used in the evaluations of regulatory regimes.

Recommendation:

- Adopt the guidelines which support the allocation of regulatory responsibilities.

The funding of regulation

Clauses F5.1

27. *Local Government New Zealand* considers that most licencing regulatory functions, as opposed to services, are funded through some form of user charge. General funds (rates, grants etc) are often used to fund the preliminary policy work, consultation and monitoring. The question for the Government concerns the willingness of councils to invest sufficiently in the policy and monitoring work which are often the unfunded elements of regulation. Under-investment in these activities might lead to poorly delivered regulations and either over or under provision.
28. We agree with the suggestion that general grants could be used to assist councils lacking capacity to provide a higher minimum level of service and it is appropriate that councils have the discretion to allocate such funds as need requires. Need could be defined in a number of ways from socio economic status to the land value of the district (as used in the Financial Assistance Rate).
29. The question is also asked whether general grants could be used to fund ‘spillovers’. It is not clear, however, what spillovers are in a regulatory context. In the regulatory context rather than “spillovers”

the issue is one of displacement – a council that invests heavily in anti graffiti policies may simply displace offenders to a neighbouring authority that has invested less; similarly alcohol bans may simply transfer drunkenness offences to a district without bans.

30. With regard to environmental regulations it is the role of regional councils to manage displacement and spillovers, where the actions of one community cause costs to another.
31. Local government accepts the principle that with funding comes accountability. The proposed funding principles outlined in Box 5.2 (page 69) are supported. The Government has considerable experience of contracting and funding non-governmental agencies to provide service on its behalf. These models could be applied to any funding allocated to councils to enhance the performance of a regulatory function.

Recommendation:

- That general grants could be used to assist councils lacking capacity to provide a higher minimum level of service and it is appropriate that councils have the discretion to allocate such funds as need requires; and
- That there is a comprehensive study undertaken to assess the real cost of regulatory imposts on to local government.

Regulation making by Local government

Clauses 7.1- 7.2

32. *Local Government New Zealand* would reaffirm that it is simply too easy for Ministers to blame local authorities for regulatory failure when the actual problem lies with the design of the regulatory system itself. As the draft report notes, where accountability is diffuse no single party has an incentive to take responsibility for the eventual outcomes of the regulatory regime.
33. The critical change must involve a more analytic approach to determining whether the regulation is one that should be decentralised to councils, and if so, the degree of discretion that should be given to councils. This is already stated in paragraphs 11 and 12 of this submission.
34. One of the issues faced by central government and local government is that there is no uniform process for devolution of regulation. This is compounded with a lack of analysis when time restraints do not allow for a full consideration of need, appropriateness and impact at the design stages of the regulatory process. A “whole of government” approach would essentially drive the development of a consistent framework of regulatory design and devolution based on a sound analysis of need and appropriateness.
35. *Local Government New Zealand* strongly believes that measures are needed to ensure that central government agencies have experienced analysts with a good background in local government and that this will assist better engagement between central government and local government in the policy design stages.
36. Local government supports the eight proposals outlined in Table 7.2. We wish to specifically highlight the potential value of the following:
 - Option 1 - Seconding/contracting staff with local government expertise. We can't over estimate the value of having officials involved with the implementation of a regulatory regime actively participating in either its development or review. The knowledge of frontline staff can ensure such regimes are designed to better meet local needs without unnecessary cost. A good example of positive engagement is with the Ministry for Primary Industries in relation to the Food Bill;

- We see a value in secondments both ways – central to local and local to central – not just in terms of providing a local government view but in increasing understanding of the issues. Consequently, we do not agree with the comment that secondment might lead to excessive influence of local authority views. The value is primarily a technical one, to ensure officials better understand the context that they are making regulations for; and
- Option 4 – Best practice guidance for officials in local and central government is important. The local government sector actively supported the Department of Internal Affairs’ guidelines that sought to inform the development of local government specific regulations. We would like to see those guidelines updated, enhanced and given greater status. Current requests for guidance on Development Contributions are seen as a positive move.

37. In addition, consideration might be given to developing a university based paper on the principles of good regulation for central and local government personnel. Such a paper could be included, for example, in Victoria University’s Master of Public Policy degree.

Recommendation:

- Government adopts the eight proposals as outlined in Table 7.2 of the Report. *Local Government New Zealand* does not support the suggestion that a Select Committee consider the issues relating to regulation.

Local government Cooperation

Clauses F8.1 – F8.5

38. Cooperation makes sense where there are economies of scale and agreement on service levels or standards, that is, where community values are relatively homogenous. We agree with the statement that “cooperation gives councils the flexibility of only working together in areas where there are advantages.” The Commission also notes that 89% of councils “coordinate/collaborate” on regulatory functions.

39. Cooperation provides councils with flexibility that is lost by structural change as the distribution of benefits will vary according to each regulatory area and benefits are likely to be maximized if cooperative arrangements can be developed on a activity basis, that is, cooperative partners may be different in the area of building control than, for example, in liquor outlet licensing or inspection.

40. *Local Government New Zealand* supports the need for central government consultation processes to be done well in order to lay the foundations for cooperative solutions.

41. Some studies in New Zealand have sought to quantify the costs and benefits of cooperation of regulatory functions. Refer for example to *Local Government Structure and Efficiency*, McKinlay Douglas Ltd (October 2006) and *Consolidation in Local Government: A Fresh Look*, Aulich et al (May 2011). However, there is most likely to be savings when resources are being shared across more than one council, and Western Bay of Plenty councils already have a history of this type of cooperation in service delivery. It is important to note that these arrangements will vary and the same business models may not work in other areas.

Recommendations:

- That empirical studies be undertaken to show the cost benefits of collaboration and cooperation in regulatory functions in 2012; and
- Avoid applying business cases from one jurisdiction to another, as this will have perverse outcomes.

Local Authorities as Regulators

Clauses F9.1 – F9.7

42. *Local Government New Zealand* considered the reports question as to whether potential pooled funding or insurance style schemes would create a better separation between councillors and decisions to proceed with major prosecutions.
43. Elected members have a valuable role to play in many regulatory regimes, such as their role as hearing commissioners and setting regulatory standards, however, as a matter of principle elected members should not be involved in decisions to determine whether or not individual prosecutions should be laid.
44. Where appeals and prosecutions are likely to create a significant cost to ratepayers, with limited likelihood of success or limited ability to recover the cost, the decision has to be made as to whether the cost is proportionate to the scale of the problem. There are a number of regulatory areas where taking an offender to court for an unpaid fine will cost councils more than the maximum fine able to be charged.
45. In our experience the cost of initiating prosecutions or appeals is not the major determinant of whether such actions are taken or not. We are not convinced that there is a problem that would benefit from a mutual styled fund.
46. In relation to by-laws, regulating access to council services and being used to avoid incurring costs, we do not believe this to be the case. This question appears to relate to the role of trade-waste by-laws and whether a contractual model would be preferable. It is our understanding that using by-law, as opposed to individual contracts with specific users of waste water systems, reduces transaction costs while providing additional compliance options and transparency, consequently reducing the cost to users and ratepayers. The ability to use such by-laws provides an advantage to publicly owned water and waste-water schemes compared to privately owned systems, which perhaps explains why the issue was raised in the first place.
47. The Commission raises the question about the differences in satisfaction reported by industry sectors. The issue here is whether dissatisfaction is with the process by which regulations are administered or with the standard users are expected to comply with – more clarity is required to fully address this issue.
48. Increasing consistency of process will arguably benefit firms dealing more than a single council but may also diminish the capacity for innovation and appropriate local diversity. Increased consistency of regulatory standards undermines the argument in favour of decentralising regulatory functions and would assume that, at least in relation to this regulatory area, all communities have the same issues to address.
49. It is understandable that firms regard regulation as a cost, yet the point of regulation is to diminish harm to citizens. This creates a trade-off and a balance as to what is a reasonable level of regulation. It is a trade-off that we expect elected members, in consultation with businesses and citizens, to resolve. As a check and balance businesses have the opportunity to exit and shift investment to areas with more

favourable regulatory regimes. The ability to exit is an important check on both the quality of regulatory practice and the level of regulatory standards.

50. *Local Government New Zealand* do, however, support the Commission in seeking to provide more guidance from central and local government in regulation. We see this as a major factor in improving the understanding of the business sector as to what is expected from them when complying with any regulation.

Recommendations:

- That there is not a need to set up a mutual style fund to increase prosecutions being taken; and
- Opportunities are explored to improve the level of regulatory guidance and information to business.

Local Monitoring and Enforcement

Clauses F10.1 – 10.10

51. The Commission queried whether risk based approaches to monitoring compliance were being widely used.

52. *Local Government New Zealand* understands that councils are increasingly using risk based approaches to regulation. The bio-security regime is risk based and changes to the Food Act are intended to shift that regime to a risk based approach. Within the RMA, the use of permitted activities is an example of a risk based regime with monitoring managed through regular state of the environment reports.

53. A risk based approach to monitoring is also being used increasingly by councils who use performance management dashboards as part of their reporting to councils. The risk based approach is used here to determine the highest priority areas for monitoring based on their risk rating.

54. With regards to monitoring and compliance it is useful to look at the three different types of monitoring:

1. Environmental monitoring;
2. Compliance monitoring; and
3. Plan effectiveness monitoring.

55. Of the three the cost of compliance, such as the monitoring of resource consent conditions, is met by applicants while the cost of the other two forms of monitoring is met out of general revenues. Investment in environmental and plan effectiveness monitoring will be influenced by the pressure of budget constraints.

56. *Local Government New Zealand* is also aware that regulatory monitoring is only one part of performance monitoring that takes place in local authorities. Performance measures are part of the Office of the Auditor General when auditing Annual Reports and Long Term Plans. This results in a great deal of performance measurement data being gathered but there is pressures of time in assembling monitoring reports which can then be used in performance improvement initiatives. This is an unseen cost within the regulatory regime and one which the community does not see.

57. The added complication within the regulatory regime is the speed with which central government is pushing more and more central government regulation down to local government to administer with no funding for resources attached. The result is defeating the original aim of the Better Local Government reforms which was less cost to ratepayers and businesses.

58. Specific regulatory regimes could also be more efficiently enforced if infringement notices were made more widely available and have an appropriate level of fine. This is certainly the case in relation to resource management, freedom camping, biosecurity, illegal dumping and litter infringements. The benefits of enforcing infringement notices needs to be balanced against the cost of providing warranted officer resource to enforce and collect the infringement fines.
59. Some regulatory regimes, by their nature are difficult to enforce. For example, with illegal dumping here the current fine has a maximum of \$400. Many councils find the cost of enforcement and prosecution to be greater than income received from a successful prosecution. The protection of wetlands is another area where enforcement is difficult given the isolation of many of our wetlands and the difficulty of monitoring.
60. *Local Government New Zealand* believes that the size of fines imposed by infringement notices should be reviewed in order to make moderate penalties more available.
61. In response to *Local Government New Zealand's* cost shifting survey, Wellington City provided a good example that might be able to be avoided should the councils be able to use instant infringement fines. The council reported that the Ministry of Justice has removed the ability of councils to pursue debt recovery through the Small Claims Court. Because the alternative, taking claims to the District Court, costs between \$5,000 and \$15,000 per case (even where a court finds in the council's favour) the likely fine, often only \$200, makes the exercise uneconomical. Consequently, Wellington City Council writes off about \$20,000 in small debts each year, regardless of the strength of the council's case.

Licensing of liquor

62. The Report asked if there was sufficient monitoring of liquor licensing occurring. Unfortunately, this question begs the corollary, how do you define "sufficient?" Elected members are elected to oversee the performance of council officers – this includes overseeing councils' regulatory performance. Most regulatory regimes deal with matters of high public interest. Should officials fail to adequately monitor liquor licenses in a particular area, and problems arise, then citizens will inevitably raise concerns with elected members who will ensure appropriate action is taken by officials. Close liaison with the Police on these matters will often provide insights into the effectiveness of any monitoring efforts.
63. With regards to the burden of proof, in our experience in most of the local authorities the burden of proof is automatically proportionate to the severity of an action otherwise enforcement is unlikely to follow. However, the model of enforcement may vary from serving liquor to minors to major breaches of licensing opening hours. There needs to be a menu of regulatory tools to be used at appropriate times.
64. Overall however, there is general agreement that the enforcement regime works well with a high level of voluntary compliance which is assisted with partnership working with the Police.
65. In most cases, very few licenses are varied because the regime is not a fully decentralised one and the uniformity of the conditions is explained by the influence of the Liquor Licensing Authority.

Recommendation:

- That the size of fines imposed by infringement notices should be reviewed in order to make moderate penalties more available.

Making Resource Management Decisions

Clauses F12.1 – 12.6

66. The report questions the low number of consents declined and asks if this is because risky consent applications are not being put forward.
67. In *Local Government New Zealand's* view it indicates the regulatory system is working well. The rules are clear and significant energy is devoted to 'pre-lodgement' meetings to assist both risky and incomplete applications meet the rules. In short, it reflects a focus on customer service.
68. With regards to different planning approaches, under the RMA councils are required to consider private requests for plan changes. Certainty is assisted by the use of zones, whereas the alternative performance based approach provides less certainty and is likely to prove expensive to prospective developers.
69. Plans and policy statements are mechanisms for making trade-offs between competing demands. By their nature they involve collective choices which both limit certain kinds of activities or favour others. The number of appeals is likely to be influenced by the process followed in the development of plans and policy statements and the degree to which interested parties believe their interests have been acknowledged and taken into account. Despite this, the right to appeal by parties who feel their interests have not been adequately addressed, or where circumstances may have changed, is an important constitutional right.
70. It would, however, be feasible to narrow the legal scope of appeals and this is especially true in relation to the Bio Security Act and should be considered. It would also be possible to limit the legal standing by preventing it to people who have previously submitted.
71. The by-law making process and the district plan making process are very different frameworks and are designed to deal with very different kinds of issues, although some aspects will be similar, such as the policy work required to assess costs and benefits of different options. This could/should allow for building organisational competency. Some by-laws relating to street dining will have a direct impact on district plan rules for encroachment, but by-laws relating to Boy Racers, Gang Patches, Liquor Ban Areas etc only marginally impact on District planning processes.

Recommendation:

- Narrowing the legal scope of appeals, especially in relation to the Bio Security Act, should be considered. It would also be possible to limit the legal standing by preventing appeals from people who have previously submitted.

Local Regulation and Maori

Clauses 13.1- 13.4

72. It is not clear how Maori involvement in decision-making could be applied in other regulatory areas, such as building or gaming, other than ensuring that consultation has occurred and tangata whenua interests have been considered. Where the regulatory instrument requires councils to consult with communities to set levels of service, such as gaming or dog control, then statutory duty to consult applies and avenues are present.

73. Other regulatory areas, such as building control, do not provide such options and regulatory decisions are increasingly reserved for staff with specific qualifications.
74. The most comprehensive survey of mechanisms by which local authorities engage with Maori (which is wider than decision-making opportunities) was carried out by *Local Government New Zealand* and Te Puni Kokiri in 2004. That survey found:
- 69 councils had formal processes for consulting Maori;
 - 79 councils had informal processes for consultation and information sharing;
 - 43 councils held Iwi management plans;
 - 55 councils provided funding for one or more joint initiative;
 - 22 councils had established co-management regimes for managing site or resource;
 - 57 councils provided internal training (elected members/staff) on matters such as statutory obligations to Maori;
 - 39 councils had established Maori advisory committees;
 - 42 councils used appointed Iwi/Maori representatives on committees or working groups;
 - 42 councils scheduled regular meetings with Maori organisations;
 - Councils which had negotiated relationship agreements with Iwi/Maori numbers 44; and
 - 32 councils employed dedicated Iwi liaison/policy staff.
75. Compared to the same survey undertaken in 1997 the number of mechanisms in each area had increased markedly.
76. The establishment of relationship agreements, joint regulatory committees and appointment of Iwi representatives on councils' regulatory /service delivery committees are all cost-effective instruments.
77. We should note that some councils have identified co-governance arrangements, following Crown Iwi settlements, as responsible for significant administrative costs. Care must be taken when designing such governance and regulatory mechanisms that they don't result in an unfair cost to councils (see *Devolution: Fact or Fiction 2012* edition).
78. *Local Government New Zealand* believes that over the last two decades since the RMA there has been considerable innovation and at this point a range of options have been explored. The more pressing issue is to expand sector understanding of the options that are working well, for both councils and Maori. It is agreed that the current system for involvement in resource consent decisions needs examining as the costs and timeframes involved do not appear to be working for Maori or councils in some areas.
79. Generally, each district or city has arrived at models that are relatively unique to their own context, particularly to the nature of Iwi/Maori within their districts. Arrangements that involve councils and single Iwi/hapu will be very different to where councils are required to build relationships with multiple Iwi/Maori.
80. There has been considerable research into this question in recent years. The Department of Internal Affairs survey *Maori Participation and Engagement with local government (2009)* identified a number of factors that contributed to successful engagement practices, namely:
- The councils are demonstrating a commitment through actions, not just words;
 - Having Maori electoral seats (ala Bay of Plenty Regional Council);
 - Recognition that participation and engagement needs to take place at all levels within councils;
 - Strong leadership from the councils and Maori which is driving a collaborative approach;
 - Strong formal and informal relationships; and
 - Recognition that relationships will be diverse and dynamic.

81. An earlier *Local Government New Zealand* survey (Local Government Relationships with Maori 2002), which interviewed council officials and members of local Iwi, found that strong leaderships needed to be balanced with formal processes and structures and that this needs to occur in the contexts of governance, consultation and participation.
82. In addition to adequate resourcing, for councils and Iwi/Maori; guidance on the Treaty of Waitangi, and building the capacity of tangata whenua to engage were also important factors in making relationships work.

Recommendation:

- That councils continue to build best practice frameworks and share information on engagement and consultation processes between councils and Maori.

Assessing the regulatory performance of local government

Clauses 14.1- 14.4

83. Many councils have used guides on performance management frameworks within their planning and monitoring cycles for Annual Reports, Long Terms Plans and other reporting mechanisms. Many councils use these frameworks to design their reporting systems on a quarterly basis with some also producing a scorecard for the public. This has increased the visibility of performance reporting in the sector. Guides are a good way of increasing uniformity in processes without enforced prescription which may have perverse outcomes.
84. Other than by-law making, which the report notes as relatively minimal in the scale of regulations implemented by councils, regulatory responsibilities possess their own principal legislation which (should) set out requirements governing capability, performance and reporting. Other than the prescribed by-law making process the LGA 2002 does not provide a mechanism for adopting new regulations, so we cannot see any justification for further legislative requirements to be placed on councils.
85. It should be noted that the LGA 2002 does make it clear that chief executives must ensure council responsibilities and duties are “properly performed or exercised,” that activities are “effectively and efficiently managed” and that there are systems to “enable effective planning and accurate reporting of the financial and service performance” of the authority (S. 42 LGA 2002).
86. *Local Government New Zealand* agrees that several leading practices exist in relation to local government regulatory performance, such as good practice guidelines, support from professional associations and institutes (e.g. Quality Planning Website) and functioning performance management frameworks.

Recommendation:

Local Government New Zealand has considered the Commission’s performance assessment options and provides the following commentary:

1. Regulatory terms of reference documents

Local government supports this option. Increasing clarity about the purpose of regulatory regimes,

the relative roles of local and central government and the manner in which performance will be assessed should be helpful for local authorities.

2. A joint health check programme

The option to have central and local government officials jointly reviewing all stages of a single regulatory regime would be possible. In our view, such a programme would need to be triggered where local and central government both agree and the result should feed into a regular statutory review.

3. Adopt elements of the PIF model

For a large number of councils the cost of a PIF style approach would be excessive and seriously outweigh the benefits. Through OAG and performance measures used in the Long Term Plan and Annual Plan, there is already a mechanism for monitoring performance. A number of councils use external quality control methodologies, such as ISO9000, Baldrige and Business Excellence, to provide independent surety about capability, assessment and performance improvement. This could be encouraged.

4. Increase focus on regulatory capabilities

As discussed above, the LGA 2002 already requires chief executives to ensure councils responsibilities and duties are delivered effectively and efficiently and this is expressed in their annual performance agreement. In addition, some government chief executives currently have the ability to intervene directly if they believe a council is failing to invest in the appropriate level of capability to deliver particular regulatory services. Again, the cost of the additional reporting requirements is likely to outweigh the benefits.

5. Expansion of leading practices to other regulatory regimes

In theory, there should be a culture which encourages the sharing of good practice where opportunities exist. In reality, diversity in the nature of regulatory regimes and in the capacity of councils might limit opportunity for aligning performance frameworks. Ultimately, this depends on the scale of risk. We suggest an “appropriate to circumstance” approach.

6. Reduce the frequency of regulatory performance reporting

Local government fully supports recommendations that reduce the cost of reporting arrangements, shifting to an “as needed” basis and improved consistency of performance assessment frameworks. We also support the proposal that central government is encouraged to share data with councils to assist with performance assessment.

Schedule of recommended changes

Productivity Review Report “Towards better local regulation.”

Title	Recommendation
Local Government in New Zealand (F2.1 – F2.3)	<ul style="list-style-type: none"> • Regulations should be developed and designed collaboratively with local government and a framework for the devolution of regulation should be established based on the principles of subsidiarity; • The Regulatory Impact Statement should be consistently applied and reviewed by an independent statutory body; • There is a need for clarity in terms of the constitutional place of local government and in order to improve the relationship between central and local government; and • Protocols for central government Ministries relating to their engagement with local government should be included in all Ministry PIFs.
Diversity across local authorities (F3.1 – F3.7)	<ul style="list-style-type: none"> • Retain council discretion to respond to their communities and allow citizens, through their elected members, to make decisions that balance economic and environmental outcomes on the basis of sound evidence and community preference – local democracy at work.
Allocating regulatory responsibilities (F4.1-F4.13)	<ul style="list-style-type: none"> • Adopt the guidelines that support the allocation of regulatory responsibilities.
The funding of regulation (F5.1)	<ul style="list-style-type: none"> • That general grants could be used to assist councils lacking capacity to provide a higher minimum level of service and it is appropriate that councils have the discretion to allocate such funds as need requires; and • That there is a comprehensive study undertaken to assess the real cost of regulatory imposts on to local government.
Regulation making by local government (F7.1 – F7.2)	<ul style="list-style-type: none"> • Government adopts the eight proposals as outlined in Table 7.2 of the Report. <i>Local Government New Zealand</i> does not support the suggestion that a Select Committee consider the issues relating to regulation.

Title	Recommendation
Local government cooperation (F8.1 – F8.5)	<ul style="list-style-type: none"> • That empirical studies be undertaken to show the cost benefits of collaboration and cooperation in regulatory functions in 2012; and • Avoid applying business cases from one jurisdiction to another, as this will have perverse outcomes.
Local authorities as regulators (F9.1 – F9.7)	<ul style="list-style-type: none"> • That there is not a need to set up a mutual style fund to increase prosecutions being taken; and • Opportunities are explored to improve the level of regulatory guidance and information to business.
Local monitoring and enforcement (F10.1 – F10.10)	<ul style="list-style-type: none"> • That the size of fines imposed by infringement notices should be reviewed in order to make moderate penalties more available.
Making resource management decisions (F12.1 – F12.6)	<ul style="list-style-type: none"> • Narrowing the legal scope of appeals, especially in relation to the Bio Security Act, should be considered. It would also be possible to limit the legal standing by preventing appeals from people who have previously submitted.
Local regulation and Maori (F13.1 – 13.4)	<ul style="list-style-type: none"> • That councils continue to build best practice frameworks and share information on engagement and consultation processes between councils and Maori.
Assessing the regulatory performance of local government (F14.1 – F14.4)	<ul style="list-style-type: none"> • <i>Local Government New Zealand</i> has considered the Commission’s performance assessment options and provides additional comments on six areas. We are unsure whether a PIF style system will fit in with OAG reporting.