



Institute of
Public Works
Engineering
Australia

Inquiry into Streamlining Local Government Regulation

**Victorian Competition and Efficiency
Commission**

RESPONSE TO DRAFT RECOMMENDATIONS

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1 INTRODUCTION

This submission is presented by the Institute of Public Works Engineering Australia Victorian Division (IPWEA Vic), in response to the Draft Recommendations of the review of “*Streamlining Local Government Regulation*” undertaken by the Victorian Competition and Efficiency Commission (VCEC).

IPWEA Vic welcomes this opportunity to provide comment and feedback and seeks to have IPWEA Vic’s contribution to the Inquiry viewed not only in a positive light, but also as a genuine attempt to influence current and future regulatory regimes for Local Government in the best interests of the people of Victoria.

This submission sets out the views of the IPWEA Vic Board on the current implications and impact of existing regulations, or lack thereof, on the Victorian community as experienced by the membership of IPWEA Vic in planning and providing the civil infrastructure upon which the economic viability and sustainability of the State depends.

2 BACKGROUND

IPWEA Vic is a professional organisation providing member services and advocacy for those involved in and delivering public works and engineering services to the community. It predominately represents engineers working in local government but also covers engineers working in all associated areas of public works.

IPWEA Vic represents those professionals employed by local government responsible for planning and delivering the physical infrastructure that is essential for the operation of any modern society. Infrastructure for which members of IPWEA Vic are responsible includes roads & streets, stormwater drainage, water supply and sewerage, parks & gardens and the construction of buildings.

3 DRAFT RECOMMENDATIONS

The approach IPWEA Vic has taken when responding to the draft recommendations is based on the degree of relevance to its members. IPWEA Vic members are involved in the planning, provision and maintenance of all civil infrastructure associated with public works. Our responses are therefore based on the degree of relevance to our members.

Where members have no involvement we have provided no comment. Where members may have minor involvement or may interface we have stated our level of support for the recommendations. Where members are directly involved we have clearly stated our position and provided more detailed comment and where appropriate provided additional information that the Commission has requested.

The following draft recommendations 5.1 to 10.8 have been made by the Commission in their report *Local Government for a Better Victoria: an Enquiry into Streamlining Local Government Regulation* – a draft report for further consultation and input, dated April 2010.

3.1 Draft Recommendation 5.1

That the Victorian Government develop and publish a performance reporting and evaluation strategy for Victorian planning regulation by July 2011, and that the strategy be developed in consultation with councils and users of the planning system, and include the following components:

- *A clear statement of the Government's priorities for the administration of planning regulation by State agencies and local governments. The priorities need to relate to outcomes, such as the number of new dwellings to be approved and desired timeframes for assessing certain types of application.*
- *A range of indicators that cover the State Government's priorities for the administration of planning regulation, such as the number of new dwellings approved and benchmark timeframes for certain types of application.*
- *Performance indicators and benchmarks for planning processes administered by the State Government such as approving planning scheme amendments, and the administration of the call-in provisions.*
- *Outcome-based measures such as surveys to measure and track users' experience with planning regulations.*
- *Indicators relating to the processes adopted by councils, covering the elements of the best practice assessment process advocated in draft recommendation 5.2.*
- *A process for making the information available to councils and the general public so as to facilitate its widespread use.*

IPWEA vic Response:

This recommendation is supported by IPWEA vic. The Commission's attention is drawn to the need to ensure that any performance indicators, benchmarks etc that are developed are clearly measurable and meaningful.

IPWEA vic recommends that the measures adopted reflect the differentiation between social/political programs as well as technical/delivery of new assets and the management of existing assets and services.

3.2 Draft Recommendation 5.2

That the Victorian Government develop in consultation with councils, a model best practice planning assessment process. The best practice model would provide guidance on pre-application meetings, the delegation of decision-making to council officers, use of online tools, notifications and objections, and dealing with incomplete applications. The Department of Planning and Community Development, with involvement from the local government sector, to report annually on the uptake of the best practice model by councils as well as the costs and benefits of improvement initiatives.

IPWEA vic Response:

This recommendation is supported by IPWEA vic. IPWEA vic is willing to participate in the annual review on the uptake of the Best Practice planning model by Councils as well as the costs and benefits of improvements.

It is essential that any model developed allow adequate time for proper assessment of the technical aspects to ensure that the standard of any public infrastructure being developed is the most cost effective for that asset type.

3.3 Draft Recommendation 5.3

That the Victorian Government develop an accreditation scheme for private technical-planning officers, which may build on or draw from existing professional accreditation schemes. These technical planning officers be permitted to assess planning permits under

its proposed code assess track. Private technical-planning officers be subject to the same reporting requirements as councils (via the Planning Permit Activity Reporting System), and have their assessments audited by councils with the results of audits published. Mechanisms for ensuring accountability and liability (such as fines, removal of accreditation) be written in legislation.

IPWEA vic Response:

This recommendation is neither supported nor opposed by IPWEA vic.

The challenge with this recommendation is that planning applications demand that many subjective matters must be weighed up in reaching a decision. The current system vests the authority for decisions in a council which is accountable for the decision directly to the community. However, the application of standard conditions relating to infrastructure standards and the like would increase efficiency without reducing any accountability to the community.

3.4 Draft Recommendation 5.4

That the Victorian Government outline, in consultation with councils, the characteristics of an effective pre-application meeting process, including pre-lodgement certification, and incorporate this guidance in a best practice model for planning permit assessments (outlined in draft recommendation 5.2).

IPWEA vic Response:

This recommendation is supported by IPWEA vic and we would encourage engineering involvement to reflect on infrastructure designs and standards.

3.5 Draft Recommendation 5.5

That the Victorian Government provides guidance on best practice delegation processes in regard to the roles of councillors and council staff as part of the best practice model for planning permit assessments (outlined in draft recommendation 5.2).

IPWEA vic Response:

This recommendation is supported by IPWEA vic. A uniform set of principles, delegations, and responsibilities empowering Councils to act will assist in the minimisation of waste resulting from time delays associated with onerous decision making processes.

3.6 Draft Recommendation 5.6

That the Victorian Government grant council the right to reject incomplete or poorly prepared applications (subject to transparent reporting on the use of this power).

IPWEA vic Response:

This recommendation is supported by IPWEA vic. However, we would suggest that minimum qualitative definitions be provided to guide Councils and Developers, and these should be contained within the planning scheme.

3.7 Draft Recommendation 5.7

That the Victorian Government streamline referral processes by:

- *developing standard agreements for all councils to use when dealing with referral authorities. Councils would remain able to negotiate amendments to the agreements if circumstances required.*
- *amending the Planning and Environment Act to introduce a deemed to consent provision if no response to a referral is received in 21 days.*

IPWEA vic Response:

This recommendation is supported by IPWEA vic. Care will need to be taken with individual council processes to ensure that the infrastructure requirements are not overlooked or shut out of this process.

3.8 Draft Recommendation 5.8

That the Victorian Government removes the cap on fees for code assess applications with the introduction of private planning assessments.

That for merit assessments, the Victorian Government replaces the cap on planning fees with a default fee. The default fee must reflect the estimated costs facing councils and involve an explicit judgement as to the appropriate level of cost recovery.

That the Planning and Environment Act be amended to allow councils to adopt self-set fees, which councils would be required to assess against the Department of Treasury and Finance's Cost Recovery Guidelines, and test through public consultation.

That the Planning and Environment Act be amended to allow the self-set fee to be revoked, if necessary.

IPWEA vic Response:

This recommendation is supported by IPWEA vic. Adopted fees need to be of a scale that ensures that adequate resources can be employed by council to consider applications.

3.9 Draft Recommendation 5.9

That the Victorian Government, in consultation with local government, develop a strategy to help Victorian councils meet their planning recruitment and retention challenges by July 2011. The strategy would provide:

- *information on the extent to which strategic planning is accorded the highest staffing priority*
- *information on the different types of work that planners currently do, and the appropriate skill-sets for different categories of work, including those tasks that can be undertaken by non-planners*
- *information on the extent of shortages and the nature and impact of recruitment and retention challenges facing councils*
- *options for fast-tracking planning qualifications, or allowing for more specialised, restricted qualifications to carry out a lesser scope of work*
- *an evaluation of the impacts of various councils' strategies for dealing with skill shortages in order to promulgate successful strategies.*
-

IPWEA vic Response:

This recommendation is supported by the IPWEA vic. Refer also to our general comments regarding skills and training in section 4.2 of this Submission.

3.10 Draft Recommendation 6.1

That Local Government Victoria in conjunction with the Councils, identify variations in terminology across councils in their building and construction local laws and in the relevant State Acts and remove them.

IPWEA vic Response:

This recommendation is supported by IPWEA vic. IPWEA vic is willing to participate in any review and provide industry sector input on current difficulties being experienced by its members and Developers.

3.11 Draft Recommendation 6.2

That Local Government Victoria, in consultation with councils, the Building Commission and the EPA, develop a credentialed local law covering working hours that provides a low-cost process for allowing businesses to undertake work outside the specified hours, where such flexibility would provide demonstrable benefits to business without impacting on community amenity. This includes identifying a list of building activities that create little or no amenity problems (such as painting) for which exceptions to working hour restrictions will be made available.

IPWEA vic Response:

This recommendation is supported by IPWEA vic. We would also add that issues of buffer zones and proximity to habitable properties be considered to enable operations outside 'normal' regulated hours.

3.12 Draft Recommendation 6.3

That Local Government Victoria coordinate the development of credentialed site-fencing and identification requirements that provides flexibility for builders about how they manage site litter but provide for a 'deemed to comply' solution for those businesses that want certainty about the performance-based requirements.

IPWEA vic Response:

This recommendation is supported by IPWEA vic

3.13 Draft Recommendation 6.4

That Local Government Victoria, in consultation with councils, develop a credentialed asset protection local law and a process for enabling builders to apply for council asset protection permits in parallel with the processing of the building permit. The validity of this permit could be conditional on there being no substantive changes in the building permit which would affect the council asset protection permit being issued.

IPWEA vic Response:

This recommendation is supported by IPWEA vic. It is recommended also that the attainment of the asset protection permit be a condition of the planning permit and it be a requirement that the permit be issued prior to commencement of any works on site.

3.14 Draft Recommendation 6.5

That the Victorian Government clarify that building regulation is the most efficient means of addressing the environmental performance of buildings, through changes to national building standards or via changes to State building regulations.

That the Victorian Government also clarify that councils' role under the planning system does not extend beyond voluntary schemes and the provision of information to applicants about the environmental performance of buildings and tools to assist applicants make informed decisions.

IPWEA vic Response:

IPWEA vic do not have a firm position, but would comment that Water Sensitive Urban Design principles regarding environmental management of waste materials, storage of materials are applicable and best practice references need to be adopted within the Victorian Building Regulation's.

3.15 Draft Recommendation 8.1

That the Victorian Government strengthens the incentives to councils for efficient procurement by clarifying the objectives that councils must have regard to when undertaking procurement, by:

- *clarifying that 'value for money' is the most important principle for local government procurement, consistent with the Victorian Auditor-General's guidance for public sector procurement, through:*
 - *amending the Best Value Principles in the Local Government Act to state that 'value for money' is the most important principle, or*
 - *amending the Procurement Best Practice Guidelines to state that 'value for money' is the most important principle*
- *requiring councils to report publicly instances where, and the reasons why, they have not prioritised 'value for money' over other principles in undertaking procurement or service delivery*
- *reviewing the requirement for procurement policies in the Local Government Act one year after these changes are implemented.*

IPWEA vic Response:

This recommendation is supported by IPWEA vic. We would add that any changes need to spell out how "Value for Money" is to be measured.

This requirement would be best clarified through amending the *Procurement Best Practice Guidelines*. Amending the guideline is preferred as there will periodically be cases where the known capacity of the contractor offering (at face value) the best value would be exceeded if the tender was awarded in their favour. Such a decision would most likely result

in the contractor failing to deliver the contract on time and therefore be in breach of the contract period.

A consistent approach across local government in decisions about contract security deposits (quantum, form and draw downs), retention moneys (quantum and draw downs), sub-contract relationships within contracts and who is paying the security or funding the retention is required to improve/reduce the factoring these costs into tender bids.

The form and quantum of insurance requirements (PI and/or PL) specified in local government tenders requires guidance. Most tenders will specify and require both forms of insurance. However some tenders do not and therefore the tender bid reflects costs associated with the tenderer holding this unwanted coverage.

The premiums associated with PI and PL coverage are often prohibitive for Small to Medium Enterprises (SME). Consideration can/could be given to whether a council's policies could be extended to provide coverage to SMEs at a modest cost for the duration of the contract.

The IPWEAvic/CCF 'Best Practice Guide for Tendering and Contract Management' should be considered for councils to use in conjunction with the reforms coming from the Councils Reforming Business program.

IPWEAvic believes that Councils can adequately address their risk requirements and at the same time achieve savings to contractors by substantially reducing the security requirements for contracts.

3.16 Draft Recommendation 8.2

That the Victorian Government, through the Department of Planning and Community Development, strengthen the incentives to councils for efficiency through more collaboration in procurement, where value for money exists, by:

- *clarifying that 'value for money' is the most important principle for local government procurement (draft recommendation 8.1)*
- *removing any impediments to councils undertaking collaborative procurement through agents, in consultation with agents, by amending the Local Government Act to allow:*
 - *agents that meet a set quality standard to become 'prescribed procurement entities', in line with other Australian jurisdictions*
 - *councils to access existing tenders and contracts that are conducted by agents without the need for Ministerial approval.*

IPWEAvic Response:

This recommendation is supported by IPWEAvic. IPWEAvic acknowledges that collaboration can be a sensitive local political issue and that it is essential that local government have the independence to either opt in or out of any collaborative procurement arrangements. This will provide for the flexibility to secure "case specific" better value outcomes from time to time.

3.17 Draft Recommendation 8.3

That the Victorian Government seek to remove the unnecessary costs that councils impose on tenderers, including small and medium enterprises, by strengthening the incentives for

councils to adopt the improvement initiatives being developed under the Councils Reforming Business program, including best practice standards for contract documentation and infrastructure technical specifications. This should be done by:

- *amending the Local Government (General) Regulations to require that councils, subsequent to the current transition phase:*
 - *adopt the improvement initiatives being developed under the Councils Reforming Business program, including best practice standardised contract documentation and infrastructure specifications, or*
 - *publicly report their reasons for not adopting the improvement initiatives.*

IPWEA vic Response:

This recommendation is generally supported by IPWEA vic, however we do request that we be consulted on the reporting requirements, as it is essential that any reporting not be resource hungry and provide meaningful outcomes.

3.18 Draft Recommendation 8.4

That Local Government Victoria implements the Victorian Auditor-General's recommendation to amend the Local Government (General) Regulations to prescribe more precisely the circumstances under which a council must tender. As part of this exercise, the Commission recommends that Local Government Victoria clarify whether the thresholds for tenders in s 186 of the Local Government Act apply to works or services (such as roads and streets works) that are currently allocated to in-house teams.

IPWEA vic Response:

This recommendation is supported by IPWEA vic, however implementation should be through the issue of a Guidance Note rather than a prescriptive regulation. It should be remembered that local government must undertake regular best value service reviews for all its services, irrespective of whether they are provided by in-house teams or external contractors. In addition, s186 of the Local Government Act already prescribes threshold for works and services procurement that must be publicly tendered and recent legislation requires all councils to adopt and implement a purchasing/procurement policy for their organisation.

IPWEA vic is willing to participate in the development of Best Practice Reporting Guides incorporating probity principles.

3.19 Draft Recommendation 9.1

In order to improve the capacity of local government to manage the costs of administering regulation, to provide a better basis for user pays charging, and to measure the net cost to local government of administering major regulations, Local Government Victoria, in collaboration with the Municipal Association of Victoria, undertake a project with selected councils to measure better the costs attributable to the administration of major State and local regulations with a view to this being eventually employed by all councils.

IPWEA vic Response:

This recommendation is supported by IPWEA vic.

3.20 Draft Recommendation 10.1

That the Government develops a clear list of agreed priorities for regulatory services that councils administer on its behalf.

IPWEA vic Response:

This recommendation is supported by IPWEA vic.

3.21 Draft Recommendation 10.2

That the Department of Treasury and Finance re-writes the best practice principles in the Victorian Guide to Regulation so that they cover the implementation and enforcement, as well as the development, of regulation. The Department should consult with councils in developing the principles and develop a training program to help councils to apply them.

IPWEA vic Response:

This recommendation is supported by IPWEA vic. In addition IPWEA vic would prefer the skills sets defined in terms of capabilities and that any review should also involve representatives from all sectors of the civil construction industry.

3.22 Draft Recommendation 10.3

That the Department of Treasury and Finance amend section 4-6 of the Victorian Guide to Regulation, to specify that where the Victorian Government intends for local government to administer or enforce new primary legislation, or new or revised regulation, it is a requirement that the relevant lead department consult with local government. This consultation needs to:

- *take place when the proposal is still formative*
- *enable the department to understand councils' capabilities and weaknesses, and to develop ways to build on the strengths and overcome limitations*
- *consider how a new obligation affects other council functions.*

That the amendments to the Victorian Guide to Regulation require the relevant lead department to document its consultations with councils about new or revised regulations in an implementation plan. This plan would guide councils' administration and enforcement of the new obligation and outline how the department will help councils to deliver it.

IPWEA vic Response:

This recommendation is supported by IPWEA vic. IPWEA vic supports the appropriate training of relevant council staff to ensure an understanding is achieved of the objectives and implementation of the principles of the new obligations

We would add that assistance in the form of Guides needs to be provided to ensure that capacity and capability to effectively implement Regulation is achieved.

3.23 Draft Recommendation 10.4

That the Essential Services Commission, as it refines the performance reporting framework, adds further indicators of regulatory services where there are estimated net benefits and looks for opportunities to reduce or streamline reporting requirements imposed on councils by State Government agencies.

IPWEA vic Response:

This recommendation is supported by IPWEA vic.

3.24 Draft Recommendation 10.5

That the Department of Treasury and Finance, in conjunction with other relevant departments, consults actively with local government about the methodology for extending the regulatory burden reduction target to local government, and has particular regard to:

- *the burden on councils of complying with the target*
- *whether councils need incentives to develop and implement regulatory burden reduction targets*
- *how and by whom councils' progress in implementing any proposals for reducing the regulatory burden will be monitored and enforced.*

IPWEA vic Response:

This recommendation is supported by IPWEA vic.

The regulatory burden could be reduced by reviewing all current regulations administered by State and local government to check where duplication (and subsequent confusion) exists. For example it is possible that the environmental requirements relating to a project could be covered by the planning scheme, the local law and state legislation or Codes of Practice.

3.25 Draft Recommendation 10.6

That the departments responsible for State Government legislation or regulations implemented by councils fund and coordinate evaluations of regulations that impose significant costs on the regulated parties and/or on councils that enforce the regulations. The evaluations would assess (amongst other issues) whether the regulations have been implemented consistently, effectively, and without unnecessary burden on business and councils.

IPWEA vic Response:

This recommendation is supported by IPWEA vic.

3.26 Draft Recommendation 10.7

That the Minister for Local Government has overall responsibility for:

- *coordinating the implementation of those recommendations from 10.1 to 10.6 that the Government accepts, and*
- *reports progress on implementation to the Local Government Ministerial Forum.*

IPWEA vic Response:

This recommendation is supported by IPWEA vic.

3.27 Draft Recommendation 10.8

That if the Victorian Government accepts the Essential Services Commission's proposal that it prepare an annual comparative report based on the performance reporting framework, it directs the Essential Services Commission to use this report to present and comment on

data about whether councils are implementing regulations effectively, consistently and without unnecessary burden.

IPWEA vic Response:

This recommendation is supported by IPWEA vic.

4 SUPPLEMENTARY COMMENTS

IPWEA vic has reviewed in detail the Report supporting the draft recommendations and wishes to make the following supplementary comments:

4.1 IPWEA vic Participation

It is essential with the introduction of any change to legislation or variance in reporting requirements that there be appropriate and effective consultation with municipalities, as well as the various representative bodies within the local government sector. To this end IPWEA vic submits that as an organisation representing one of the key professions that will be impacted upon by any changes that it be consulted on any changes, which are proposed. We would be prepared to provide expert opinion to assist the Commission and the government to implement the recommendations that are to be made.

4.2 Skills Shortage

IPWEA vic notes that the majority of recommendations made by the Commission will have an impact on the resources required to administer the new regimes. The Commission is no doubt aware of the general shortage of qualified and skilled staff within the technical areas of local government, particularly engineering and planning.

Training programs to ensure that all staff involved in procurement are appropriately skilled will be of paramount importance to ensure all staff involved in procurement processes understand their roles and responsibilities.

To ensure that the recommendations are properly implemented it is essential that the Commission recommend that additional funds for training and skills enhancement be provided by the State government. These funds need to be made available directly to local government with a minimum of strings attached.

IPWEA vic would welcome the opportunity to assist in the development of any training program that the Commission may wish to recommend and advise that we have a training capability that can be easily mobilised.

4.3 Procurement Paralysis by Prescription

IPWEA vic believes that care needs to be taken to not paralyse the procurement processes of local government through an overly prescriptive approach. Over-prescription and centralisation of local government procurement will potentially increase procurement costs and efficiency. The adoption, implementation, staff training and monitoring of practical procurement policies with suitable 'checks and balances' will ensure that the desired procurement savings are achieved in a well trained and managed organisation environment.

5 CONCLUSION AND SUMMATION

On behalf of our Members, we again thank you for the opportunity to submit these comments and recommendations which we believe, if implemented, will assist in improving local government processes leading ultimately to reducing costs for the provision of infrastructure.

On behalf of IPWEA Victoria we again confirm our commitment to work with the Commission and the Government to address the specific issues raised in the Commission's recommendations.

We would welcome the opportunity to elaborate on the issues and recommendations contained within this submission.

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