



Department of Planning and Environment submission to IPART's Draft Report on the Review of Domestic Waste Management Charges

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Introduction

The Department of Planning and Environment (DPE) is pleased to make this submission to the Independent Pricing and Regulatory Tribunal (IPART) about its Draft Report on the Review of Domestic Waste Management Charges (Draft Report) released in December 2021.

DPE values the opportunity to comment and wishes to acknowledge the work undertaken by IPART in considering the issues surrounding domestic waste management (DWM) service charges in the local government sector. These charges, and the services that they support, form an important part of each council's contribution to the communities they serve.

DPE also acknowledges the extensive consultation carried out in the development and drafting of this report. DPE offers the comments below for consideration.

Key Issues – Office of Local Government

Executive Summary

The Office of Local Government (OLG) has identified the following key issues with IPART's Draft Report:

1. With significant change currently underway in how NSW manages waste, as captured in the NSW Government's *Waste and Sustainable Materials Strategy 2041* (Waste Strategy) and the importance of the transition to a circular economy, the timing of IPART's proposed changes to the DWM service charge will have a significant negative impact on progress towards achieving the State's goals identified within the Waste Strategy.
2. OLG is of the view that some of the issues IPART has identified in its Draft Report can be addressed by updating the 'Council Rating and Revenue Raising Manual' (Rating Manual) published by OLG. Additionally, OLG is able to audit the cost basis of DWM service charges should significant concerns be raised about a council seen to be imposing unjustifiably high DWM service charges on their communities.
3. The Rating Manual is the most appropriate mechanism by which to define DWM service charges and to guide councils in the levying of a DWM service charge while at the same time maintaining sufficient flexibility in order for councils to respond to local needs and community demands. While recognising the Government has delegated to IPART powers to introduce a waste peg, IPART's proposed changes in the Draft Report go beyond the powers available to IPART.
4. OLG is concerned that the proposed changes will result in an unjustified increase in administrative and regulatory burdens for councils by duplicating consultation and reporting mechanisms already legislated. Ratepayers currently have the opportunity to comment on their council's proposed fees and charges each year via the Integrated Planning and Reporting process (IP&R). The community also has the existing ability to compare the DWM service charge levied by their council with that of similar-sized councils, or in fact any NSW council, via the [Your Council](#) website.

1. Proposed annual 'benchmark' waste peg

The proposed annual 'benchmark' waste peg has the potential to disincentivise appropriate waste management

OLG has identified a number of issues with the proposals outlined in the Draft Report for an annual 'benchmark' waste peg. Primarily, it appears that the calculation of the waste peg will take into account only a very narrow definition of the services that can be covered by the DWM service charge. This comes at a time when the Commonwealth and State Governments are introducing

significant policy reforms in an effort to transition towards a circular economy that brings with it unknown cost implications for the local government sector.

In its Draft Report, IPART proposes to set a benchmark waste peg that reflects the average annual change in costs of providing DWM services. There is a real risk, in setting a waste peg that is based on average State-wide costs, that individual councils will lose the ability to prioritise and determine their waste management functions on local needs and demands.

Further, the setting of such a waste peg, and the local community views on councils that exceed the waste peg, has the potential to incentivise the sector to prioritise costs and disincentivise the waste management needs of their communities. This could have significant impacts on the goals identified in the State's Waste Strategy.

It is appropriate for councils to deliver a broad range of DWM services based on local circumstances

While certain core services – such as kerbside collection – are provided in most communities, the cost of delivering these services may vary for operational reasons. In addition, councils are required to measure and respond to differing local needs and preferences for services under the IP&R framework. It is important that councils retain flexibility in setting their DWM service charge so that local needs can be met and addressed in a timely fashion.

The published benchmark will cause confusion among ratepayers and councils

While it is noted that IPART proposes the benchmark waste peg would be provided as guidance for councils when setting their DWM service charge, the suggestion that it will be published by IPART alongside the rate peg will potentially cause confusion among ratepayers and councils. This is likely to significantly increase enquiries and complaints between ratepayers and their councils, who may mistake the benchmark waste peg as mandated in the same way as the rate peg, especially if the benchmark waste peg only includes kerbside collection services.

IPART is not able to compel councils to report reasons for setting DWM service charges above the benchmark

Requesting those councils that set their DWM service charge above the benchmark waste peg to report the reasons for this to IPART is also not supported. Many, if not all councils may not be aware that IPART is unable to compel councils to report such matters. Even if reporting is ostensibly voluntary, councils choosing not to explain their pricing decision may be seen by their community to lack transparency, even though councils have already consulted extensively with their communities through IP&R processes as to the types of waste-related services they would like to see the DWM charge cover. Such a reporting regime would be an administrative duplication.

OLG also notes that IPART intends to refine the waste peg for 2023-24 with more detailed cost information, which raises the question as to whether it would be premature to introduce a benchmark waste peg for 2022-23.

The retrospective nature of the proposed waste peg and the lack of price forecasting is also of concern

For example, the cost to councils to implement food organics and garden organics (FOGO) services is significant and the timing of implementation will vary from council to council. If IPART's proposed waste peg was to come into effect, councils would be expected to meet the significant FOGO costs upfront out of already extremely tight budgets. The process suggested by IPART will only enable councils to recoup these costs retrospectively, and only if subsequent waste pegs are set at a rate that allows appropriate recoup.

OLG understands that under IPART's proposed reforms, councils would be able to impose a DWM service charge above the benchmark, but will be required to explain to IPART why this is the case.

It is not clear what reasons IPART would deem legitimate and whether IPART would provide public commentary in response.

In any case, as explained above, OLG sees this as unnecessary duplication, given councils have a legislative responsibility to consult with their communities through the IP&R processes when setting their DWM charges.

The Government is responsible for setting the policy frameworks for DWM service charges

IPART has previously acknowledged that the Government has retained responsibility for setting the policy framework for matters delegated to it. OLG wishes to reaffirm that understanding noting that presently the NSW Government's policy setting in relation to DWM service charges are reflected in OLG's 'Council Rating and Revenue Raising Manual'. Revisions to that policy will have regard to the Government's 20-Year Waste and Circular Economy Strategy 2041.

2. Pricing principles

DWM service charges should relate to council responsibilities under the *Local Government Act 1993*

It is OLG's view that councils' DWM service charges should relate as clearly as possible to the requirements of the *Local Government Act 1993* (the Act) – that is, calculation of reasonable costs under section 504 of the Act as well as meeting community needs and expectations as determined under councils' IP&R processes.

Importantly, the waste management services provided by councils extend beyond kerbside collection and waste facility maintenance and include whole of lifecycle costs associated with domestic waste management, including reducing waste generation and increasing recycling through education and behaviour change initiatives.

The pricing principles proposed in IPART's Draft Report are overly restrictive. Excluding the bulk of expenses that currently make up the DWM reasonable costs calculation and moving them under councils' capped general revenue would effectively mean that ratepayers that do not access DWM services would still bear these costs. Alternatively, some of these services may no longer be offered if general revenue expenditure is prioritised towards other competing demands.

3. OLG's Recommended Approach

OLG recommends an alternative regulatory approach to ensure appropriate levying of the DWM service charge by councils, entailing:

- updating OLG's rating manual to provide further guidance to councils on key issues identified by IPART, without the prescriptive nature of pricing principles; and
- making it clear to councils that there is an ability, if necessary, for OLG to work with the NSW Audit Office to initiate performance audits on a case-by-case basis of any council or councils seen to be imposing unjustifiably high DWM service charges on their communities.

Key Issues – Environment, Energy and Science

1. Potential adverse sustainability outcomes of IPART proposals

While it is a worthwhile exercise to encourage and enable councils to achieve value-for-money in waste services procurement, other options could be considered by IPART to accomplish these outcomes to avoid some of the potentially adverse sustainability outcomes of the proposals.

Publishing councils' performance against a benchmark waste peg and requiring councils to publish their domestic waste management (DWM) services with the associated costs could result in a 'race to the bottom' around sustainability measures such as circular economy objectives, climate risk readiness and associated emission reduction goals. The proposals in their current form would reward councils (and industry) that perform poorly against these sustainability measures.

Circular economy objectives, such as targets and requirements under the NSW Waste and Sustainable Materials Strategy, in most cases, will require additional investment from councils to deliver on community and regulation expectations. One example of this is the implementation of food and garden organics collections, which could increase waste management costs for councils (especially within Sydney) while improving recycling outcomes and reducing emissions.

Appropriate reserves should also be set aside to account for contingencies, such as natural disasters projected to increase in frequency and severity with climate change.

Other options which may meet IPART's objectives, without these adverse sustainability outcomes, include:

- publishing guidance on appropriate levels of services and associated costs
- guidance for councils to negotiate with industry
- audits on the use of DWM funds.

2. Risk mitigations for current IPART proposals

If IPART is of the view to continue with its current proposals, then the perverse outcomes and risks of publishing councils' performance against a waste peg should be considered and mitigated.

Potential mitigation measures could include:

- publishing councils' performance against other sustainability measures, such as circular economy objectives, climate risk readiness and associated emissions, within the same context as their performance against the waste peg
- advising or requiring councils to publish the same information on their websites
- implementing a longer lead-time (e.g. 3-5 years) before publishing council performance. This would allow IPART to monitor and remedy issues with the waste peg calculation method and allow councils time to make any necessary changes
- publishing results across a more extended reporting period, such as every three years, which would allow for smoothing of year-to-year fluctuations
- including an allowance within the benchmark calculation for increased costs resulting from government policies and regulations (both state and federal)
- including an allowance within the benchmark calculation for the accumulation and maintenance of a budget reserve to allow for timely responses to risks and hazards such as natural disasters

- providing best-practice guidance to councils on a risk-based approach to procurement, budgeting for and ongoing delivery of waste management services
- providing best-practice guidance to councils on procurement of waste services to achieve circular economy and emissions objectives.

A thorough assessment of the risks and the development of a clear and effective mitigation strategy should be completed before implementing any proposals.

3. Waste peg calculation should consider forecasts

Given the many external pressures councils are currently facing for their waste services, including federal waste export bans, new requirements to implement under the Waste and Sustainable Materials Strategy and increasing climate-related risks, the proposed waste peg for 2022–23 (1.1%) seems very low and is even less than the forecast CPI rate of 2.25%. The benchmark calculation should consider forecasts, not just historical information, to consider changing operating contexts not within councils' direct control.