

Illawarra Shoalhaven Joint Organisation

Submission:

IPART Draft Review of
Domestic Waste
Management Charges



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The Illawarra Shoalhaven Joint Organisation (ISJO) is an entity under the NSW Local Government Act. We work with our four member councils – Wollongong City, Shellharbour City, Kiama Municipal and Shoalhaven City – and State Agency partners to facilitate a united and local voice for our region and its communities.

We wish to thank the Independent Pricing and Regulatory Tribunal (IPART) for the opportunity to provide comment on its draft [Review of Domestic Waste Management Charges](#). Our whole of region submission follows and should be read in the context of any detailed submissions from our member Councils. The ISJO's commentary has been derived from this member Council feedback and we wholeheartedly endorse and support the views expressed therein.

Background

In its August 2020 Discussion Paper on [Local Council Domestic Waste Management Charges](#), the IPART stated the following in relation to the review it was undertaking of domestic waste management (DWM) charges levied by NSW local councils.

IPART has not limited DWM charges in the past

*To date, IPART has opted **not** to limit the maximum percentage by which DWM charges may be varied. In our consideration of DWM charges in previous years, we have noted that:*

- *Councils are required to set charges that do not exceed the reasonable cost of providing DWM services*
- *DWM costs have been independently audited as required by the NSW Office of Local Government (OLG) each year*
- *Many councils outsource DWM services through a competitive tender process.*

IPART has therefore been satisfied that DWM charges were likely to be both reasonable and efficient, and that the cost of additional regulation would likely outweigh the benefit.

The Discussion Paper identified a number of reasons why the IPART's position on DWM had changed.

These reasons included:

DWM charges have not been audited since 2016-17

In June 2019, OLG informed IPART that it had ceased conducting audits of the reasonable cost basis of DWM charges in 2016-17. OLG intends to enter into a wider audit arrangement with the Auditor General, and DWM charges may be included, but there is no definite plan or timeframe for this.

Since being informed of this, we have undertaken some initial research and analysis of DWM charges in NSW to help inform our future decisions on DWM charges. We also asked councils to report on their DWM expenses and services for the 2017-18 and 2018-19 financial years as part of our 2019-20 Local Government Cost Index (LGCI) survey.

Our preliminary analysis indicates that DWM charges may not be delivering good value for ratepayers and there may be challenges for local councils in purchasing and pricing these services.

In the past we have decided not to regulate changes in DWM charges. Going forward, we need to consider whether this approach remains appropriate.

At this stage, we consider that caution is needed and prescriptive regulation may not be appropriate. But, there may be other ways to improve transparency and share best practice guidance to help local councils and ratepayers get good quality services at cost-reflective prices.

Our Discussion Paper explains these preliminary views and asks for feedback on whether stakeholders consider that there are issues with the prices charged for DWM services, and, if so, how we should respond.

IPART has a role in limiting DWM charge variations

NSW local councils provide a range of DWM services to their residents, such as kerbside collection, drop-off facilities and periodic clean-up services. To recover the cost of these services, local councils levy DWM charges (separate to ordinary rates) on their residential ratepayers.¹

In 2010 the Minister for Local Government delegated to the IPART the function of approving special rate variations and minimum rates, and the function of varying annual council charges for domestic waste management services.

The ISJO acknowledges the role of the IPART in reviewing Domestic Waste Management Charges and supports the intent behind release of the Draft Review.

IPART's initial analysis

IPART's initial analysis identified several potential issues with DWM charges levied by local councils which – as the IPART pointed out – are usually monopoly providers of DWM services. These issues suggested to the IPART that, in some cases, DWM charges may not reflect the reasonable and efficient costs of providing DWM services.

It was noted that, in general, DWM charges overall appeared to be increasing faster than the rate peg and inflation (2014 – 2018) with rural areas increasing at a much higher rate (38.3% as opposed to an average residential rate increase of 18.5% and an inflation rate over the period of 8.2%).

The Discussion Paper also observed that:

- There is wide variation in the number and type of DWM services provided across councils – some councils provide regular kerbside collection of general waste, recycling and organics, whilst in other areas residents deliver their waste directly to a DWM facility

¹ Local councils cannot fund DWM services through ordinary rates revenue, but must instead fund them through levying separate DWM charges (see *Local Government Act 1993 (NSW) (Local Government Act) section 504(1) and (2)*). Councils are required to set DWM charges that do not exceed the reasonable cost of providing DWM services and revenue collected through DWM charges may only be used for DWM purposes (see sections 504(3) and 409(3)(a), *Local Government Act*). The NSW Office of Local Government's *Council Rating and Revenue Raising Manual* requires that revenue from the DWM charge must be kept separate from general rating income, and only used for expenditure related to DWM.

- There is wide variation in DWM charges across councils
- Some councils appear to be in surplus for DWM services, as annual revenue from the DWM charge exceeds expenditure on providing the services (noting that in some circumstances, there may be reasonable justification for surpluses/reserves)
- Many councils either fully or partially outsource the provision of DWM services, though it is not clear that there is effective competition in the market for procuring such services, and there may be barriers to effective procurement
- Some councils appear to be allocating 'overhead expenses' that contribute more than half of total DWM costs.

The IPART sought submissions on the Discussion Paper and in December 2021 released its draft [Review of Domestic Waste Management Charges](#).

The proposed approach to reform the domestic waste management charge (DWMC) in IPART's Draft Report is very different to what was proposed in the Discussion Paper and it is clear that the IPART has moved on from "caution" and an avoidance of "prescriptive regulation" to a proposed much more aggressive intervention in the sector.

Several councils and regional groups have already commenced analysing and discussing the options in the Draft Report and an online forum for councils was held on 22 March 2022. It is important that Councils provide feedback to the IPART both for the IPART's information and for the State Government as it considers the IPART's final recommendations on the matter.

What the Draft Report proposes:

In broad summary, the Draft Report calls for the following:

- An annual benchmark peg, and
- Rebalancing.

"The Peg":

The IPART's Draft Report recommends adoption of pricing principles and an annual benchmark peg on the DWMC starting at 1.1% in 2022/23.

The IPART proposes to calculate the waste peg using a similar methodology to the one used to calculate the change in the Local Government Cost Index (LGCI) – a key component of the rate peg. The difference would be that the rate peg applies to revenue, while the waste peg would apply to DWM charges.

The proposed Waste Cost Index (WCI) will be a price index for domestic waste services provided by NSW councils. It will measure average price changes over the past year for goods, services materials and labour used by a council to provide DWM services. It would be similar, in principle, to the Consumer Price Index (CPI) which is used to measure changes in prices for a typical household. The IPART proposes to set the benchmark waste peg equal to the annual change in the WCI.

Commentary:

The Peg is based on a waste cost index that includes both operating cost and capital cost components.

The base data, however, is from 2017/18 and 2018/19 and there is concern around how reflective that time period would be in terms of external influencing factors – including international factors – applying pressure to the industry now and into the near future.

Potentially a greater concern relates to the capacity of a peg in any form to institutionalise a cost recovery methodology that does not reflect the true cost of the service. In exactly the same way that the general Rate Peg has for many years penalised councils that had historically low residential land rates at the outset of the rate pegging regime, so too will a DWM charge peg penalise councils who have sought to minimise DWM fee increases. It also, paradoxically, could potentially reward councils that did not seek to cushion their communities from fee increases.

Pegs of any sort are blunt instruments. As part of the Peg implementation, IPART proposes to publish an annual report on the extent to which particular councils increased their annual DWMC more than the benchmark peg. This might well lead to the DWM peg becoming weaponised as a headline and social media grab to shame councils even when there is a solid and substantiated basis for a council increasing its charges above the peg amount.

Rebalancing:

The IPART's original *Discussion Paper* recommended adoption of pricing principles by councils but, instead of a peg, recommended setting a monitoring, reporting and benchmarking regime. Councils would apply the pricing principles to "rebalance" costs attributed between the DWMC and general rates with a one-off variation to council's general rate base allowed in 2022/23.

Under the original proposal, IPART would monitor "like for like" councils against their benchmarks and report on outlier councils each year, with outliers triggering a "please explain" or potential regulatory response.

As now proposed the pricing principles are:

1. DWM revenue should equal the efficient incremental cost of providing the DWM service

Commentary:

While on the surface this makes sense, under the current structure activities and resources such as street sweeping, public place bins, general litter including education, community days including Clean Up Australia Day and illegal dumping programs are not included as costs of providing a DWM.

This raises significant concerns. For example, figures from the past 12 months show that more than 65% of waste cleaned up by Council RID officers was household domestic waste however the RID function would need to be funded through general rates under the current proposal. It should be our standpoint that either the definition of waste contained in the LG Act or the pricing principle should be expanded to include all services and functions that relate to the minimisation, management and highest order recovery of waste that is generated by rateable properties and residents or visitors (an important sector for our region) staying in or on those properties.

There is agreement across the sector that Councils would like IPART to simplify the definition of "efficient incremental costs" for applicability across the waste cost index. For example, how much of a director's time or meetings with the Executive team can be allocated and which capital costs are reasonable? If a landfill cell is to take Municipal, C&D

and C&I waste, does waste have to be apportioned and separately accounted for? How will emergency waste – a major recent and likely accelerating issue – be treated given its impact on the life of a landfill cell?

While efficient pricing tends to suggest that Councils could build reserves to cover the costs of asset acquisition and maintenance, IPART have stated that Councils will not be able to charge for a service to which residents currently do not have access. This means that any new facilities or services, if they require capital, would need to be separately financed outside the DWM cost recovery stream – a consequence contradictory to the pricing principle upon which the IPART is basing its approach.

Without allowance for staff to provide components of waste services not covered under the IPART principles, Councils will be required to apply for grants to employ staff on what are core and essential waste minimisation campaigns. This would place increasing pressure and demand on existing staff to provide a high service level in a severely constrained funding environment – thereby exacerbating an already difficult situation generated by significant reduction in NSW EPA funding for core waste management initiatives.

2. Councils should publish details of all the DWM services they provide, the size of the bin, the frequency of the collection and the individual charges for each service.

This is agreed. For it to have value to ratepayers, however, Councils should also be required to publish a series of indicators that include, but are not limited to, the size of their LGA, how much waste service costs have risen over a 5 year period, the CPI and the cost and cost consequences of disaster recovery, rise and fall, fuel cost increases and other external limiting factors. These indicators contextualize and add meaning to the very simple “small part of the story” that the IPART is proposing.

3. Within a Council area, customers that are:

- a. Imposing similar costs for a particular service should pay the same DWM charge**
- b. Paying the same DWM charge for a particular service should get the same level of service**

As a matter of superficial principle, yes. However, even within a particular LGA there can be significant cost differentials in the delivery of a notionally equal domestic waste management service that could not be acceptably result in differing tiers of DWM charge.

For example, costs associated with collection in an urban core centre can be substantially less than costs associated with collection in an LGA’s isolated, rural communities with very low and widely dispersed populations.

Costs need to be contextualized. In the Shoalhaven City Council area there are on average 5.7 bins per kilometer with trucks averaging 810,000 kilometers a year. These statistics – startling as they are – disguise the fact that truly enormous distances are travelled to service isolated communities. The IPART’s methodology does not even consider – let alone address – how Council’s might equitably and sustainably manage such cost differentials.

4. Any capital costs of providing DWM services should be recovered over the life of the asset to minimize price volatility.

There is a contradiction between efficient pricing and the restriction placed on Councils to finance capital costs up front through a loan arrangement rather than from reserves. Using

again the example of Shoalhaven City Council with a population of 104,000 and an area of 4,567 km², a vehicle travelling an average of 810,000 kilometers per annum will require replacement on a frequent basis. This will necessitate a capital expenditure budget line for asset replacement substantially greater and more frequently accessed than that in place for Councils of a similar population size but significantly smaller geography.

With this in mind, Councils with extraordinary service delivery costs and associated inputs will require a policy mechanism to allow the levying of higher rates in order to create a reserve balance to buffer frequent vehicle turnover costs. If they were required to undertake this replacement in arrears of income generation, with user pays, the impact of interest repayments should appropriately and without restriction be passed on to the ratepayer.

This creates an evident and profound issue for the efficient pricing principle.

CONCLUSION

The Draft Report the IPART released in December 2021 arose from its perception that some Councils were charging unreasonably and unsustainably high fees for domestic waste management services. These Councils, IPART clearly believed, were – to use the vernacular – rorting the system.

Unfortunately its Draft Report has taken the potential problem of a few and sought to apply a regulatory remedy to all Councils even those that have consistently sought to minimise the cost impacts of DWM charges on their communities. It has also sought to apply this broad brush approach in an environment of international uncertainty about the future of waste streams and rising community expectations about ever more sophisticated and environmentally responsible management of what we call waste.

It should also be noted that a clear motivating factor for the IPART's fundamental change in stance on Domestic Waste Management Charges was the decision by the Office of Local Government to cease auditing reasonable cost bases for the fees levied by Councils. IPART is therefore choosing to use benchmark data that is out of date.

The consequences of using potentially misleading data could be significant. In 2018, whilst the initial impacts of China Sword were being felt, major policy changes such as the container deposit scheme were not. It had been introduced on 1 December 2017 but material recovery facilities owned and operated by the duopoly (Visy & Suez) applied major pressures to Councils to come to a refund sharing arrangement so they could claim a rebate from 1 December 2018.

Additionally, there has been a series of natural disasters which have generated enormous waste loads, likely legislative change to mandated FOGO services and we now have a waste export ban that will have a flow on effect to DWM charges given the low levels of historical investment in the commercial waste management sector.

It is very much the case that Councils are being held to account for decisions, events and data over which they have had no control.

Councils have been made aware of the fact that the IPART is stressing the importance of Councils supporting one approach or the other rather than conditioning their submissions to the perfect outcome.

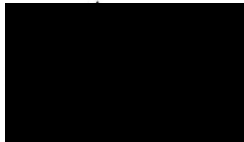
Unfortunately this is difficult because of the fundamental issues embedded in the IPART's proposals.

The IPART has extended the timeframe for submissions on its Draft Report to 29 April 2022. We thank the IPART for this extension and Local Government NSW (LGNSW) for its advocacy on additional time for considered and detailed response.

On behalf of our Member Councils we wish again to acknowledge and support the role of the IPART in reviewing domestic waste management charges.

Unfortunately we cannot endorse the content and intent of the Draft Review of Domestic Waste Management Charges. We would ask that the IPART reconsider the fundamental change in position from the Discussion Paper and the Draft and that the IPART re-engage with the local government sector to find solutions and opportunities that are feasible, long term and allied to the operational, environmental and governance frameworks within which councils work.

Yours sincerely



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