

Our submission

IPART supports the Review Panel's draft report and recommendations. We note that they align with our recommendations and key themes in our response to your Issues Paper. Specifically, your report recognises that there will not be real or tangible improvement to the quality of regulatory policy in NSW until:

- ▼ the issue of regulatory oversight and accountability is addressed, and
- ▼ sector-wide cultural change towards better regulation is embraced and upheld.

Our submission provides responses based on the groupings of draft recommendations in the Draft Report.

1 Reframing regulation

The regulatory policy framework should be enhanced to be fit-for-purpose and better equipped to meet the needs of our community into the future. Therefore, we support your proposal for new legislation to reframe the NSW regulatory policy framework, and particularly the creation of an independent body or function for regulatory quality and a statutory obligation for regulatory stewardship.

As outlined in our submission to the Issues Paper, it is essential that the body or function responsible for regulatory quality is independent from government and adequately resourced.

2 Culture and capabilities

Sector-wide cultural change, supported by capability development, is required to tangibly improve the quality of regulatory policy. We support your draft recommendations relating to culture and capabilities, including:

- ▼ updating the *NSW Consultation Policy* to embed early, effectively targeted consultation with industry and individuals that have limited resources such as consumer and community groups,
- ▼ embedding a better regulation officer or team in each cluster to develop the capacity within agencies to undertake regulatory policy development and evaluation, and bring cultural change, and
- ▼ implementing a statutory regulator performance framework.

These recommendations align with our recommendations in response to the Issues Paper.

We support the development of a code of practice and guidelines for regulators as part of the statutory regulator performance framework. We also support the Panel's view that the framework should include performance measures that are publicly reported. These measures should demonstrate a regulatory body is evolving and improving in terms of policy making, implementation, compliance and review.

As the independent body assesses PPEs, it should provide greater assistance and support to agencies and regulators as required and allocate resources to build this capacity. This could include the secondment of staff to assist with policy development, PPE planning and preparation and incentives for early engagement with the independent body.

3 Evaluating proposals

In order to promote accountability and transparency and to incentivise best practice, we support your draft recommendations relating to evaluating proposals, including:

- ▼ taking outcomes-focused, risk-based approaches to regulation that identify the problem or issue to be addressed and the need for regulation,
- ▼ initiating evaluation early in the policy development process,
- ▼ requiring Policy Proposal Evaluations (PPEs) that are tiered according to the potential impacts of regulation and the depth of analysis to support them,
- ▼ developing guidelines and templates to support agencies in complying with PPE requirements,
- ▼ requiring agencies, which are developing regulation involving regulatory responsibilities for local government, to consider the impacts on and collaborate with local government.
- ▼ publishing PPEs, assessments of compliance, reasons for exemptions and related information to provide transparency around the process of regulatory development.

These draft recommendations align with our recommendations in response to the Issues Paper and, in the case of regulation involving responsibilities for local government, IPART's recommendation from the 2016 Local Government Regulatory Burdens Review Draft Report.

The impact of all policy instruments should be evaluated

Regulatory policy is delivered through a range of instruments, both legislative and administrative. Administrative instruments include licences, mandatory codes of practice and ministerial directions.

The impact of a policy encompasses all relevant regulatory instruments. Therefore we consider that the requirement for PPEs should not be limited to policy proposals enacted through Acts and Regulations but should apply equally across all legislative and administrative instruments. For practical reasons it may be necessary to establish separate gate-keeping arrangements for policy proposals delivered through administrative arrangements.

PPEs should identify and evaluate the proposed regulatory response

We agree that a Policy Proposal Evaluation (PPE) should clearly articulate the problem or issue to be addressed through regulation. We consider that in addition, the PPE should identify and evaluate the proposed **form** of regulatory response to the problem or issue. For example, for IPART's 2014 Licensing Review,¹ we engaged PricewaterhouseCoopers to assist in developing a Licensing Framework² and Guide³ that regulators can use to assess whether licences in NSW are:

- ▼ likely to achieve their underlying purpose, and
- ▼ the most appropriate means of meeting this purpose.

Evaluation of the proposed **form** of regulatory response to the identified problem or issue is essential to ensure the most appropriate regulatory response is chosen.

There should be a comprehensive evaluation of firm policy options

We support the initiation of evaluation early in the policy development process. However, we also note that comprehensive evaluation of a regulatory proposal will only be possible once firm policy options have been identified and the impacts of each option assessed.

The detail of the PPE should reflect the potential impacts of regulation

We support PPE requirements that are tiered according to the potential impacts of regulation and the depth of analysis to support them. As you have acknowledged, we consider that the lead agency should initially assess the significance of a regulatory proposal, subject to the approval of the independent oversight body.

Our submission to your Issues Paper also suggested that the independent oversight body should also develop a standardised assessment process and criteria guidelines to be used when determining a proposal's significance.

The PPEs, compliance assessments and exemptions should be public

We support your recommendation relating to publication of PPEs, assessments of compliance, reasons for exemptions and related information to provide transparency around the process of regulatory development, which aligns with our earlier recommendations. As noted in our submission to the Issues Paper, the independent oversight body should also make all relevant supporting analysis publicly available (subject to confidentiality and any other constraints on release of information, but the information should not be protected by Cabinet-in-Confidence only), including economic modelling used in support of a regulatory proposal. This could be achieved through a central online portal.

¹ IPART, *Reforming licensing in NSW- Review of licence rationale and design* (2014) – 2014 Licensing Review.

² PricewaterhouseCoopers (PwC), *A best practice approach to designing and reviewing licensing schemes*, March 2013 (Licensing Framework).

³ PricewaterhouseCoopers (PwC), *A best practice approach to designing and reviewing licensing schemes – Guidance material*, March 2013 (Licensing Guide).

4 Central governance arrangements

We support your draft recommendations relating to central governance arrangements, including:

- ▼ assigning responsibility for regulatory policy to a senior Minister,
- ▼ establishing a highly skilled, well-resourced and independent body for regulatory quality,
- ▼ developing mechanisms to manage the stock of regulation over time,
- ▼ the independent body having a role in ongoing review and reform of regulatory regimes through:
 - ▽ support of a regulatory stewardship approach,
 - ▽ post-implementation reviews, and
 - ▽ proactively identifying opportunities for review and reform.

These recommendations generally align with our recommendations in response to the Issues Paper.

One of the key roles of the recommended independent body or function is to provide rigour to the **process** of regulatory evaluation and assessment. Better regulatory evaluation processes (both initial and ongoing) can help deliver better regulatory outcomes. It is important that the independent body does not undertake the PPE. Rather, the agency responsible for the policy or regulatory proposal should undertake the PPE, supported with training and assistance from the independent body, as required.

5 Regulating differently in the digital age

We support your draft recommendations on regulating differently in the digital age, including:

- ▼ developing a central repository of models of successful regulatory and non-regulatory responses that use digital tools or data to demonstrate options for agencies to consider, and
- ▼ creating easy to access data registers.

We consider the scope of the central repository should be extended to include all successful regulatory models (whether they use digital tools or data or not), such as the partnership model between State and Local Governments, to reduce delays, inconsistencies and duplication. An example of this is the Food Authority partnership model that has been acknowledged as a successful regulatory model.

We also consider that local government should be able to access data registers, where appropriate. This is consistent with Recommendation 7 in IPART's 2016 Local Government Regulatory Burdens Draft Report.

6 Reducing overlap and duplication

We support your draft recommendations on reducing overlap and duplication, including:

- ▼ the ‘tell government once’ principle, and
- ▼ the development of a register of local government reporting, planning and compliance obligations to be used by agencies in developing regulatory proposals.

The development of easily accessible data registers, as proposed by the Review Panel, may also help to achieve the recommended ‘tell government once’ principle.

Consistent with our recommendation from the 2016 Local Government Regulatory Burdens Review, we support your recommendation to develop a register of local government reporting, planning and compliance obligations. A consistent, overarching concern raised by councils through our review in 2016 related to the cumulative burden of regulation on councils.⁴ As outlined in our Draft Report, reporting obligations, in particular, are not always based in legislation, but can be imposed administratively. Therefore, they are not as visible and so are not as easily identified by other agencies. This should be explicitly acknowledged in development of the new regulatory policy framework.

The development and maintenance of the central register should help agencies identify all obligations on councils to avoid unnecessary overlap and duplication and manage the cumulative burden of regulation on councils. This is also relevant to the proposed role of the new regulatory oversight body in developing mechanisms to manage the stock of regulation over time.

7 Ensuring regulation remains fit for purpose

We support your draft recommendations on ensuring regulation remains fit for purpose, including:

- ▼ a proactive, life-cycle approach to managing regulatory regimes, including:
 - ▽ formal evaluation of significant regulation
 - ▽ smaller-scale targeted reviews
 - ▽ regular stocktakes and cluster-based planning for regulatory reviews.
- ▼ review of priority policy areas identified by the Australian Government Competition Policy Review.

We also consider that post-implementation reviews should be a requirement of the PPE framework.

⁴ IPART, *Review of reporting and compliance burdens on Local Government* (2016), *Draft Report – 2016 Local Government Regulatory Burdens Review*, pp 37-40.