Local Government Association of South Australia

The voice of local government.

# Inquiry into reform of South Australia's Regulatory Framework

## South Australian Productivity Commission – Issues Paper

## LGA Submission

**May 2021**

# Table of Contents

# Executive Summary

In responses received by the LGA to the South Australian Productivity Commission's (the Commission's) Inquiry Issues Paper, the South Australian local government sector has informed the following points made within this LGA Submission.

During the height of the COVID-19 pandemic, and related economic crisis, the local government sector acted swiftly to support local businesses and provide regulatory relief to facilitate business operations and survival.

The local government sector applauds the same urgency displayed by the South Australian Government (the Government) and South Australian Parliament (the Parliament) to pass emergency legislation designed to provide the regulatory environment necessary to support various business operations and tenancies through the economic crisis.

In this context, the local government sector welcomes a thorough investigation into opportunities to provide greater regulatory flexibility to the executive arm of government, with the caveat that the Cabinet process should be subjected to a greater level of transparency and consultation than currently exists.

A major business regulatory concern expressed by councils is that the state's reliance on primary legislation imposes a lowest common denominator approach, which is prescriptive, can unnecessarily stifle business operations and limits opportunities for the Government to incentivise good economic, social and environmental outcomes through innovation.

An example of an effective method employed to incentivise best-practice business regulation and other business supports is South Australia's Small Business Friendly Council Initiative, administered by the Office of the Small Business Commissioner.

The Initiative's Charter includes a council commitment to: "provide clear advice and guidance to small businesses to assist them to understand and meet their regulatory obligations, and to work with them to achieve compliance."[1]

According to many council respondents, the Charter's commitment to also limit unnecessary administrative burdens on small business, through efficient data storage and use, is not matched by Government agencies. A common criticism is that Government agencies do not share access to data, including business information stored by different agencies.

Council respondents have also expressed significant concerns about the following issues:

- The disconnect which exists between many Government policies and applicable regulatory instruments, which can adversely affect business investments and operations.
- The lack of transparency and stakeholder consultation involved in the preparation of Regulatory Impact Assessments (RIA), carried through the Cabinet Office.
- The absence of sufficient local policy content in the Planning and Design Code, which could assist primary producers with more streamlined planning processes.

Most importantly, council respondents support a 'stewardship' model of regulatory management and have provided feedback that an immediate step that can be taken to achieve this would be the re-establishment of the State-Local Government Red Tape Taskforce.

[1] Small Business Friendly Council Initiative Charter, Part A: Commitment 2 (b), p.1, https://www.sasbc.sa.gov.au/files/978_sbfc_initiative_charter.pdf

The Taskforce previously featured membership from metropolitan and regional councils, as well as representatives from Government agencies and the LGA, and was provided with secretariat support from the Simpler Regulation Unit of the Department of Treasury and Finance. It had the overriding objective: "to identify opportunities and progress reforms that address regulatory barriers and reduce red tape to drive economic development and growth of small business in South Australia."[2]

The Taskforce was disbanded in 2018, but had established a workplan, which included identified opportunities to research, recommend, and implement reforms designed to reduce unnecessary regulations, enhance regulatory understanding (among key stakeholders and the public), and simplify application and compliance processes.

Given that the state's regulatory framework is almost entirely structured by the Government and the Parliament, the LGA advocates for the re-establishment of the Taskforce, that it be adequately resourced through the Government, and include senior Government agency representatives, responsible for progressing meaningful regulatory reform.

Opportunities for business regulatory reform, involving the local government sector, which can be re-examined by a re-established State-Local Government Red Tape Taskforce include the following areas:

- Small / start-up business regulatory understanding and compliance.
- Business use of Crown and Community land.
- Disposal of Community Land.
- Temporary or special events.
- Live music.
- Environment Health Officers food health inspections.
- Outdoor dining.
- Small Venue Liquor Licensing.

## About the LGA

The LGA is the voice of local government in South Australia, representing all 68 councils across the state and the Anangu Pitjantjatjara Yankunytjatjara.

The South Australian *Local Government Act 1999* recognises the LGA as a public authority for the purpose of promoting and advancing the interests of local government. The LGA is also recognised, and has prescribed functions, in 29 other South Australian Acts of Parliament. The LGA provides leadership, support, representation and advocacy relevant to the needs of our member councils.

The LGA is a strong advocate for policies that achieve better outcomes for councils and the communities they represent. As such, the LGA welcomes the opportunity to provide a submission on the Commission's Issues Paper, which forms part of their Inquiry into reform of South Australia's regulatory framework.

## Purpose of Submission

The LGA has prepared this submission to provide the Commission with an over-arching local government sector thematic response to the Inquiry's Issues Paper, as well as specific responses to the 'information requests' contained within the Issues Paper.

[2] State-Local Government Red Tape Taskforce, 'Charter of Operations', p. 1.

Given the short timeframes allocated for submissions to the Issues Paper, this submission does not provide a comprehensive or authoritative local government sector response regarding every regulation which affects private sector businesses, within South Australia's regulatory framework. Instead, it provides a local government perspective on the themes raised in the Issues Paper and furnishes responses to the Issues Paper's specific 'information requests' with examples supplied by member councils through the consultation process outlined below.

## LGA Consultation Process

In preparation for this submission, the LGA Secretariat publicised details of the Commission's Inquiry through its online Latest News service and requested targeted feedback from the LGA's member councils.

The LGA Secretariat also hosted a consultative webinar with member council staff on Wednesday, 5 May 2021, featuring guest presentations and a 'Question and Answer' session from Inquiry Presiding Commissioner, Dr Matthew Butlin (Chair & CEO, South Australian Productivity Commission) and Inquiry Lead, Ms Christine Bierbaum (Deputy CEO, South Australian Productivity Commission).

Furthermore, several councils were individually interviewed by the LGA Secretariat based either on senior executive staff having previously served on the State-Local Government Red Tape Taskforce, or their expressed interest in business red tape reduction issues.

# Background

The Government instructed the Commission to conduct an Inquiry into reform of South Australia's regulatory framework, in so far as it affects businesses.

In commissioning this Inquiry, the Government documented three contributing factors:

- To ensure that the state's regulatory framework remains fit-for-purpose.
- To assess the benefits of recent business regulatory reforms made in inter-state and overseas jurisdictions.
- To embed the regulatory lessons learnt from the COVID-19 pandemic.[3]

## Inquiry Terms of Reference

The Terms of Reference[4] for the Inquiry confine the Commission's investigation to the following issues:

1. Recommendations for reform which are likely to deliver investment, employment and productivity growth.
2. Recommendations to improve both regulators' conduct and performance, and the state's regulatory architecture.
3. Identification of:
    a. regulatory overlap, duplication and inconsistencies; and
    b. opportunities for the removal, simplification, streamlining and/or harmonisation of regulations.

[3] These contributing factors were included in a letter from the Premier, Hon Steven Marshall MP, (dated 29 January 2021) which also contains the Inquiry's Terms of Reference. The letter is copied in: SAPC, 'Issues Paper: Inquiry into reform of South Australia's regulatory framework', Appendix 1, pp. 40-1.
[4] See the Inquiry Terms of Reference copied in: SAPC, 'Issues Paper: Inquiry into reform of South Australia's regulatory framework', Appendix 1, pp. 40-1.

For the purposes of the Inquiry, regulation is defined to include any principal legislation or statutory instruments made under an act, such as regulations, rules, by-laws or any instruments of a legislative character, that principally affect businesses. This includes state legislation and regulatory schemes which involve the local government sector but excludes national regulatory schemes (of which South Australia is part) where change requires the agreement of other jurisdictions.

The Inquiry will also assess administrative instruments that have a quasi-legislative character which impose a regulatory burden on businesses.

## SA Productivity Commission Inquiry Issues Paper

The Commission released for consultation on 31 March 2021 an Issues Paper, prepared to support stakeholders and other interested parties participate in the inquiry by highlighting key issues importance and raising questions designed to elicit feedback.

Within the Issues Paper, the Commission detailed its preference for a state-wide regulatory framework which adheres to a set of principles assisting the development and implementation of regulations which are necessary, effective and minimise unnecessary burdens on affected stakeholders.

The Commission has also indicated in the Issues Paper that it will use the inquiry process, including analysis of inter-state and overseas regulatory systems, to recommend the adoption of better practice regulatory approaches, which includes adherence to life-cycle regulatory review and the implementation of a whole-of-government, overarching framework of regulatory oversight in which competing economic, environmental and social concerns are monitored and the processes for assessing and balancing these factors is improved over time.[5]

In so doing, the Commission has indicated several potential flaws in the state's regulatory framework, in so far as it affects businesses:

- The state's reliance on primary legislation for regulatory purposes may be too prescriptive, rather than outcomes-based, and may prove both too rigid and inflexible to respond effectively to external economic shocks or technological disruptions and prove less amenable to the adoption of new regulatory technology, such as advanced data analytics and artificial intelligence.[6]
- The Legislative Review Committee's scrutiny responsibilities are confined to legal considerations, whereas regulatory review mechanisms in other inter-state jurisdictions take into consideration the impact of regulations on businesses and the broader community.[7]
- The South Australian Government's Regulatory Impact Assessment process may be ineffective in both evaluating the costs and benefits of various regulatory and non-regulatory options, and be overly reliant on forecasts of regulatory impact, rather than including the monitoring and evaluation of regulatory burdens post-implementation.[8]
- There is no state-wide policy in place for performance monitoring and improvement across South Australia's regulators.[9]

[5] South Australian Productivity Commission (SAPC), 'Issues Paper: Inquiry into reform of South Australia's regulatory framework', 31 March 2021, pp. 9, 14-5, 18, 22-4, 27-8, 33, 38.
[6] *Ibid.*, pp. 19, 38-9.
[7] *Ibid.*, pp. 17, 19-20.
[8] *Ibid.*, p. 20.
[9] *Ibid.*, pp. 33-4.

As part of the Inquiry Issues Paper, the Commission documented a series of 'information requests', designed to elicit feedback from stakeholders and other interested parties regarding issues of particular importance to the Commission's ongoing investigations.

The following sections outline the LGA's responses to these specific information requests.

# LGA Responses to Issues Paper's Information Requests

## South Australia's Reliance on Primary Legislation

The Commission's Issues Paper argues that the tendency for regulatory provisions to be placed in primary legislation may limit the South Australian Government's ability "to undertake regulatory reform without engaging in potentially complex legislative amendments", thereby reducing its "capacity to act rapidly to address complex issues including unusual events like the COVID-19 pandemic."[10]

The Commission also argues that this reliance on primary legislation may be too prescriptive and prove unable to keep pace with the introduction into markets of new technologies and prove incompatible with the introduction of new technologies into regulatory enforcement, including advanced data analytics and artificial intelligence (AI).[11]

**Commission Information Request 2.1**

a) Does SA have an appropriate balance between regulating through primary legislation and subordinate legislation? How does this affect the capacity of regulations to respond effectively to changing circumstances and priorities?

b) Does SA's approach to regulatory design and development constrain innovative approaches to regulation, such as outcomes-based regulation or different types of regtech? If so, how can this be addressed?

### *LGA response – information requests 2.1 (a) & (b)*

The initial consultation conducted with the local government sector has not raised concern that a shift away from the state's current reliance on primary legislation would concentrate too much regulatory power in the executive arm of government, at the expense of parliamentary oversight of primary legislation.

Instead, the sector has broadly emphasised that the onset of the COVID-19 crisis revealed a welcome urgency from the Government and Parliament to pass emergency legislation to provide the regulatory environment perceived as necessary to protect public health and support various business operations and tenancies (amongst others) through the economic crisis.

In this context, the local government sector welcomes a thorough investigation into opportunities to provide greater regulatory flexibility to the executive arm of government, with the caveat that the Cabinet process should be subjected to a greater level of transparency and consultation than currently exists (see more below).

Most importantly, feedback received from the local government sector has revealed a philosophical disagreement with the state's reliance on primary legislation to regulate business activity.

A common opinion expressed by council respondents is that it is not clear whether legislation, introduced by successive South Australian Governments and passed through the Parliament, has

[10] *Ibid.*, pp. 18-9.
[11] *Ibid.*, p. 19.

progressed through a rigorous policy-development process in which the following questions have been asked: “What economic / social / environmental outcomes are we trying to achieve?”; “Is legislation the best method to achieve these outcomes?”.

The major concern expressed by councils is that a reliance on primary legislation imposes a lowest common denominator approach to business regulation, which is prescriptive, can unnecessarily stifle business operations and limits opportunities for the Government to incentivise good economic, social and environmental outcomes through innovation.

An example of an effective method employed to incentivise best-practice business regulation and other business supports is South Australia’s Small Business Friendly Council Initiative, administered by the Office of the Small Business Commissioner.

Under the Small Business Friendly Council Initiative Charter (the Charter),[12] councils are required to implement five initiatives designed to foster and support small businesses in their area:

1. Implement activities to improve the operating environment for small business within Council’s area.
2. Establish a business advisory group (if one does not already exist) to assist Council’s understanding of small business in its area.
3. Implement a procurement policy which recognises and supports local small businesses wherever possible.
4. Pay undisputed invoices from small businesses within 30 days.
5. Implement a timely and cost-effective dispute resolution process to manage disputes.

“Councils are then required to identify and implement three additional initiatives per year to support local small business.”[13]

Regarding business regulation, the Charter includes a council commitment to: “provide clear advice and guidance to small businesses to assist them to understand and meet their regulatory obligations, and to work with them to achieve compliance.”[14]

Furthermore, councils also make the following commitments regarding their own regulatory responsibilities and conduct:

> “Council agrees to:
>
> a) take reasonable action to limit unnecessary administrative burdens on small business by:
>  i. only asking for information that is absolutely necessary;
>  ii. not asking for the same information twice; and
>  iii. working collaboratively with other councils.
> b) undertake regular policy reviews to limit policy impact on small business, and to test new policies and procedures for ‘small business friendliness’; and
> c) ensure that Council officers have the necessary knowledge and skills to apply plans and regulations in a consistent manner.”[15]

According to many council respondents, the Charter’s commitment to limit unnecessary administrative burdens on small business, through efficient data storage and use, is not matched by Government agencies. A common criticism is that Government agencies do not share access to data, including business information stored by different agencies.

[12] See: Small Business Friendly Council Initiative Charter, https://www.sasbc.sa.gov.au/files/978_sbfc_initiative_charter.pdf
[13] Small Business Commissioner, ‘Small Business Friendly Council’, https://www.sasbc.sa.gov.au/small-business-friendly-council
[14] Small Business Friendly Council Initiative Charter, Part A: Commitment 2 (b), p.1.
[15] Small Business Friendly Council Initiative Charter, Part A: Commitment 3, p.2.

## South Australian Parliament's Legislative Review Committee

The Commission's Issues Paper makes regulatory comparisons with other Australian state jurisdictions, many of which require that their parliamentary legislative review committees "ensure that the effect of a proposed regulatory action is not unduly burdensome on businesses or the wider community and that all statutory requirements that apply to impact assessment have been met." [16] In contrast, the South Australian Parliament's (the Parliament's) Legislative Review Committee (which has jurisdiction to review and disallow council by-laws) confines its regulatory considerations to "strict legality, constitutionality and its effect on common law rights and freedoms."[17]

**Commission Information Request 2.1**

d) Are there ways of enhancing the central scrutiny functions exercised by the Legislative Review Committee?

### *LGA response – information request 2.1 (d)*

While council respondents have expressed a greater level of dissatisfaction with the lack of transparency involved in the South Australian Government's Cabinet decision-making process, some have expressed displeasure at the inconsistency in which council by-laws have been disallowed by the Legislative Review Committee in recent years (examples provided related to by-laws regulating dog and cat management), while others questioned whether this oversight role would be better undertaken by a panel of independent and appropriately qualified legal and regulatory experts appointed by the Parliament rather than the Members of Parliament themselves.

Many council respondents have expressed an interest in the establishment of a system of regulatory oversight which independently analyses the effects of regulations on different (and sometimes competing) economic, social and environmental interests.

## OECD Framework – Whole-of-Government Management of Regulatory Stock

The Commission is also investigating the merits of implementing a whole-of-government management system of the stock of regulation, according to an OECD (Organisation for Economic Cooperation and Development) framework. According to the Commission: "The OECD's framework highlights the importance of ex-post review in ensuring that regulations remain fit-for-purpose; deliver on their intended objectives; are effective in their implementation; and are relevant to the prevailing social and economic conditions." [18]

**Commission Information Request 2.2**

a) Does South Australia's regulation expiry program assist in managing the overall stock of regulation? How could it be improved?
c) Are regulations in SA subjected to sufficiently rigorous and frequent ex-post evaluations? How are these conducted?
e) What barriers or disincentives exist to repealing or varying regulations once they exist?
f) What are the benefits of adopting a 'stewardship' model of regulatory management? How could this be implemented in SA?

[16] SAPC, 'Issues Paper: Inquiry into reform of South Australia's regulatory framework', pp. 19-20.
[17] *Ibid.*, p. 17.
[18] *Ibid.*, pp. 22-3.

## *LGA response – information requests 2.2 (a), (c), (e) & (f)*

Council respondents broadly support a 'stewardship' model of regulatory management and have provided feedback that an immediate step that can be taken to achieve this would be to re-establish the State-Local Government Red Tape Taskforce.

In addition, council respondents have emphasised that as a matter of priority a system of review should be established which lessens the occurrence of Government policies contradicting applicable regulations, and they have emphasised that more local content should be included in the Planning and Design Code so that non-harmful business practices can be accommodated.

### *Re-establishment of the State-Local Government Red Tape Taskforce*

The Commission's Issues Paper observes that while initiatives designed to periodically assess opportunities for regulatory efficiencies or the elimination of ineffective regulations have merit – such as previous South Australian initiatives (the 'Rip it Up' initiative implemented in 2017 and the Simplify Day initiative of 2016 and 2017) – they are no substitute for an effective system of regulatory stewardship, involving an ongoing review of the impacts of the state's regulatory stock.[19]

In this light, the South Australian local government sector advocates for the re-establishment of the State-Local Government Red Tape Taskforce (the Taskforce).

The Taskforce was established by the South Australian Government as part of the 2017 Simplify Day (on 10 August 2017), in response to the volume of issues involving local government that were identified for regulatory review. The Taskforce featured membership from metropolitan and regional councils, as well as representatives from Government agencies and the LGA. The Taskforce was provided with secretariat support from the Simpler Regulation Unit of the Department of Treasury and Finance.

The Taskforce had the overriding objective: "to identify opportunities and progress reforms that address regulatory barriers and reduce red tape to drive economic development and growth of small business in South Australia."[20]

The Taskforce met several times, developed a workplan of regulatory issues to investigate and recommend reforms, but was disbanded in 2018. Since the disbandment of the Taskforce, the LGA has advocated for its re-establishment.

As documented in greater detail below, the Taskforce established a workplan, which included identified opportunities to research, recommend, and implement reforms designed to reduce unnecessary regulations, enhance regulatory understanding (amongst key stakeholders and the public), and simplify application and compliance processes.

Identified opportunities for business regulatory reform, involving the local government sector, included the following areas:

- Small / start-up business regulatory understanding and compliance.
- Business use of Crown and Community land.
- Disposal of Community Land.
- Temporary or special events.
- Live music.
- Environment Health Officers food health inspections.

[19] *Ibid.*, pp. 22-4.
[20] State-Local Government Red Tape Taskforce, 'Charter of Operations', p. 1.

- Outdoor dining.
- Small Venue Liquor Licensing.

Given that the state's regulatory framework is almost entirely structured by the Government and the Parliament, the LGA advocates for the re-establishment of the Taskforce to be adequately resourced through the Government and include senior Government agency representatives, responsible for progressing meaningful regulatory reform.

Later sections detail some of the specific regulatory reform initiatives started (but not completed) by the Taskforce, which can be re-examined in the light of the economic consequences of the COVID-19 pandemic and the introduction of the Planning and Design Code.

### *Disconnect between SA Government Policy and Regulations*

Council respondents have expressed significant concern about the disconnect that exists between many Government policies and applicable regulatory instruments, which can adversely affect the investments and operations of businesses.

An example, raised by council respondents, is the South Australian Tourism Commission's support for various forms of eco-tourism and immersive experiential accommodation options,[21] conflicting with planning restrictions on this type of development which exist in many areas, due to various bushfire overlays contained in the Planning and Design Code and development referrals made to emergency service agencies.

The local government sector is supportive of both business innovation in the nature-based tourism sector and appropriate regulatory constraints on potentially hazardous developments. However, under planning regulations, the result can be frustration for a development proponent (accommodation business) as plans for the establishment of various forms of 'glamping' accommodation (such as temporary small cabins or tent-style structures) may need to be altered, reconsidered, or abandoned.

In these circumstances, councils have expressed dissatisfaction that, as the relevant planning authority, they often receive the brunt of the criticism from development proponents if a development application fails to receive planning consent.

In this context, many councils have expressed hope that a whole-of-government regulatory management framework may better align the stated policies of the Government with the regulatory framework.

In addition, many council respondents have expressed dissatisfaction with the lack of transparency involved in the Regulatory Impact Assessment (RIA) process, carried through the Cabinet Office. Criticisms include that it is unclear when RIAs are carried out, and there is no requirement for the RIA process to involve a rigorous process of consultation with key stakeholders, including businesses and councils affected by proposed regulatory changes.

Reform of the RIA to ensure greater transparency and stakeholder consultation should be investigated.

### *Local Policy Content*

Many council respondents also expressed concern about what may be the excessive centralisation of regulatory policy content. The largest recent example of this has been the introduction of the Planning and Design Code – a state-wide set of planning rules.

[21] See: South Australian Tourism Commission, *The South Australian Visitor Economy Sector Plan 2030*, pp. 4, 23, https://tourism.sa.gov.au/media/txpncuwn/satc_tourism-plan-2030_final_aug2019.pdf

While one of the primary objectives of the introduction of the Planning and Design Code (and its accompanying ePlanning system) was the simplification of the planning system for users – and particularly development proponents – the Planning and Design Code does include local policy content relating to the protection of local history and streetscape character.[22]

An argument has been prosecuted from some councils, however, that similar geospatial regulatory variations are not made within the Planning and Design Code for other purposes, with important consequences for primary producers.

For example, council respondents advise that the more streamlined deemed-to-satisfy pathway for horticulture in the Planning and Design Code stipulates that horticultural production needs be undertaken both on a slope of not greater than 10 per cent and not closer than 50 metres from a watercourse or native vegetation.

Councils representing growers in the Adelaide Hills argue that had these requirements applied historically, many growers would have faced more complicated development assessment processes, increasing the complexity, time and resources involved.

Moreover, while acknowledging that ensuring water quality and erosion are important regulatory considerations, state-wide planning policies designed to achieve these outcomes can offer a blunt instrument.

For example, despite Adelaide Hills growers having grown horticultural produce on much steeper land, and much closer to waterways and natural vegetation, a September 2019 EPA study identified that the four most prevalent herbicides in creeks in the Mount Lofty Ranges are used largely for the control of broad leaf or woody weeds, and not herbicides commonly used in horticulture.[23]

Furthermore, the use of planning regulations designed to guard against contaminants entering the natural environment risks these regulations not being kept up to date regarding the latest technological advancements in herbicides or other regulatory requirements governing the use of chemicals contained in the *Agricultural and Veterinary Products (Control of Use) Act 2002* and associated regulations.

It is therefore argued, that while the establishment of a whole-of-government system to manage the stock of regulations is worthy of investigation, it should not stifle geospatially designed regulations, calibrated for local conditions, and which support optimal business operations.

This example also illustrates the value of the local government sector's local business knowledge and the value to businesses which can be realised if councils are consulted during policy development processes, to avoid the implementation of ineffective and costly regulations.

## Council Regulations

The Issues Paper provides the local government sector with an opportunity to not only review councils' own by-laws and regulatory responsibilities but consider examples of "regulatory overlap, duplication and inter-jurisdictional inconsistencies, including questions of 'cost-shifting' and 'cost-sharing' and their associated effects on business." [24]

**Commission Information Request 2.1**

c) What role does local government play in the state's regulatory framework? Is it effective? How could it be improved?

[22] See: https://www.saplanningcommission.sa.gov.au/news?a=612919
[23] See: EPA, 'Pharmaceutical products and other human-sourced chemicals in creeks', Information Sheet, issued September 2019, https://www.epa.sa.gov.au/files/14363_info_wq_pharma_study.pdf
[24] SAPC, 'Issues Paper: Inquiry into reform of South Australia's regulatory framework', p. 17.

## *LGA response – information request 2.1 (c)*

### *Issues to be addressed through re-established State-Local Government Red Tape Taskforce*

As alluded to above, the Taskforce previously investigated several regulatory areas for reform, which involved the local government sector as a regulatory authority.

Given the Taskforce was disbanded prior to its workplan having run its course, many items remain outstanding. An opportunity now exists for these items to be re-examined under the auspices of a re-established State-Local Government Red Tape Taskforce.

Details of some of the most prominent areas, previously identified for reform (but left unresolved), are detailed below.

The impetus for their re-examination is bolstered by the recent introduction of the Planning and Design Code into the state's planning system (from 31 July 2020 in regional council areas and 19 March 2021 in major regional and metropolitan council areas) – having replaced the planning rules previously contained in council development plans.

#### *Temporary or Special Events*

Following submissions received as part of Simplify Day 2017, the regulation of temporary and special events on land under the care, control and management of councils was included in the Taskforce's workplan.

There is widespread acceptance and understanding in the local government sector that temporary or special events provide enhanced character and vitality to an area and can provide market exposure opportunities for local businesses.

However, submissions were received by the Red Tape Taskforce that the current regulatory requirements for Temporary Events or Special Events can be overly prescriptive, inconsistent and duplicative within, and across, councils.

Examples of duplicative processes can include the preparation of Site Nuisance Management Plans, which can replicate amenity matters commonly considered as part of development applications (DAs). According to section 19 of the *Local Nuisance & Litter Control Act 2016*, Site Nuisance Management Plans are required when an event is likely to generate or create nuisance and/or litter. The management plans must include reference to the measures which will be taken to prevent, minimise or address any anticipated adverse effects from the event on the amenity value of the area.

Previously, environmental issues were jointly managed by the Environmental Protection Agency and the local government sector. Councils now have sole regulatory responsibility regarding event nuisance and litter issues.

The notification of compliance with food safety standards, under the *Food Act 2001*, offer another example of duplicative processes, whereby under section 86, mobile food vendors must notify each council area of their compliance, rather than be covered by a food safety "passport" – an option previously canvassed (but left unresolved) by the Taskforce.

Most prominently, under the *Development Act 1993* (since replaced by the *Planning, Development and Infrastructure Act 2016*), many stakeholders – including councils – expressed confusion as to when temporary or special events required permits and/or development approvals. In simple terms, a permit is required to address outstanding issues of safety, accessibility, amenity, waste management, environment protection, community consultation and promotions. Whereas a DA is required if the temporary event constitutes "a change in the use of land", under planning law.

Because of the time and expense involved in lodging a DA, councils have emphasised that the process can act as a disincentive for businesses (or business associations) organising ticketed events – which are likely to be interpreted as a change in land use.

Similarly, other councils have echoed the confusion expressed by some businesses as to why the infrequent use of their carparks for markets have – under the previous planning system – been interpreted as a change of land use, whereas a market event held on a council reserve can be held without a DA. Businesses prefer the use of their own (or leased) assets for expanded (if temporary) business practices, not the use of another venue, which does not serve their marketing purposes, nor generate ancillary consumer spending.

More generally, businesses have expressed the view that temporary events that occur more than once per year, such as monthly markets, should not constitute development – as previous case law under the *Development Act 1993* dictated. The argument put forward is that the holding of an event for a matter of hours on an irregular basis (for instance once per month) does not change the basic use of the land.

In this context, and in light of the recent introduction of the Planning and Design Code, the following issues remain of ongoing relevance and in need of re-examination:

- Ambiguity regarding when a DA is required for a special or temporary event. (Consideration should be given here as to the required timeframe between scheduled events needed to retain the designation of a 'temporary' or 'once-off' event. e.g., monthly, yearly?)
- Uncertainty regarding the requirements for the temporary closure of public roads and the erecting of temporary structures.
- Confusion generated by the inconsistency of council administrative processes and permit requirements, and confusion regarding the acceptable business use of council-managed land under Community Land Management Plans.
- The production of a risk management checklist or management plan template to assist event holders in the development of risk management plans.

*Live Music*

Opportunity exists for the regulation of live music to be re-examined in the interests of facilitating the enhanced business opportunities which accompany live entertainment. This issue was raised to the attention of the Taskforce by the Australian Hotels Association (SA).

In recent years, reforms have been made by the Government to simplify the planning and liquor licence regulatory processes involved with live music:

- The *Liquor Licensing Act 1997* was amended so that licensed venues no longer need the consent of the Liquor and Gambling Commissioner to provide entertainment, including live music, at any time (except for 'prescribed entertainment'). Entertainment consent was previously required and regulated the live performance of specific genres and instruments, for specific time periods.
- *Development Regulations 2008* were amended to exclude low risk entertainment from being treated as development. This allows licensed and unlicensed venues to showcase low risk music activities without requiring a DA, thereby promoting live music in existing and non-traditional venues.

However, several other regulatory reform options and issues of concern have been left outstanding and could be re-examined:

- The 'agent of change' principle has been raised as a potential reform option. It purports that the person or business responsible for the change is responsible for managing the impact of the change. This differs to the idea that whoever is making the noise is responsible for that noise. Under the principle, if a new residential development is to be built near an existing music venue, then the developer is responsible for the cost of noise mitigation measures as part of the planning process. Likewise, if a music venue opens, or an existing venue wants to include entertainment, then the venue is responsible for the costs of mitigating and managing the noise impact on its neighbours. (Some metropolitan councils amended their development plans in accordance with this principle and included statements on recommended noise mitigation measures, but these development plans have since been superseded by the Planning and Design Code).
- Regulatory confusion as to what constitutes 'low impact entertainment' and whether the phrase: "in accordance with the lawful use and occupation of the premises", means that live music must be in accordance with existing site development approvals.

*Environment Health Officers food health inspections*

Opportunity exists for the regulatory operations of council Environment Health Officer (EHO) food inspections to be re-examined in the interests of standardising operational practices and fee setting.

Food businesses in Australia are required to comply with the Australia NZ Food Standards Code which is established under the Australia NZ Food Regulation Agreement 2002. The *Food Act 2001* and *Food Regulations 2017* adopt the Code into state legislation and delegate powers to councils to ensure compliance with the Code and take enforcement action, where necessary.

To ensure food businesses are complying with the Code, regulatory audits and/or food premises inspections are undertaken. Food safety audits are required for designated high risk food business sectors (such as vulnerable persons) who have to implement additional food safety management systems. Most other businesses (including restaurants and cafes) do not have to comply with an additional food safety management system and surveillance of their compliance is performed through regular food premise inspections which are undertaken by qualified EHOs contracted by councils. The frequency of food safety inspections is dependent on the premises' compliance history, SA Health's priority risk classification system, or in response to a complaint.

In addition to undertaking inspections, a key part of the role of EHOs is to provide advice and educational materials to food businesses, as well as respond to complaints and food poisoning outbreaks as required.

The following issues remain of ongoing relevance and in need of re-examination:

- Provision of professional development and advice from SA Health regarding best practice EHO food health inspections, targeted at cross-council consistency and a facilitative business approach.
- The introduction of a dispute resolution process, applicable for when businesses object to EHO decisions.
- Inclusion of 'Australian Standard 4674-2004: Construction of Fit-out of Food Premises' into the Building Code of Australia as a "Deemed to Comply" document. This would create a single, state-wide reference that would be of value to designers of food premises and EHOs responsible for assessing a proposed food premises for compliance with Food Safety Standard 3.2.3: Food Premises & Equipment.
- Cross-council consistency of fees applied for EHO food inspections.

*Outdoor dining*

Opportunity exists for the regulation of outdoor dining to be re-examined in the interests of simplifying and/or standardising council permit conditions and providing greater regulatory clarity.

As part of Simplify Day 2017, the Restaurant and Catering Industry Association of South Australia (R&CA), raised the issue council permit requirements, and the interpretation of those requirements by planning and compliance officers can create inequities, uncertainties, delays, costs and frustration for businesses, as well as creating complexities for council staff.

In addition, and in common with the regulatory issues noted above regarding temporary or special events, it is uncertain when a development application is required for outdoor dining approval.

The following issues remain of ongoing relevance and in need of re-examination:

- Inconsistencies regarding permit conditions for outdoor between councils. These inconsistencies include required road safety treatments (e.g., bollards), restrictions on furniture advertising, prescriptions on the type of furniture, cutlery and crockery to be used.
- Possible production of a model council permit application process.
- Clarification on when a DA is needed to activate outdoor dining.
- Standardisation of applicable council fees.

### *Caveat on cross-council regulatory consistency*

A caveat to the items mentioned above, is that the consultation process with councils has revealed divergent views within the local government sector regarding the value in establishing local government sector consistency in how regulatory responsibilities are applied by councils.

For instance, while some councils believe that greater local government sector consistency in how regulatory processes are administered, and fees charged, would reduce the regulatory complexity that businesses are required to deal with, other councils argue that differences in council regulatory processes can reflect local variances. In the latter case, it is argued that regulatory processes (and accompanying fees) have been designed to not only suit the local business environment, but reduce administrative costs, and ultimately the fees charged to businesses.

Caution should therefore be exercised when examining cross-council regulatory inconsistencies.

## Council COVID-19 Regulatory Reforms

As referenced above, one of the contributing factors to the Government's establishment of the Inquiry was the desire to embed the regulatory reform lessons of the COVID-19 pandemic.

In this context, the Commission is seeking feedback on the lessons learned about the process of regulatory reform during the COVID-19 pandemic, as well as specific examples of worthwhile regulatory reforms implemented during this period.

In addition, the Commission is also interested in the extent to which the South Australian regulatory framework supports business innovation.

**Commission Information Request 4**

a) What lessons can be learned from the experience of regulation design, creation and implementation during the COVID-19 pandemic?

e) The Commission is interested in views on the extent to which South Australia's regulatory framework supports innovation in business. Are you aware of specific examples of good practice?

### *LGA responses – information requests 4 (a) & (e)*

During the height of the COVID-19 social distancing restrictions, which severely impaired the ability of many businesses to operate, the South Australian local government sector moved quickly and efficiently to not only provide a variety of direct supports to businesses, but also introduced temporary regulatory reforms to facilitate business operations.

The measures detailed below illustrate the responsiveness of the local government sector to the COVID-19 recession and the efforts made to facilitate business operations and survival amidst the economic uncertainty:

- Provision of financial relief, including waived, reduced or deferred payments, including for council business rates, various fees relating to business operations (e.g., food health inspections and outdoor dining), as well as lease payments.
- Establishment of business support hotlines and shifted their business training supports to online formats, focussed on COVID-relevant topics (such as establishing effective online presences), and offered these services free-of-charge.
- Establishment of "Buy Local" campaigns.
- Business grants for capital works, ecommerce improvements or training/professional development.
- Concise and clear communication of changing COVID-19 regulations affecting business operations.
- Support for local music industry.
- Food support program for vulnerable residents and local food and beverage hospitality businesses.
- Placemaking infrastructure projects, including public art.
- Increased weighting for local content in council procurement.

In addition to these direct supports, several councils waived fees applicable for hospitality venue outdoor dining permits, or expanded access to shared footpaths or parklets, in order to increase the venue capacities of hospitality venues during the period of the most stringent social distancing restrictions (i.e., one patron per four square metres).

Many councils also worked with the Government to facilitate the movement of heavy vehicles during night-time periods – when their movements are usually restricted – in order to facilitate the supply of food and groceries to supermarkets, which had been granted extended shop trading hours to allow for the social distancing of their patrons.

While these examples reveal the local government sector's responsiveness to business (and customer) needs during the COVID-19 economic crisis period, the temporary nature of these regulatory reforms also reveal the local government sector's commitment to sound regulatory principles. Footpath and parking amenity cannot be permanently subsumed to accommodate increased outdoor dining capacity, and this increased capacity is unlikely to be needed when social distancing restrictions are removed. Similarly, regulations restricting the times of movement for heavy vehicles in residential streets exists for community amenity and should not be permanently removed.

The regulatory reforms introduced during the height of the COVID-19 social distancing restrictions do reveal an effective and timely process for regulatory reform in times of crisis.

## Business Advocacy

**Commission Information Request 2.1**

i) Are there specific examples of ineffective or inefficient regulations? Are there examples of regulations that do not have clear policy goals?

### *LGA response – information request 2.1 (i)*

#### *Business regulation concierge service*

Many council respondents have argued that the burden of business regulatory compliance would be lessened if a form of business concierge service was established and/or an online repository of applicable business regulations were created.

This type of business concierge service is commonly provided (often at no charge) by councils. This can include council staff walking businesses through complicated regulatory processes, such as those involved in event planning, which can include application processes involving more than one council as well as Government agencies, and involve public consultation, road closure approvals, use of council land approvals, development approvals, liquor licensing applications etc.

However, it would be of great value if a stocktake was made of applicable business regulations and a state-wide system of concierge service established by the Government to assist both small and start-up business operators, in addition to council staff.

The Taskforce included consideration of a council proposal for the establishment of a single state-wide advisory service for small businesses that would provide a dedicated channel to manage legislative issues and promote cross-government coordination. This type of assistance would support businesses exploring innovative product or service offerings, which do not fit neatly within current regulatory categories, and would lessen business confusion, frustration, avoidance of regulatory responsibilities, and the cost to businesses of seeking expert advice.

Most significantly, the streamlining of business regulatory processes will enable businesses to focus on their operations and business planning, by reducing the amount of time spent completing necessary compliance activities.

However, the disbandment of the Taskforce meant that this project, and the stocktake of applicable business regulations, was not completed and remains a valuable regulatory endeavour.

#### *Restrictions on competition – Small Venue Liquor Licence*

Some councils have raised concern about restrictions on business competition, despite section 45 of the *Competition and Consumer Act 2010 (Cwlth)* prohibiting contracts, arrangements, understandings or concerted practices that have the purpose, effect or likely effect of substantially lessening competition in a market.

As an example of recent LGA advocacy efforts targeted at removing anti-competitive business regulation, the LGA has championed the extension of the Small Venue Liquor Licence beyond the confines of the Adelaide central business district (CBD), so that the ancillary benefits of enhanced precinct vibrancy can be enjoyed throughout the state.

The LGA's Policy Manual includes the following position:

> "**2.1.7 Small Bar Licensing.** Local government supports opportunities to develop vibrant night-time economies by extending small bar licencing beyond the Adelaide CBD. Councils, through the LGA will continue to lobby state government to allow small bar licencing (where desired) for suburbs and South Australia's regional areas."[25]

Advocacy efforts targeted at expanding the Small Venue Liquor Licence to state-wide application have proven unsuccessful with the Government.

In recent months, however, the LGA's Greater Adelaide Regional Organisation of Councils (GAROC) Committee wrote to the Attorney-General, Hon Vickie Chapman MP, advocating for a more limited pilot expansion of the Small Venue Liquor License to the six councils included in the Eastern Region Alliance area.[26]

The proposed pilot includes the following components:

- The pilot trial should proceed for a period of approximately 24 months after the operational establishment of the first licensees.
- A suitable number of Small Venue Liquor Licences should be granted across one or several trial sites in the ERA area, to enable adequate observation of the introduction of the licences on street vibrancy, local/precinct licenced premises revenue and related employment.
- The ERA will be responsible for managing the project, including collecting, collating, and reporting on the following data sets:
    - Small Venue Liquor Licensee's turnover and employment over pilot trial period.
    - Changes in turnover and employment recorded for other licenced premises in the locality or precinct of the trial sites.
    - Local products sourced and sold through Small Venue Liquor Licensees.
- Inclusion of the case management support and a variant of the City Makers Grant included as part of the introduction of the Small Venue Liquor Licence in the Adelaide CBD in April 2013.

The proposed pilot has been referred to Consumer and Business Service's current Liquor License Review for consideration.

[25] LGA Policy Manual, Economic Development, '2.1 Building local economies', https://www.lga.sa.gov.au/about-lga/overview-of-the-lga/corporate-documents/lga-policy-manual/economic-development/2.1-building-local-economies

[26] ERA councils comprise the Cities of Burnside, Campbelltown, Norwood, Payneham & St Peters, Prospect, Unley and the Town of Walkerville. See: About Us – Eastern Region Alliance (era.sa.gov.au)

Local Government Association of South Australia

The voice of local government.