

**ITEM 12.3.10 FEEDBACK - SOUTH AUSTRALIAN PRODUCTIVITY COMMISSION  
INQUIRY - REGULATORY FRAMEWORK REFORM**

<b>Report Type</b>	Decision
<b>City Plan Theme</b>	Leadership
<b>Report Author</b>	Governance Manager (Corporate Services)
<b>Report Summary</b>	This report presents a summary of the SA Productivity Commission report on the impacts of the Local Government regulatory framework on the growth and productivity of businesses and the South Australian Economy
<b>Attachments</b>	Attachment 1 – Proposed Feedback South Australian Productivity Commission – Regulatory Framework Reform

**RECOMMENDATION**

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- 1. The Director Corporate Services' report titled "*Feedback – South Australian Productivity Commission Inquiry – Regulatory Framework Reform*" be received and noted.**
  - 2. The feedback contained within this report and Attachment 1 of this report form the basis of a submission from the City of Port Adelaide Enfield to the LGA and the South Australian Productivity Commission in response to the Inquiry into Local Government Regulatory Framework's impact on business.**
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**Report**

The South Australian Government has sought an Inquiry from the South Australian Productivity Commission (SAPC) on the impacts of the Local Government regulatory framework on the economic development and growth of the state. The purpose of the Inquiry includes:

- 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.

The intent of the SAPC Inquiry is to form recommendations that assist Councils to:

- 'institutionalise ongoing improvement and good practice by the state's regulators, drawing on better practice approaches;
- incorporate in the state's regulatory framework the lessons learned for better regulation from the COVID-19 pandemic, to safely grow jobs, raise productivity and encourage sustainable economic growth;
- embed the application of best practice regulation principles when proposing new, amending or sun-setting regulations and reform systems and processes for developing and managing the stock of regulations; and
- establish a clear, fit for purpose and whole of government accountability framework for ongoing improvement to the state-wide system of regulation'.

The scope of the SAPC Inquiry is limited to South Australian Government regulation. The Commission seeks feedback from Councils where there is 'significant regulatory overlap,

duplication or inconsistency, not only between regulators within the state, but also between SA and other jurisdictions’.

### **Key Findings**

Commission has stated the following 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.
- 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.
- 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.
- There is no state-wide policy in place for performance monitoring and improvement across South Australia’s regulators’

### **Submissions**

Submissions are due to be submitted by 21 May 2021. The LGA is also seeking feedback from Council’s to ensure they can share a view that is representative of the sector.

Whilst Council has the option of resolving feedback contained within **Attachment 1** of this report, Elected Members are able to provide individual responses also.

### **Proposed Council Response**

Council’s consideration is sought on the PAE feedback contained in Attachment 1 which in summary:

- Legislation should be simple, principles based and not prescriptive to support the community to understand its intent and their obligations. There should be a primary objective to improve outcomes for the community with a balance of the social, cultural, environmental and economic outcomes and not on compliance.
- PAE seeks continued and improved involvement of Local Government on the development or amendment of legislation, and that this involvement afford appropriate timeframes for considered responses.
- PAE confirms that from our consultation with business, the legislative requirements for businesses can be difficult to identify and navigate, and there is an important liaison, advocacy and advisory role that Local Government plays.
- There is (and was) appropriate discretion available for councils to support businesses through COVID, but that a more collaborative approach led by state government may support more consistent result for the SA business sector
- Legislature lifecycles should support the evolving technical environment and innovation

### **City Plan Relationship**

Active participation in the reform discussions allows the views of Port Adelaide Enfield Council and community to be considered when amendments to legislation are formed. This approach supports Council’s City Plan theme of Leadership, demonstrating sustainable and accountable decision making which reflects the interests and the expectations of our community.

## **Legislative Context and Related Policies**

The Local Government Reform agenda which incorporates this Inquiry from the South Australian Productivity Commission offers an opportunity to simplify the Local Government Act 1999 (and associate and subordinate legislation) requirements to ensure they reflect the current and future expectations of communities with regard to business growth. The Reform process offers Councils the opportunity to provide input into the legislative framework which drives Local Government activities to ensure it is practical, relevant and flexible to support community growth.

## **Stakeholder Engagement**

The SAPC Inquiry is a public inquiry and seeks the feedback of any interested person or agency. In the preparation of this report and recommendation, the Council's Strategic Plans, policies and previous resolutions of Council were considered. Feedback from the Administration has been incorporated within the recommended responses.

## **Risk Management**

Active participation in sector reform discussions is a key control in ensuring that the views of the community and Council are considered. Holding an open and ongoing dialogue with the LGA and the Office of Local Government provides further opportunity to build relationships with State Government in the interests of the community. Legislative reform that supports current and future needs of the community allows Council to manage and plan resources in efficient and innovative ways. Council has been supporting the cities economic growth and resilience for several years and has worked collaboratively with our businesses to identify challenges and opportunities to improve or innovate our services to our business community that support economic development

## **Financial Management**

There are no direct financial impacts as a result of this report, however, there is likely to be a financial impact when the reform recommendations are implemented. Council will continue to track and monitor the progress of this reform discussion to ensure that financial and service impacts can be planned accommodated.

## **Environmental and Social Impacts**

The Environmental and Social impacts relating to the SAPC inquiry will be identified and known once recommendations are implemented. Council will continue to participate and monitor the progress of this work together with the Local Government Reform to ensure that social and environmental impacts can be identified and managed appropriately, reflecting community expectations.



## ATTACHMENT 1

### **PAE Feedback to SAPC Inquiry - Regulatory Framework Reform**

(Based on Appendix 2 Inquiry - information Requests of the Issues Paper)

#### **General Feedback**

There are a number of processes which appear to be imposing additional requirements on business could potentially be revised. Development processes for approvals have been a major focus and the result of which is yet to be fully realised. Leases or use of public land, community land management processes, outdoor dining, mobile food trucks, permits, road closures and licences for events, coastal usage for business, liquor licencing, food inspections, bollards, provision of state funded parking in economic precincts etc can be very challenging for businesses. These areas should be considered to determine if there are opportunities to support business through regulatory amendment.

PAE would support legislative reform which results in a simplified and streamlined process for businesses who need to engage with Councils. Feedback from our business community in PAE is that it is not always clear which legislative requirements apply to them, nor the most effective sequence of legislative requirements and therefore interactions. The regulations are often drafted in such a way that are very difficult for people in the community to understand. This can lead confusion, frustration, avoidance or additional costs being incurred for them to seek expert assistance. Incorrect action based on this can result in Council declining an application (for example) which can translate to the community that Local Government is not being supportive of business, or is being unnecessarily bureaucratic.

PAE has employed Economic Development Officers who establish relationships with business in the area in an effort to support them to navigate the necessary legislative requirements that impact their business. Council also supports the Adelaide Business Hub, a not for Profit organisation that provides strategic, financial and planning advice to businesses to establish themselves and be successful. The combination of efforts has seen an increase in the number and types of businesses being successful in PAE. Streamlining the legislative framework would enable businesses to focus on operating successfully and reduce the amount of time required to complete compliance necessary activities.

Being practical in the application of legislation and having discretion that meets the principles that the legislation establishes could support businesses. Enabling Councils, delegates and authorised officers to determine the risks associated with an activity and exercise discretion to support economic outcomes based on legislative principles may assist, noting there is more risk exposure to be managed in this approach.

#### **General Feedback - COVID**

During COVID, PAE has waived, reduced or deferred fees such as food business inspection fees, outdoor dining, lease payments, deferral of council rate payments to support businesses to focus on their sustainability over this time.

<p>PAE has worked with other Councils and Not for Profit organisations to create a Business hotline over this time, providing advocacy and advisory services, support for access to grants and funding, support to navigate the council processes. It was identified that business counselling and support for mental health impacts was essential and critical for many.</p> <p>Many businesses have relied upon Economic Development staff and the Adelaide Business Hub to support them over this time with business plans, training and establishing strategies and practices. It would be recommended that a similar state wide model be considered. Having economic development advisors embedded in Councils is of significant benefit and the true value is realised through the one on one relationships with businesses to be a constant source of advice, advocacy and is considered to be a conduit to support business to navigate through the various complex legislative framework.</p>	
<b>SAPC Questions</b>	<b>PAE Proposed Response</b>
<b><i>Information Request 1</i></b>	
<p>a) The Commission is interested in gaining a better understanding of what constitutes best or better practice: what may be considered to be best practice or better practice for each stage of the regulatory life-cycle (from design and development through to implementation and ex-post review)? Please provide examples from SA or other jurisdictions where possible.</p>	<p>PAE supports a more consistent and timely consultation process, that involves representatives from local government in the early design phase prior to a Bill or amendment being development, as well after. The involvement of Local Government experts may assist to identify the needs and desires of the community based on regular and ongoing consultation and engagement that Councils conduct, enabling the identification of impacts to the community.</p>
<b><i>Information Request 2.1 - Developing Regulation</i></b>	
<p>a) Does SA have an appropriate balance between regulating through primary legislation and subordinate legislation? How does this affect the capacity of regulators to respond effectively to changing circumstances and priorities?</p>	<p>PAE believes that legislation should be principles based in nature, be focused on regulation that is in the interests of public good and should be less prescriptive in general, with the exception of specific compliance requirements that enforce equity, risk management, safety and wellbeing outcomes.</p>
<p>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?</p>	<p>PAE takes opportunities to be involved in legislative reform, either by way of participation of Networking Groups, State led Working Parties or by considering and providing feedback to the consultation efforts of the LGA and relevant Ministers Office. Technologies to better support ongoing involvement from councils and businesses throughout the process would be a welcomed addition.</p>
<p>c) What role does local government play in the state's regulatory framework? Is it effective? How could it be improved?</p>	

d) Are there ways of enhancing the central scrutiny functions exercised by the Legislative Review Committee?	<p>The opportunity to be involved or even provide information in a timeframe which is considerate of Council decision making timeframes has improved in recent times, however, historically has been inconsistent and unreliable.</p> <p>PAE would welcome a more structured framework of consultation which affords the local government sector greater opportunity to be involved in the development of legislation prior to the formation of a Regulation, Bill or Amendment, as well as during the consideration of Bill. Local Government is able to provide the most accurate and experienced information on the impact of the legislative reform on the business and economic environment.</p> <p>PAE supports legislation that is designed to meet outcomes rather than imposing additional compliance activities. This should include the consideration of all outcomes and not prioritise one above the others. This assessment and consideration should form part of the design and drafting of legislation and can be enhanced by the involvement of local government experts.</p> <p>PAE considers that the Cabinet Office as the gatekeeper of the process would be best placed to comment upon the adequacy and quality of submitted regulatory impact analyses.</p> <p>PAE would consider that the Local Government Sector could contribute towards the consideration of impacts to the community, which may result in improvements to the application of the legislation once enacted. There is currently a lack of stakeholder consultation in this phase of development and review. Making Legislative impact statements publicly available may also assist.</p>
e) Given the acknowledged importance of ensuring that benefits to society exceed costs, are regulatory impact statements prepared frequently enough by agencies?	
f) Do regulatory policy development and implementation functions require greater separation in the SA public sector?	
g) Does the quality of regulatory impact analyses require improvement? If so, how might this be achieved?	
h) Are the objectives and expected outcomes of regulations, as outlined in the <i>Better Regulation Handbook</i> , clear and unambiguous?	
i) Are there specific examples of ineffective or inefficient regulations? Are there examples of regulations that do not have clear policy goals?	
j) How common are self-regulation and quasi-legislation in SA? Are there examples, in SA or elsewhere, of successful regulatory outcomes that have been achieved by relying on self-regulation or quasi-legislative approaches to regulation?	
<b>Information Request 2.2 - Managing the Stock of Regulation</b>	
a) Does South Australia's regulation expiry program assist in managing the overall stock of regulation? How could it be improved?	<p>There is some legislation relevant to Local Government which has been rolled over, and not been thoroughly revised in over 20 years. This does not enable Council's to best adapt to the changing needs of communities</p>

<p>b) Could the current sunseting arrangements be expanded to incorporate primary legislation? What are other options for ensuring that regulatory provisions contained in primary and delegated legislation are fit for purpose?</p>	<p>and business, particularly with the vast development of technologies over this time. Examples under the Local Government Act 1999 include:</p>
<p>c) Are regulations in SA subjected to sufficiently rigorous and frequent ex-post evaluations? How are these conducted?</p>	<ul style="list-style-type: none"> <li>• the requirement for hard copy submission or provisions of information,</li> <li>• the inability for Councils to consider petitions created online (whilst the intention of the signatories is clear, if they do not meet the specific name address etc requirements, Council cannot receive them as petitions which creates distrust within the community and unnecessary red tape)</li> </ul>
<p>d) Should the ten year timeframe applying to the regulatory expiry program be shortened? Should a decision to postpone expiry of a regulation require a full ex-post assessment?</p>	<ul style="list-style-type: none"> <li>• advertising in newspaper circulating the area creating additional cost and effort for Council's (and communities).</li> </ul>
<p>e) What barriers or disincentives exist to repealing or varying regulations once they exist?</p>	<p>In this rapidly changing technology environment, ten years between legislative review does not allow Councils to innovate and support changing community needs or expectations. This timeframe also impacts on the ability for Councils to consider and implement State and Council Strategic objectives which are more visionary in nature, which may limit a councils ability to plan in a visionary manner and realise the potential of Artificial Intelligence and smart cities capabilities.</p>
<p>f) What are the benefits of adopting a 'stewardship' model of regulatory management? How could this be implemented in SA?</p>	<p>PAE supports the SAPC investigation of 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, to highlight the importance "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."</p>
<p><b>Information Request 3.1 - Regulator Structure</b></p>	
<p>a) What type of regulator structure would be leading practice for South Australia? Why and are there any examples? What are the key issues to consider when determining the most appropriate structure for a regulator in South Australia?</p>	<p>A structure which focuses in community (which includes business) outcomes and is assessed against this is suggested.</p> <p>In terms of Councils involvement in the development By-laws, the South Australian Parliament's Legislative Review Committee (which has</p>

<p>b) Given the inquiry terms of reference, the Commission asks for suggestions on which regulators the Commission should focus on for the inquiry and why?</p>	<p>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." A focus on the community outcomes which support economic, social, environmental growth and wellbeing would broaden the ability to implement enabling legislation and policy.</p>
<p><b>Information Request 3.2 - Regulator Practice</b></p>	
<p>a) What are the challenges and opportunities relating to the structure of regulators and the state-wide regulatory framework in South Australia and what changes to structure would improve regulatory outcomes?</p>	<p>Whilst economic growth and support is a priority, PAE has provided feedback to other legislative review enquiries that, at times, Acts and Regulations are framed to support economic outcomes to the detriment of social, safety, wellbeing and environmental outcomes. Implementing additional critical assessment during the development of legislation may assist to get a more balanced outcome. Focus should be more on principles-based legislation and supporting innovation.</p> <p>In supporting the implementation of a principles-based legislation, consideration for a sector wide Regulatory Philosophy that is developed through the LGA. This approach would support consistency across the sector, allow for responsive regulation and also support business/community to respond uniformly with knowledge that the same matter will be dealt with in the same way, noting the variances occur</p>
<p>b) Provide examples in the development of regulations or in regulator practice in South Australia where economic, environmental and social objectives have been balanced to achieve sustainable development outcomes? Are there any areas for improvement?</p>	
<p><b>Information Request 3.3 - Improving Regulator Performance</b></p>	
<p>a) What are some specific examples of good and poor regulator practice in SA? What areas of regulator practice require the most improvement?</p>	<p>PAE has identified there is some overlap, duplication, cost shifting/sharing and confusion in some key Acts and Regulations that impacts local government. An example is the application the Environment Protection Act 1993 and associated regulation and policies. As there are several requirements for specialised technical expertise to be applied before a decision is undertaken under this legislation, and that this expertise are not typically employed or required by Local Government, consideration of the appropriate authority is required. Because there is a lack of clarity and inappropriate assignment of responsibility, we have identified several examples where the legislation has created unnecessary complexity and</p>
<p>b) How well do regulators work together? Are there any examples of duplication or overlapping roles between SA regulators? Between SA and other levels of government?</p>	
<p>c) Do regulators have the right capabilities to administer and enforce regulations effectively?</p>	

<p>d) Do some regulators engage with stakeholders better than others? In what ways could stakeholder engagement be improved?</p>	<p>confusion for community members. This can result in people 'falling through the cracks' in terms of who community members can approach, who is responsible and who is resourced to deliver the requirement of the Regulation or Policy on behalf of the customer. Councils (and therefore communities) may also incur unnecessary legal costs in trying to determine who and how the legislative requirements can and can't be applied.</p>
<p>e) Are there any other issues around specific regulator practices that the Commission should look at more closely?</p>	
<p><b>Information Request 3.4 - Challenges and Opportunities in SA</b></p>	
<p>a) Do SA regulators currently apply a framework or process for monitoring, reviewing and improving their performance? What, if any, key performance indicators or other data do regulators currently collect to measure their performance?</p>	<p>Broader use of State data sets (or creating such data sets) may result in improvements to legislative review. Advancing data analytics across the state may result in KPI's which inform legislative, policy and process decision making to support economic development. This may also enable comparison with other States which can be used to identify examples of good frameworks and practices (establishing evidence) and inform the review process and decision making in the future.</p> <p>PAE continues to work collaboratively with other Councils to advance data analytics capabilities to provide benefit to the community and would support this approach on a broader scale to support outcomes for the community.</p> <p>Establishing ongoing structured relationships between State and Local Government with a focus on legislation and reform may be a more effective method of garnering feedback and continuous improvement, rather than only at the time that the reform is occurring on specific legislation.</p>
<p>b) Are regulator performance review systems adequate in SA? Are regulators transparent when assessing and reporting on their performance?</p>	
<p>c) What measures or processes should the government use, to assess regulator performance effectively?</p>	
<p>d) What steps are required to embed a culture of continuous improvement among SA's regulators?</p>	
<p>e) What are some recent examples of regulatory improvement initiatives undertaken by regulators?</p>	
<p>f) Are there examples of harmonisation of regulations or practice across Australia or opportunities to do so?</p>	
<p><b>Information Request 4 - Regulating for the Future</b></p>	
<p>a) What lessons can be learned from the experience of regulation design, creation and implementation during the COVID-19 pandemic?</p>	<p>PAE believes that the legislative change via the Ministers Notices that have been implemented for the purpose of addressing COVID was appropriate and enabling. The legislation enabled discretion with regard to</p>

<p>b) How responsive is SA's regulatory framework to market disruptions or changes in technology? Provide examples of regulatory arrangements in South Australia or elsewhere that support innovative approaches by regulators.</p>	<p>fee waivers over this time to support businesses. The ability to change a rates structure if a Council wanted to undertake this avenue is available but convoluted and could be improved in the future.</p>
<p>c) What opportunities for improvement to the state's regulatory framework are presented by artificial intelligence, big data, regtech or other technological developments?</p>	
<p>d) What action is required to develop a regulatory system that is more adaptable, an agile and future oriented?</p>	
<p>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 example of good practice?</p>	
<p>f) Are regulatory sandboxes a useful mechanism to support business innovation? Are there examples of the successful use of regulatory sandboxes in South Australia or areas of opportunity?</p>	