



Regulatory burden reduction opportunities

Hospitality Sector

Response from the Local Government Association of Tasmania

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Introduction

The Local Government Association of Tasmania (LGAT) is the representative body of Local Government in Tasmania. Established in 1911, the LGAT is incorporated under the *Local Government Act 1993* with membership comprising 28 of the 29 Tasmanian councils.

The objectives of the Association are:-

- To promote the efficient administration and operation of Local Government in the State of Tasmania;
- To watch over and protect the interests, rights and privileges of municipal councils in the State of Tasmania;
- To foster and promote relationships between Local Government in the State of Tasmania with both the Government of Tasmania and the Government of the Commonwealth of Australia;
- To represent the interests of the members of the Association generally, and in such particular matters as may be referred to the Association by its members; and
- To provide such support services to the members of the Association as the Association may by resolution in meeting determine.

General Comments

This submission has been developed following consultation with member councils and focuses on a number of shared comments and concerns in relation opportunities identified by the Department of Economic Development's Hospitality Red Tape Working Group.

While each opportunity with Local Government identified has been separately addressed; it should be noted that the role Local Government plays in many of these activities is strictly dictated by State legislation. Councils implement legislation developed by Commonwealth and State Governments and often have little control over regulatory activities. While several responses in this submission defer to existing legislative arrangements, it may be possible to streamline several encumbrances via amendment to the initial head of power.

It should also be noted that in undertaking the regulatory activity dictated by State and Federal Governments, councils must work on a cost recovery basis. This is often achieved by an up-front cost, related to initial applications and licensing, which supports later education and inspection regimes. Care must be taken so that centralising or streamlining processes doesn't leave Local Government with an inability to resource the remaining regulatory requirements.

2. Review the impacts of disability access requirements under the Building Code of Australia (BCA) on the hospitality sector in terms of:

- **supporting appropriate new business development in heritage precincts; and**
- **enabling improvements to be made to existing hospitality businesses located in heritage buildings.**

Develop options that better align the restrictions on the development of heritage buildings with the requirements for disability access under the BCA in a Tasmanian context.

Local Government understands how concerns in this area arise but note that councils are currently largely constrained by State and Federal legislation.

It is noted that the Director of Building Control has indicated that he is preparing to review the whole *Building Act* and therefore it is felt that it is an opportune time to be discussing some of these perceived or actual issues.

One council reported to LGAT that a recent discussion between the Building Surveyor's forum and the Director of Building Control touched on Section 117 of the *Building Act* and a Building Surveyor's ability to use his/her judgement in dealing with 'changes of use' particularly as relates to access issues. Concerns were expressed about their ability to achieve compliance and to also seek acceptable solutions for clients (without attracting unacceptable risk for either party).

It seems apparent that there is a need for more guidance in the delivery of compliance with changes of use, specifically with older buildings. There is a need to aim for equitable access for all, and at the same time maximise our building reuse. Consequently almost every 'change of use' has as a major factor of access compliance, which in some cases would be preventing new uses occurring.

In some older planning schemes, the controls exercised with regard to heritage buildings related to exterior works only. Such decisions were made based on legal advice which rested on the legislation and case law of the day and was open to different interpretations. Generally current schemes have no allowance in heritage provisions to exempt disability access. While, this would be one way to reduce 'regulator burden', the provision of disability access to heritage buildings is an aspect of development that requires careful consideration and detailing, perhaps explaining its unsuitability as a class of exempt works.

On March 1 the amendments to the *Historic Cultural Heritage Act* come in to force. As part of this Heritage Tasmania will be issuing new draft exempt works guidelines. These are not available on line as yet but they may contain information of relevance to disability access. Councils will likely align their heritage exemption categories with those of Heritage Tasmania for a range of reasons (consistency, procedural certainty etc). Although councils need to see how it works in practice there may be some reduction in 'regulator burden' when, from March 1, decisions of local planning authorities on heritage places that have Tasmanian Heritage Register listings need to have regard to (and in certain circumstances be consistent with) Tasmanian Heritage Council decisions.

Without seeing the specific examples it is assumed that solutions somehow interfered with the historic integrity of the building. The principles for heritage building conservation and adaptation are well documented. There also must be many examples when it has been done successfully. Heritage Tasmania would be best placed to provide examples of best practice and innovative solutions etc.

Glenorchy Council's Building Coordinator provided LGAT with a copy of the Disability (Access to Premises – Buildings) Standards 2010 (Premises Standards) frequently asked questions which may provide some clarity. They also noted that the Building Code Of Australia is a performance based document therefore alternative solutions may be possible as opposed to D-T-S (Deemed to Satisfy which are prescriptive) provisions. Further information that may be of value may be found at:

<https://www.humanrights.gov.au/frequently-asked-questions-disability-standards-access-premises-standards>

It is noted that currently within the Heritage Council there is an ex Building Surveyor who was heavily involved with the writing and presentation of the Premises Standards. Mr Michael Small now resides in Tasmania and is working as a Consultant. The Red Tape Working Group may wish to make contact with Mr Small if they haven't already done so.

Many Australia jurisdictions have put in place a panel to consider possible hardship applications. These allow for expert assessment and development of alternatives to allow building surveyors, owners, developers and building professionals to apply and have an approval of varied requirement outside the deemed-to-satisfy requirements. Not so much a red tape reduction as a blockage removal mechanism. It does not appear this system was fully embraced in Tasmania and might be an option for consideration. It would allow building surveyors a safe approval of a performance based alternative or consideration of a situation based approval (dealing with a specific use or possible specific disability) thereby having the risk removed. However this would need to be done in a way does not end up with the matter going to the RMPAT appeals system which is costly and slow.

Finally, it is noted that there may be a need to educate tourism and other operators. All too often accessibility issues are seen as holding up development but they are missing out on a huge sector of the community and this will only become more important with Tasmania and Australia's rapidly ageing population. It is also noted that in terms of language, it is accepted best practice is to refer to persons with a disability not disabled persons.

4. Create a single licence to enable temporary food licence holders to sell food at any event in the state for a fixed period (for example, 12 months). This could be in the form of:

- **a State-based licence that is issued centrally (which would require an amendment to the Food Act), or**
- **a licence issued by the vendor's primary council that is recognised for use in other council areas**

There is a high level of support from Local Government for this opportunity. Outlined below are some practical issues that would need to be considered and some possible mechanisms for implementing.

Issues

- A significant area of concern for councils is the potential cost shift. Registration fees cover the cost of inspections, the burden of which would still rest with councils. It begs the question of where the consolidated 'centralised' funds would go?
- There would need to be rigor installed around the assessment of each food vendor and the acceptance of minimum standards. The 'Guidelines for Temporary Food Stalls' would act as a good assessment tool, however these would need to be called up into the *Food Act 2003*.
- Caterers usually produce food with a much higher risk, due to the nature of their business.
- In smaller rural areas that just have the occasional stall/ event with stalls and equipment that just comply, there is concern that should they then want to travel to larger events where the numbers of clients doubles or triples, their stall may not be adequate. Perhaps such licences should only be available to larger regular stall holders who can satisfy the local authority over a period of time.
- There is some apprehension around problems that may occur if an Environmental Health Officer (EHO) has issued a notice to a business owner in one municipality and then they continue to operate without remedying the initial notice in another municipality.

Mechanisms

- Might work for larger regular stall holders if they were registered with an approved laminated copy of a plan that is attached to their licence which would be required to be displayed with the licence.
- Some councils report that with regard to streamlining the food premises applications, they send out the renewal forms with all of the information already held and require only additions or amendments from stall holders.
- Local Government's preference would be for the licence to be issued by State Government or by the vendor's primary council that is then recognised for use in other council areas.
- There should be discussions with DHHS and other stakeholders about how this state-wide certificate could be implemented and also more importantly how the food safety risks associated with the operation would be addressed, noting that the same 'temporary food stall' in different locations/setting can have different risks.
- Inspection regimes and cost recovery mechanisms need thorough consideration.
- Section 88 of the Food Act, which is titled Single certificate of registration for whole State says; "*a certificate of registration of a food business which is conducted in a vehicle issued by one council is sufficient to satisfy the requirement of registration in respect of that food business throughout the state*". As the section states "conducted in a vehicle", food van operators are only required to hold an annual food business registration with their home council. This registration allows food vans to operate anywhere in Tasmania without needing to notify or be registered with other councils whenever they wish to operate at events outside their municipality. It is therefore recommended that the words "or food stall" be added to Section 88. The amended section 88 would then read: "*A certificate of registration of a food business which is conducted in a vehicle or food stall issued by one council is sufficient to satisfy the requirement of registration in respect of that food business throughout the state*".

5. Reduce the information requirements for the annual renewal of a 'Certificate of Registration of a Food Business' by requiring businesses to provide information only in those instances where their circumstances had changed in the last 12 months

There is support from Local Government for this opportunity.

Outlined below are some practical issues that would need to be considered and some possible mechanisms for implementing.

Issues

- The application form is a standard form which is an 'approved form' under the *Food Act 2003*. Councils do not have the authority to amend this form.
- Many councils pre-populate a number of fields in the renewal form. It is very important that a council receives up-to-date contact details and notification any changes to food production/handling as this may impact on the type of registration the applicant requires. Despite suggestions otherwise, it is not uncommon for this type of information to change. Pre-populating the entire application form has been trialled in the past however it was found that this information was not being checked appropriately and 'old information' was left unchanged. Some councils feel the form is not overly onerous and would be apprehensive about reducing the required information.

Mechanisms

- Need to consider mechanisms for invoicing/payment for registration/inspections which are currently charged per business and provide significant revenue to support the regulatory functions of the Environmental Health Officer.
- Amending the *Food Act 2003* to allow registrations to be issued which do not have to expire on the 30 June and extend the term to 18 months would provide a flexibility so that

an applicant taking over a business in March doesn't have to re-apply when licences expire at 30 June, instead have a registration issued until the following 30 June.

6. Consider the merits of introducing consistent minimum public liability insurance requirements for those food-related licences where a certificate of currency is required. (The minimum amount could be aligned with industry standards.)

There is support from Local Government for this opportunity.

It is noted that a many councils already require a Certificate of Currency with a minimum of \$10million for POA events held on council land. There is a common insurer for most Tasmanian councils and hence this is likely to be common and immovable.

Requiring a permit to display a board is a local by-law issue and not a state-wide legislative provision. Many by-laws are under review and largely were developed to address gaps in State legislation. It would be worth having a separate conversation with the Local Government Division of DPAC on by-laws.

7. Engage with Local Government to develop a more consistent approach to smoking restrictions in outdoor dining areas across the state.

There is support from Local Government for this opportunity.

However it is noted that the smoking legislation implemented on 1st March 2012 outlines the requirements surrounding smoking near outdoor dining areas and that many councils opposed council regulation of patrons smoking in outdoor dining areas. This related to (a lack of) resourcing ability and a view that it falls to the business to ensure compliance with the legislation.

Smoke free areas are enforced by state "nominated officers". Some local councils have taken this on with additional by-laws. Early DHHS advice was that council EHO's were not expected to act as nominated officers, but the powers were there to do so, should the council wish. LGAT is not aware that this is common place - with Launceston and Hobart being exceptions. Where councils take on a stronger role it largely relates to strategies developed with communities as part of their legislative requirement to develop strategic plans every 5 years.

The DHHS smoke-free website contains extensive materials, which provide an excellent resource for food business operators.

9. Develop a consolidated check-list of regulatory requirements that businesses need to consider in pursuing a development assessment and related requirements for a new hospitality business venture.

This concept is largely supported and is considered relatively easy in relation to standard requirements such as those contained in the *Building Act 2000* and *Food Act 2003* which remain constant.

However, to provide detailed information from a planning perspective is currently difficult because of the variation of requirements between planning schemes. Some variation will remain even as councils move to the interim planning schemes, prepared using a Common Planning Scheme Template, because of the impact of regional strategies and the effect of State Codes on different areas.

It might mean that the check list can only be of a higher order.

LGAT's advice is always that a business should speak to their local Council at the earliest possible opportunity. They may need Planning and Building permits but not necessarily. It all depends on the work proposed and if any existing use rights exist or what the zoning is. While they will definitely need a food licence, the work required to obtain this can only be ascertained by talking to

the Council's Environmental Health Officer. A simple one pager could provide some narrative around all three approvals to provide some basic understanding, but there is no simple so called checklist that will do away with the need to talk to councils.

10. Work with Local Government to develop and implement cost-effective online payment options for the payment of the annual fee for the Certificate of Registration of a Food Business (and other relevant licence fees administered by councils)

There are many trusted, widely used and readily available online payment systems available. The development of a streamlined payment system is not considered necessary.

The inability to pay online for some councils relates to business process and/or high transactional costs. It's recommended that any focus on facilitating councils to move towards offering an online payment option be directed at:-

- Encouraging councils to provide online payment options across all fees and charges (wider use creates higher level of transactions and better economies of scale)
- Negotiating lower transactional costs for the industry from an existing provider.
- Funding incentives for implementation (i.e. little to no set-up costs if you do it now which was an incentive offered by BPAY View last financial year)

Is really a matter for each council as to how they receive payments. The best that this project can do is to encourage those councils who do not currently provide those facilities to review that approach and work toward electronic payment as an option.

Larger councils are able to be very proactive in this space. For example Launceston City Council is working on the on-line payment option for food licences. They have also offered to participate in the development of an overarching checklist that outlines the range of planning and other requirements that are relevant to new hospitality businesses on behalf of the Sector, under LGAT's auspices.

If this is truly a significant concern, consideration perhaps should be given to a centralised State Government payments portal. However, it is noted that there may be issues around payments which must be accompanied by proof of relevant approvals and/or other information.