



Competition Policy Review Draft Report

**Local Government Association of Tasmania
Submission**

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Contact: Kate Hiscock

GPO Box 1521, Hobart 7001

Ph: 03 6233 5965

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Introduction

The Local Government Association of Tasmania (LGAT, the Association) 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

LGAT would like to thank the Panel for the opportunity to comment on the Competition Review Policy Draft Report (the draft Report) and for the forum held in Hobart, at which the Association was represented. It is unfortunate that LGAT only became aware of the review very late in the process. Consequently the Association has only been able to provide a high level analysis around a number of key issues for Local Government in Tasmania. It would have been preferable for Local Government to have been engaged directly in the process, given that a number of the draft recommendations relate to areas of responsibility for Local Government, in particular planning and zoning and issues relating to the regulation of alcohol.

Specific Comments

2.7 Planning and Zoning

Some comments made in this section of the report trigger thoughts as to the purpose of competition policy, who benefits from the policy, the many definitions of 'consumer' and the role of Local Government. While the productivity commission has found planning processes in Tasmania to be amongst the cheapest and fastest in the nation, it is acknowledged upfront that the Local Government planning system (in Tasmania) is not perfect and there may be cases where commercial activities are constrained by the land use planning system. However, the role of Local Government, at least according to the *Local Government Act 1993* (Tasmania) section 20 is (among other things):

- a) to provide for the health, safety and welfare of the community; and
- b) to represent and promote the interests of the community.

The way councils plan the use and development of space for communities is crucial to achieving sustainability and to ensuring vibrant healthy communities. The land use planning process impacts significantly on how land is used and developed and also impacts on its value (in a range of ways) for future generations. It is closely linked to how communities grow.

Land use planning is the process of deciding in a broad sense which areas of land are available for what purpose. In Tasmania it is described through the Resource Management and Planning System of Tasmania (RMPS). The RMPS¹ is a package of laws, policies and procedures which aims to ensure that all decisions about the use of land and natural resources in Tasmania are based on the same set of principles around ecologically sustainable development. The principal legislation is the [Land Use Planning and Approvals Act 1993](#) (LUPAA).

¹ You can find out more about the RMPS on the website of the Tasmanian Planning Commission. Go to www.planning.tas.gov.au/the_planning_system.

Key legislated objectives of the RMPS include:

- to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and
- to secure pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania.

The planning scheme needs to support and be consistent with State Policies, planning directives and any relevant regional land use strategy as well as with other council policies and strategies such as those providing infrastructure and open space.

The planning scheme comprises:

- Written requirements in respect to use and development in different zones, special areas or areas subject to an overlay; and
- Maps which show the different zones, special areas and overlays.

Currently, all new planning schemes are required to be in a standard template format that was introduced by [Planning Directive No.1](#) in May 2011. The template aims to provide more consistency between planning schemes and greater certainty for developers, business and the community, of the 'rules of development'.

The three Regional Land Use Strategies inform planning schemes in Tasmania, as do state-wide codes which outline mandatory common provisions for use and development. The codes currently deal with issues such as bushfire prone areas and residential standards but in the future will include matters such as landslide, flood prone land and road and railway assets.

Council planning schemes are required to be consistent with the Regional Strategies for the South, North and North-West. The strategies aim to guide development and investment and provide a co-ordinated approach to infrastructure aligned to identified future needs.

Currently, the Tasmanian land-use planning environment is in a state of flux pending State Government commitment to significant reform, including the establishment of a single state-wide planning scheme. The goal is faster, fairer, cheaper, simpler development.

With all that in mind we would dispute the draft Report notes on page 32, Part 2, that the Panel has concerns that in regards to planning and zoning there is an "overly localised focus" and that "without a clear shift away from a planning and zoning focus on specific residents or existing businesses, all other members of the community are likely to pay higher prices and have fewer choices into the future". We also note that in Draft Recommendation 10, the panel suggests that principles in regards to competition policy to be adopted as part of planning and zoning objectives should focus on "the long-term interests of consumers generally (beyond purely local concerns)".

Regardless that a robust planning system provides for numerous community outcomes in a strategic fashion, Local Government would not seek in any way to cause its community members to have fewer choices or pay higher prices, however councils have a legislated responsibility to take into account the broader interests of their municipal residents. One only has to think of the many stories of the negative impacts of the big supermarket chains entering small towns, wiping out local small business, offering less variety and offering no cost savings to the local community. While this may all be fair and good under National Competition Policy, when Local Government considers the weighting of principles in its planning and zoning objectives, it is obliged to prioritise local interests and for good reason.

Further, under the Tasmanian *Local Government Act 1993* the associated *Local Government (General) Regulations 2005*, Tasmanian councils also have an obligation to enhance the capability of local business where possible. This is generally addressed through procurement and tendering codes and guidelines, where councils are encouraged to offer local businesses the opportunity to participate (or not prevent them from participating) in procurement and tendering processes. It should be noted however, that safeguards exist to prevent preferential treatment of local providers where it cannot be reasonably justified.

8.8 Liquor and Gambling

The importance of Local Government having the capacity to represent local interests through planning and zoning is particularly important when it comes to issues such as Liquor licensing. Liquor licensing and planning and zoning matters in relation to the regulation of alcohol sales and consumption in Tasmania is an issue of great concern to Tasmanian councils.

Alcohol has the potential to cause significant social harm to individuals and broader communities. Each day in Australia, 15 people die and 430 are hospitalised due to alcohol misuse (FARE Submission to Competition Policy Review, 2014). Increases in the availability, affordability and promotion of alcohol are widely understood to increase social harms. Consequently, liquor should not be treated the same as all other commodities.

LGAT is pleased to see the Panel acknowledge that "the risk of harm to individuals, families and communities from problem drinking (and gambling) is a clear justification for regulation" (draft Report pg 109, part 3). While LGAT notes that the Panel's recommendation is for ongoing review to ensure that the regulations are meeting their stated objectives, the Association calls for caution in such a process, particularly if combined with a review of planning and zoning and the capacity of a council to represent the needs of its local community.

A current review of the Tasmanian *Liquor Licensing Act 1990* has seen broad calls for the introduction of harm minimisation as a key objective of the Act. As part of its submissions to the Tasmanian Government, LGAT identified the many concerns councils currently hold in regards to how liquor sales and consumption are regulated and enforced in Tasmania. In some cases, Local Government is unable to prevent the establishment of further liquor sales outlets or licensed premises due to the restrictions in its own planning schemes (where the planning scheme allows for broad business or commercial zoning allowing multiple liquor outlets) or a where there "the best interests of the community" test as applied by the State Government Licensing Board is perceived to prioritise competition and business needs over principles of harm minimisation for the community.

As part of the review of national competition policy Local Government in Tasmania would not want to see any weakening of regulations that govern the sale and supply of alcohol including:

- Removing restrictions related to planning and zoning for alcohol outlets
- Further re-regulating retail trading hours; and
- Reducing constraints on supermarkets being able to sell alcohol.

As discussed in the previous section, Local Government has a legislated responsibility to provide for the health, safety and welfare of the community. On an issue such as the regulation of alcohol consumption and sales Local Government would strongly protest the prioritisation of competition to the detriment of the welfare of local communities.

2.9 Competitive Neutrality

Local Government in Tasmania has strived to comply with competitive neutrality policy. Changes in competitive neutrality policy, however, remain an area of high resourcing demand for some, particularly smaller, Tasmanian councils. The burden of work is primarily at the level of implementation and consequential amendments to regulations and by-laws as a result of compliance with competitive neutrality policy.

Additionally, in some cases, meeting the demands of competitive neutrality has required councils to change the way they deliver some services or introduce charges to services that were previously offered at no charge. While councils are meeting their obligations in regards to National Competition Policy, changes have not been received well by all members of the community, particularly where consumers have to pay for a service that was previously free of charge. This can cause significant local economic impacts as Councils were not offering such services with a view to competing, but rather filling a gap to ensure the economic benefits of tourism were not lost to local communities.

As a specific example, the application of competitive neutrality policy in regards to caravan parks and road side camping used by motor homes has been particularly laborious for Local Government in Tasmania. Individual councils, LGAT and the State Government have spent many hours attempting to develop a model by-law in order to provide simplicity and consistency for the consumer, including engaging with many stakeholders. Without direct resourcing however, significant challenges have been encountered particularly in regard to the task of identifying and amending the many different by-laws and model by-law has proved too difficult to achieve.

Based on the experience in relation to roadside camping and caravan parks in Tasmania, any review of competitive neutrality policy recommended by the Panel, needs to take into account the resourcing demands it will place on councils in terms of reviewing and implementing policy changes. What may be simple at the policy level in regards to principles of National Competition Policy, may not be seen by the consumer as being in their best interests. This is exacerbated by the fact that more often than not, councils bear the brunt of consumer and stakeholder frustration.