



MINISTER FOR THE ENVIRONMENT



In response please quote: MOF24684

Mr James Cox
Chief Executive Officer
Independent Pricing and Regulatory Tribunal
(Attention: Lil Cullen)
PO Box Q290
QVB Post Office NSW 1230

4 - SEP 2006

Dear Mr Cox

Re: Regulation Review

Thank you for the opportunity to comment on IPART's draft report "*Investigation into the burden of regulation and improving regulatory efficiency*".

A number of the report's specific recommendations in section 5 relate to matters in which the Department of Environment and Conservation (DEC) is directly involved. The following additional information may be of assistance to IPART in finalising the report and recommendations in these areas.

Personal liability for directors p170

As noted in the draft report, the Government has recently taken steps to revise defences which apply to directors of corporations that commit offences under the *Protection of the Environment Operations Act 1997*. The table included on page 170 of the draft report compares defences in environmental laws across Australia. DEC recommends that the analysis of defences relating to "due diligence" and "reasonable steps" be combined as they involve essentially the same thing, ie due diligence relates to taking reasonable and practical steps to prevent the occurrence of an offence. Rather than using the phrase "due diligence" some legislation will specify that "reasonable steps" need to be taken.

Planning and development assessment

DEC is supportive of measures to reduce the complexity of the planning process, including measures to streamline processes for ensuring that concurrence requirements are made plain in Local Environment Plans as suggested in recommendation 58.

We suggest, however, that your report should acknowledge the major reforms already implemented by the Government in the *Threatened Species Conservation Act 1995*, where the Minister for the Environment is now able to grant Biodiversity Certification to large area Local Environmental Plans. Certification has the affect of 'switching off' site by site threatened species assessment, where the Minister determines that the overall result of plan implementation will be the maintenance or improvement of biodiversity values.

The report should also refer to the recent reforms of the *Environmental Planning and Assessment Act 1979*, particularly the addition of a new Part 3A. Under this part, the Minister for Planning becomes the sole decision-maker for the Government, and concurrence from other portfolios is no longer required. Part 3A applies to the assessment of a wide range of significant development proposals. The Department of Planning could provide further details.

Water Utilities Reporting

The NSW public places a high value on a quality water supply, and it is important that any proposals to reduce regulatory complexity do not compromise environmental and social objectives. In particular, human health objectives, ecosystem functioning and low cost water provision are distinct objectives and require different expertise. Consequently, some measure of regulatory complexity is inevitable.

Notwithstanding this, recommendation 67 which supports the establishment of an inter-departmental working group to streamline reporting requirements would be a positive step. Such a committee could establish benchmarks that are necessary, meaningful and justifiable on the basis of overall benefit to the community.

I trust this information will be of assistance. If you require further information or clarification, please do not hesitate to contact the Director of Environmental Innovation, Jenny McAllister on 9995 6202.

Yours Sincerely



Bob Debus