



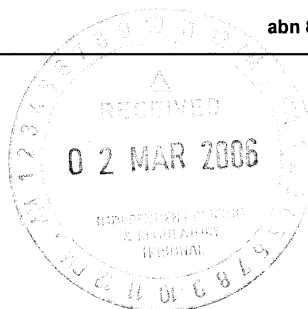
Council of Social Service of New South Wales

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1 March 2006

Investigation into the Burden of Regulation in NSW
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230



Dear Madam/Sir

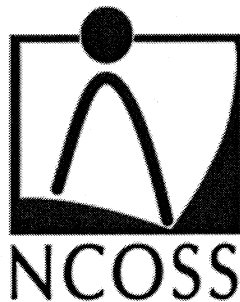
Please find enclosed a submission prepared by the Council of Social Service of NSW (NCOSS) in relation to the Investigation into the Burden of Regulation in NSW and Improving Regulatory Efficiency.

If further information is required please contact Dev Mukherjee, Senior Policy Officer, on 9211 2599 ext 130, or by email dev@ncoss.org.au.

Yours sincerely

Gary Moore
Director

**Submission to the
Independent Pricing and Regulatory Tribunal
Investigation into the Burden of Regulation
in NSW and improving regulatory efficiency**



February 2006

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1. ABOUT NCOSS

The Council of Social Service of NSW (NCOSS) is the peak body for the social and community services sector in New South Wales. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in NSW. It was established in 1935 and is part of a national network of Councils of Social Service, which operate in each State and Territory and at the Commonwealth level.

NCOSS membership is composed of community organisations and interested individuals. Affiliate members include local government councils, business organisations and Government agencies. Through current membership forums, NCOSS represents more than 7,000 community organisations and over 100,000 consumers and individuals. Member organisations are diverse, including unfunded self-help groups, children's services, youth services, emergency relief agencies, chronic illness and community care organisations, family support agencies, housing and homeless services, mental health, alcohol and other drug organisations, local indigenous community organisations, church groups, and a range of population-specific consumer advocacy agencies.

NCOSS provides an independent voice on welfare policy issues and social and economic reforms. It is the major coordinator for non-government social and community services in NSW.

2. INTRODUCTION

The Independent Pricing and Regulatory Tribunal (IPART) *Issues Paper* states that regulation is a tool of government to deliver social, environmental and economic goals of the community. NCOSS agrees with this statement and highlights that many of the goals of regulation relate to fairness, equity and the protection of the disadvantaged.

Table 5.1 of the *Issues Paper* lists several rationales for introducing regulation such as monopoly control of a market, externalities, and scarcity and rationing. In these cases government regulation improves service provision to protect the vulnerable. For example, social obligations ensure essential services such as electricity are not disconnected without some assistance being offered to those in hardship.

The *Issues Paper* states that aim of regulation is "to achieve its policy intent at the least cost and with the greatest benefit to the community". It is inherent in the nature of regulation that there is a need to balance interests. For example, consumer protection legislation seeks to ensure that consumers not disadvantaged due to information asymmetry. What is 'red tape' to some is protection for others.

NCOSS believes that some regulation across government, non-government and private sectors should not be regarded as a 'burden' but a necessary 'cost of doing business' in order to fulfil financial, social and environmental goals and accountabilities. There may be ways to improve the effectiveness and appropriateness of regulation and to minimise costs, but in some industries (such as child care) regulation is not a burden but essential to establishing a minimum standard of service. Some industries are too important to be left to the vagaries of the market.

In this submission, NCOSS outlines the regulatory burden in the priority areas of the not-for-profit sector, consumer protection, and planning and development. The submission does not go into details on each area of regulation but highlights the main issues involved. If Tribunal adopt any of these areas as a priority for further investigation, NCOSS is in a position to provide further details.

3. NOT-FOR PROFIT SECTOR REGULATION

The not-for-profit sector contributes between five and six per cent of the Gross State Product of NSW. There are approximately thirty-six thousand not-for profit organisations in NSW, of which around thirty thousand are incorporated associations, five thousand not-for-profit companies and one thousand cooperatives.

The not-for-profit sector contributes around five percent of Gross State Product to the economy of NSW. In human services the not-for-profit sector is critical to the well being of many disadvantaged people including the frail-aged, people with disabilities, people with mental illness, victims of violence and abuse, the homeless etc.

Burden of regulation

Incorporated Associations are established and operate under the NSW *Associations Incorporations Act 1984* and related regulations. Cooperatives are established and operate under the *NSW Co-operatives Act 1992* and regulations. Both incorporated Associations and co-operatives are regulated by the NSW Office of Fair Trading in the Department of Commerce. The not-for-profit companies fall under Commonwealth corporations law and are regulated by the Australian Securities and Investments Commission. Government funding requires organisations to be incorporated within one of these systems.

All this legislation includes governance and accountability requirements to members of the associations, co-operatives or companies as well as the regulators. The NSW legislation is less stringent in its reporting requirements to the regulators than the Commonwealth's *Corporations Act 2001*.

Most government funding programs have service standards and accreditation requirements that aim to maintain the quality, appropriateness and cost efficiency of the service. Often service standards include financial viability and reporting requirements including audited financial statements. If the organisation receives grants from two separate programs even within a single department these must be accounted for separately and have individual audit statements.

Further, there is not yet an agreement between NSW government human service departments concerning their accreditation systems and standards. There is more work needs to be done to achieve a set of generic standards for human services in NSW.

The regulatory burden for the not-for-profit sector is increased by a lack of standard definitions for accounting purposes. Australia does not have national accounting standards for not-for-profit organisations, unlike many other OECD countries. Although the NSW Government has been making some progress to simplify the human services grants administration processes, there is limited consistency in accounting categories and terms required by government departments in their funding agreements.

Programs that are jointly funded by the Commonwealth and State governments have an added degree of complexity. One such program is the Home and Community Care (HACC) Program, which is a joint Commonwealth and State program. Sometimes issues arise from joint programs such as slow approval processes and unnecessary duplication. There is attempt to address some of the issues in the HACC program through the national Community Care Review (The Way Forward) process.

The Tribunal should note that not all areas with both Commonwealth and state systems add to the burden of regulation. Childcare is one area of such critical importance that it is appropriate for both the Commonwealth and NSW governments to have regulatory function. The NSW Government licenses childcare services to establish minimum standards that ensure childcare services provide safe and appropriate care and educational environments for children. The Commonwealth has established an accreditation system that supports continuous improvement in the quality of childcare provided. It might be argued that having two systems adds to the burden of regulation and presents a barrier to entry for providers. However, the two systems are complementary with the state based regulations operating as a basic platform from which the Commonwealth's quality improvement can build.

Cost of regulatory burden

The cost of regulatory burden faced by a not-for-profit depends upon the activities of the organisation and its funding sources. Those with significant government funding have a significant administrative burden to meet

accountability requirements. For example, it has been estimated that community care services spend 50% to 60% of their time with accountability procedures rather than providing direct services. This is not an uncommon complaint amongst those working in human services.

More often than not, the cost of the administration is held by the organisation. The cost of accreditation can be high and many organisations need to undergo this process on a regular basis. Many not-for-profit organisations in receipt of government funding do not receive sufficient government funding to meet the level of service required and the administrative burden. Any shortfall is made up from fund-raising or voluntary staff contributions.

Enhancing the regulatory framework

Streamlining and enhancing the regulatory framework within which the not-for-profit sector operates should enhance service provision and community outcomes. Many not-for-profit human services organisations receive public money for service provision. NCOSS does not believe that there should be less accountability for the expenditure of this money; however, reducing the burden of accountability without removing the degree of accountability has the potential to save money which can be re-invested into service delivery.

One possible solution is to enhance the *Associations Incorporations Act 1984* to improve the financial and management accountability required under this Act, thereby standardising the requirements across the sector to an acceptable level. The Office of Fair Trading would need to develop its systems to ensure adherence to the Act. Government departments with funding responsibilities could then focus on service standards and client outcomes rather than financial and governance processes. Work also needs to be done to streamline the significant number of standards and accreditation systems, many of which focus on the same client group.

Another possible solution is to develop a single national regulatory body such as the Charity Commission in the UK. The UK Charity Commission was established as the regulator and registrar for charities to increase charities' effectiveness as well as public confidence and trust. The Commission requires regular reporting on governance and financial accountability. For a similar system to be established in Australia would require agreement by all states, territories and the Commonwealth governments.

4. CONSUMER PROTECTION

Consumer protection is a potentially controversial area of regulatory reform that the Tribunal may wish to consider. Many service and retail industries believe they are over burdened by regulation because they have particular pieces of legislation that govern the operation of that industry in addition to the *Fair Trading*

Act 1987 and associated regulations. Legislation dealing with particular industries includes the *Credit Act 1984*, the *Fitness Services (Pre-paid Fees) Act 2000*, the *Retirement Villages Act 1999*, and the *Residential Parks Act 1998*. Some industry bodies may consider the industry specific regulation to be a burden. However, NCOSS believes that in certain essential services industry specific regulation is necessary and can improve the operations of the market and better balance the needs of consumers and providers. In particular, vulnerable consumers need better protection from unscrupulous business operators in essential services.

It might be argued that there is some Commonwealth/state duplication of consumer protection effort with the NSW Office of Fair Trading and the Australian Consumer and Competition Commission (ACCC) both having a role. In practice, many industries and firms slip through the gaps in regulation. For example, the funeral industry has seen an increased concentration of ownership and substantial rise in prices. These are issues not dealt with by the NSW Office of Fair Trading and the ACCC has not undertaken an investigation into the funeral industry.

The funeral industry is an example of an essential service that could be improved by industry specific regulation.

Burden of regulation

In consumer protection the burden of regulation, or the lack of it, falls on the consumers. Firms are able to take advantage of information asymmetries and limited competition between firms. The funeral industry is one significant example as the price of funerals tripled between 1992 and 2002. The price increases are a consequence of increased concentration of ownership, vertical integration, and the hard sell tactics of some unscrupulous funeral industry operators. Often funeral directors do not list specific items in a funeral but provide a single price or limited list of fees and charges.

These issues arise because consumers, who are the families and friends of the deceased, are usually in vulnerable positions and tend to lack knowledge concerning funerals. This information imbalance enables some funeral industry operatives to use exploitative strategies to increase the price and reduce costs by not following the instructions of the deceased's family and the regulatory requirements. In particular, there is lack of clarity about the price of funeral services and the total price of the funeral.

Cost of the regulatory burden

NCOSS recognises those industries with specific regulatory framework impose additional costs on firms and hence consumers. However, these additional costs need to be balanced against the cost of having no specific regulation. Lack of

regulation in an industry can impose greater costs on consumers than having regulation.

The funeral industry is an example. There are around forty-four thousand funerals in NSW each year. The average price of a funeral is around \$5,000 to \$6,000 meaning the industry is worth at least \$220 million per annum in NSW. The price of funerals has increased dramatically as is likely to rise further as the population ages. The costs arising from a lack of consumer protection fall hardest on low-income earners who are least able to afford cost of even a basic funeral.

Enhancing the regulatory framework

NCOSS believes that consumer protection regulations should be improved generally using 'smart' regulatory frameworks for essential services. This consists of elements of government regulation through registration or licensing systems and self regulation through codes of conduct and independent complaints mechanisms. For example, NCOSS believes that funeral industry would benefit from a regulatory system comprised of Code of Conduct (including price lists), an industry ombudsman scheme, and a registration or licensing system that ensure adherence to the code and membership of the ombudsman scheme. Detail on the regulatory approach can be found in the NCOSS submission to the NSW Legislative Council Social Issues Committee Inquiry into the Funeral Industry and can provided to the Tribunal if desired. Many of the proposals contained in the NCOSS submission were adopted by the Social Issues Committee in its report on the Funeral Industry.

Some consumer and industry bodies may be critical of this approach as regulation is seen to increase barriers to entry in the industry thereby reducing competition and increasing price. This is especially true when the aim of regulation is to set minimum standards of operation and service. Inability to meet these minimum standards prevents entry to the market by new firms and significant or continual breaches can mean exclusion by the removal of a license to operate. However, the Tribunal should be cognizant of the balance required between raising barriers to entry the need to protect consumers and other social goals such as public health.. In the case of the funeral industry in NSW there is already a significant concentration of ownership and hence regulation should focus on protecting consumers from the effects of this concentration.

A good licensing system should not significantly raise barriers to entry into the market or further driving small firms out of the market or significantly raising the price. A well designed licensing system can actually increase the level of competition by improving information available to consumers (e.g. via clear price notices). For example, NCOSS does not propose to require funeral directors to own a mortuary as this will require greater capital investment and so limit entry to the market of small firms. Such conditions do not relate to service standards or

operational standards as funeral directors can buy in these services and so these should not be requirement for gaining a funeral industry license.

5. PLANNING AND DEVELOPMENT REGULATION

Planning and development is one of the most complex areas of regulation within NSW and one of the most important. NCOSS is aware that the NSW Government has commenced a process to streamline the planning system in NSW. This includes reducing the number of state environmental planning policies and regional environmental plans and ensuring that there will be one local environmental plan for each local government area. NCOSS welcomes these initiatives provided the objectives of economic, social and environmental sustainability are maintained and enhanced. NCOSS is concerned that the social impact of development and social infrastructure has not been sufficiently incorporated into the planning reforms.

Burden of regulation

A good planning system is one characterized by probity, transparency, consistency and timeliness, and that enables community views to be heard. The main instrument for planning and development in NSW is the *Environmental Planning and Assessment Act 1979*. This legislation includes social aims such as the provision and maintenance of affordable housing and the provision and co-ordination of community services and facilities. Several State Environmental Planning Policies (SEPP) outline the NSW Government's priorities for the social sustainability of NSW (e.g. SEPP 70 Affordable Housing (Revised Schemes) and SEPP (Seniors Living) 2004).

Local governments have a major role in planning through Local Environmental Plans (LEPs) and approving development applications. Local governments also have to prepare a social or community plan to address the needs of designated target groups within their community. These designated target groups include people with disabilities, children, young people, Aboriginal people, people from culturally and linguistically diverse backgrounds, women and older people. Each council must prepare and submit a social/community plan, at least once every five years.

Some developments require social impact assessments. The sale of alcohol and gambling are licensed activities. Any development to licensed premises requires the preparation of a social impact assessment before the license is granted.

The issue of timeliness is one that the NSW Government has sought to improve with proposed changes to planning system by setting time limits or benchmarks for councils. Provided the benchmarks are reasonable and probity and transparency are maintained, benchmarks can be beneficial. Councils have also been criticised for rejecting development applications, contrary to planning

advice, simply to placate people, knowing the decision will likely be overturned on appeal by the Land and Environment Court. Finally, there is a significant the number of different (and highly complex) definitions that individual councils adopt in their zoning schemes. If these could be rationalised and standardised that would be a good outcome.

One solution has been to have the Minister too 'call in' matters for his approval. However, this creates the risk that consistency, transparency and probity might be reduced rather than increased. Where there are considered to be systemic problems that lead the Minister to act, the preferable course should be provide better guidance to decision makers, through SEPPs, regulations, Ministerial directions, practice guides etc. This should be the key role of the Department of Planning.

The industry has also claimed that some developer levies have grown out of control and question if the money raised is being properly spent. The Minister's response is to invite the industry to complain to him on a case by case basis. A better way would be to have an expert group test the accuracy of the complaints and provide policy options in response. There are already caps on various forms of levies but the reasonableness of these could be reviewed. NCROSS would be happy to require councils to open the books, and show how much they have raised and spent out of developer levies.

The burden of regulation falls on local government and developers without clear guidelines for social infrastructure development. Residents also have a burden if social infrastructure is not developed in a timely and effective manner.

Cost of the regulatory burden

Although developers face significant regulatory restrictions, they will pass on the costs of the regulation through higher prices. Although difficult to measure, the community bears the brunt of unclear development rules through insufficient social infrastructure development such as public transport, health and community services, and education facilities.

Enhancing the regulatory framework

Although the area is complex, NCROSS believes that improvements to the planning process could be achieved through an amendment to the *Environmental Planning and Assessment Act 1979* that requires local government to include social infrastructure development and social planning in their Local Environment Plans.

Improved planning by the NSW Government should ensure better social outcomes as well. Benchmarks and performance reporting for social infrastructure should drive better performance. Too often planning policies are not carried through. For example, a significant gap in State Environmental

Planning Policies is the provision for local integrated transport planning. SEPP 66, the NSW integrated land use and transport planning policy, was released in 2001 in draft form, with no indication that this will be finalised in the future. Improving local urban planning regulation to take into account mobility, access and transport issues is crucial in order to improve connectivity to jobs, services and education, and promote environmental sustainability. The number of draft LEPs, DCPs, SEPPs, and housing schemes that were never put into effect, despite going through a time consuming and expensive consultation process, should be public information. Were such information more widely disseminated people would start asking why does this happen.

6. CONCLUSION

The regulatory frameworks in the priority areas of the not-for-profit sector, consumer protection, and planning and development could be substantially improved.

Streamlining and enhancing the regulatory framework within which the not-for-profit sector operates should enhance service provision and community outcomes. This involves an enhanced *Associations Incorporations Act* and a concerted effort by the NSW Government to streamline standards and accreditation systems.

Consumer protection regulations should be improved generally using 'smart' regulatory frameworks for essential services involving combinations of government regulation to set minimum standards and self regulation through codes of conduct and independent complaints systems.

Finally, improvements to the planning process should be achieved through an amendment to the *Environmental Planning and Assessment Act 1979* that requires local government to include social infrastructure development and social planning in their Local Environment Plans.

NCOSS believes that these are areas in which the Tribunal may assist in the development and well-being of the residents of NSW if they are adopted as a priority for further investigation.