

Towards better local regulation – Final report A focus on Māori issues

July 2013



This *Cut to the chase* report highlights findings from the inquiry that the Commission considers are of most likely relevance to Māori.

Local regulation

Local councils have a big influence on the success of communities and local economies. A large and diverse set of regulations is managed by councils. They cover things like urban development, building safety and standards for air quality, right through to dog control and food safety. It is critical to community wellbeing, and New Zealand's overall performance, that these local regulatory systems perform well.

The relationship that Māori have to their maunga, awa, taonga and wāhi tapu means that they have a special interest in local regulations. Likewise, Māori groups are a significant community of interest for local authorities, to whom (unlike other groups) there are specific statutory obligations for inclusion in decision making.

The obligations of local authorities toward Māori in carrying out regulatory functions under the Local Government Act 2002 (LGA) and Resource Management Act 1991 (RMA) were the main focus of the Commission's assessment summarised below.

Key issues and challenges

- The LGA recognises the Crown's obligations under the Treaty of Waitangi by placing obligations on local authorities to facilitate participation by Māori in decision-making processes. Although the Treaty relationship is between iwi and the Crown, iwi are also significantly affected by the regulatory functions conferred on local authorities.
- It is the Crown's responsibility to interpret its obligations under the Treaty and to translate these into policy and procedural requirements for local authorities. There is a question about whether or not the policy and procedural requirements in the RMA and LGA satisfy the Crown's responsibility with respect to facilitating participation by Māori in local authority decision making.
- Where Māori have a kaitiaki interest in regulation, local authorities are challenged to effectively mesh two governance systems in a way that works for both parties and the community.
- A kaitiaki relationship is more complicated than a strict question of who owns or who regulates a resource. Māori might have a kaitiaki relationship with an environmental feature that they do not have a legal property title to (notwithstanding native title claims).
- Involvement in regulatory processes by Māori – whether related to design or implementation of regulation – often demands a level of capacity, and sometimes capability (depending on the issues), that is not often present in local Māori groups.

Key opportunities

- **The Government needs to:**
 - better recognise the context described just above, i.e. take better account of what capacity and capability exists within Māori groups to be properly involved;
 - better take into account any relevant kaitiakitanga relationships when developing and reviewing regulations; and
 - better evaluate whether or not regulations are having the desired effects and fulfilling Treaty obligations.
- **Local authorities need to:**
 - determine the appropriate level of recognition for kaitiakitanga in the way regulations are designed and/or implemented at local government level;
 - ensure a greater range of support is available to Māori representatives in decision making where needed, including guidance on procedural requirements and governance principles (including management of conflicts of interest);
 - work together with Māori to gather and evaluate feedback relating to regulatory decision-making processes and implement improvements to ensure effective participation of Māori is realised; and
 - share and build on leading practice across local government to deepen relationships with local iwi (see below).

Good practices

Involving Māori in local authority decision making provides an important opportunity for communities to better define what regulations mean when mandated from central government. There are good examples of effective involvement, though the degree and quality varies significantly across the sector, including through the following mechanisms:

- **Co-management:** a spectrum of arrangements from information provision and consultation at one end, to full decision making and control at the other.
- **Iwi representatives or commissioners on council committees:** including appointment of iwi commissioners in council governance structures for significant land, water and environmental matters, as well as tangata whenua representation on joint committees.
- **Joint planning committees and management agreements:** including involvement of Māori in the development stage of regulations.
- **Informal processes:** the value of using informal processes for consultation and information sharing were highlighted – allowing flexibility in plans and working arrangements depending on the nature of the particular issues.

Broader inquiry recommendations

The Commission's broader recommendations for improving local regulation included:

- **a set of principles** for helping to decide what regulations, and which parts of implementing regulation, are best performed by Government or councils;
- **use of standardised formats** and increased transparency to better demonstrate how key council regulatory decisions have been made;
- **more focus on costs and benefits**, when government departments are preparing new regulation intended to be implemented by councils, including where costs and benefits will 'fall'; whether or not councils have the capability and capacity required to effectively implement new regulation; and the likely costs of building that capability and capacity where it does not exist;
- **the development of a 'Partners in Regulation' protocol** to better guide Government/council engagement;
- **new or enhanced joint Government/council forums** established for regulatory overseeing improvements; and
- **greater use of risk-based approaches to monitoring and enforcement** of regulation by councils, together with enabling greater use of infringement notices to support regulations in place of more costly formal prosecutions.

The way ahead

The Finance Minister Bill English tabled the Commission's report in Parliament in May 2013. The Government will respond at a later date, once the report has been considered in full.

To find out more

To find out more about local regulation and Māori, see Chapter 9 of the full inquiry report *Towards Better Local Regulation* at www.productivity.govt.nz/inquiry-content/local-government

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