Local government compliance and enforcement

Regulation Review — Draft Report
October 2013
Local government compliance and enforcement

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October 2013
Invitation for submissions

IPART invites written comment on this document and encourages all interested parties to provide submissions addressing the matters discussed.

Submissions are due by 4 July 2014.

We would prefer to receive them electronically via our online submission form www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission.

You can also send comments mail to:

Regulation Review – Local Government
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

Late submissions may not be accepted at the discretion of the Tribunal. Our normal practice is to make submissions publicly available on our website <www.ipart.nsw.gov.au> as soon as possible after the closing date for submissions. If you wish to view copies of submissions but do not have access to the website, you can make alternative arrangements by telephoning one of the staff members listed on the previous page.

We may choose not to publish a submission—for example, if it contains confidential or commercially sensitive information. If your submission contains information that you do not wish to be publicly disclosed, please indicate this clearly at the time of making the submission. IPART will then make every effort to protect that information, but it could be disclosed under the Government Information (Public Access) Act 2009 (NSW) or the Independent Pricing and Regulatory Tribunal Act 1992 (NSW), or where otherwise required by law.

If you would like further information on making a submission, IPART’s submission policy is available on our website.
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1 Executive summary

Regulation is one of the key tools government uses to achieve its economic, social and environmental objectives. However, it must be well designed, targeted and efficiently administered, so that it achieves its objectives at least cost to society. If regulation is inefficiently or ineffectively designed or administered, it imposes unnecessary costs on business and the community.

In recognition of the benefits of reduced regulatory burden, the NSW Government has a target of $750 million in reduced ‘red tape’ costs for business and the community by June 2015.¹

To help achieve this target, the NSW Government has engaged IPART to undertake a review of local government compliance and enforcement activity in NSW. This is the first in a series of red tape reviews IPART will be undertaking on behalf of the NSW Government.

Our recommendations in this Draft Report are expected to:

- reduce red tape to businesses and individuals by at least $177.7 million per year
- save councils an estimated $42.4 million per year
- save the NSW Government an estimated $1.3 million per year, and
- provide an estimated $220.5 million per year in net benefits to the community of NSW.²

These recommendations relate to improving the existing stock of regulation currently in force in NSW.

¹ Premier’s Memorandum, M2012-02 Red tape reduction - new requirements, February 2012.
² The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 4-5.
In addition, our recommendations also aim to prevent the imposition of new regulation which does not result in a net benefit to NSW. Our recommendations would avoid a further $48 million, per year, by preventing new red-tape over the next 10 years. Overall, this would provide a net benefit of $21 million to businesses and the community, taking into account:

- the loss of community benefits that could potentially be gained from new regulation
- no estimated change in costs to local councils, and
- an increase in costs to the NSW Government.

### 1.1 What has IPART been asked to do?

The full Terms of Reference (ToR) for this review are provided at Appendix A. Under these ToR, IPART is to examine local government compliance and enforcement activity (including regulatory powers conferred or delegated under NSW legislation) and provide recommendations that will reduce regulatory burdens for business and the community.

We must consider:

- ways to improve governance of local government compliance and enforcement activities – including local government roles relative to, and interactions or coordination with, the NSW Government
- ways to improve the capacity and capability of local government to undertake their regulatory responsibilities
- ways of improving the quality of regulatory administration by local government – including consistency of approach, economies of scale and mutual recognition across local government areas
- the ‘culture’ of regulatory services – including the extent to which local government considers and understands best practice regulatory principles and approaches (such as consideration of the economic impacts of their regulatory actions)
- issues relevant to priority regulatory areas – including building and construction, parking and road transport, public health and safety, environmental regulation, planning and companion animals management
- best practice approaches to local government compliance and enforcement activity in NSW and other jurisdictions

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4. Ibid.
5. Ibid.
Executive summary

Local government compliance and enforcement

- the merits of NSW adopting leading practices identified by the Productivity Commission in its 2012 report *Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator*
- ways to ensure regular assessment of regulatory performance
- changes to local government regulatory services to maximise the opportunities arising from the current review of the NSW planning system.

We must also:

- identify the nature and extent of key regulatory functions undertaken by local government
- identify differences in approach across local government areas
- identify areas of local government compliance and enforcement with the greatest regulatory impact on business and the community
- ensure that our work complements the review of the *Local Government Act 1993* (NSW) (the LG Act)
- provide recommendations that would produce net benefits for NSW
- provide estimates of the reduction in regulatory burden for NSW business (especially small business) and the community from our recommended reforms
- provide estimates of the budget implications for the NSW Government from our recommended reforms.

1.2 How IPART has approached the task

In NSW, local government compliance and enforcement responsibilities are extensive and diverse (see Box 1.1 below). They arise under the LG Act and an array of other State legislation. We have determined that councils have 121 regulatory functions, involving 309 separate regulatory roles, emanating from 67 State Acts, which are administered by approximately 31 State agencies.6

Therefore, there is considerable merit in finding ways to reduce unnecessary costs on business and the community that arise from how councils go about their compliance and enforcement activities.

The focus of this review is on how local government in NSW implements and enforces regulations. However, we have also considered the design or provisions of regulations to the extent that they impede efficient and effective implementation and enforcement practices.

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In undertaking this review, we have sought to identify:

- those local government compliance and enforcement practices that are imposing unnecessary regulatory burdens on business and the community
- best practice principles and approaches in relation to implementation and enforcement of regulation, for local councils to apply
- measures to assist councils in undertaking best practice implementation and enforcement of regulation
- impediments to efficient and effective local government implementation and enforcement of regulation.

We have also considered:

- the role of local government relative to the State Government in implementing and enforcing key areas of regulation – including the extent to which there is effective coordination and cooperation between both levels of government
- the extent of cooperation and coordination between councils, and whether this lessens or removes unnecessary costs of regulation for councils, business and the community
- how the regulatory performance of councils and the achievement of regulatory outcomes is currently assessed and how this can be improved
- the impacts on business, the community, councils and State Government of potential reforms and, most importantly, the overall benefits and costs to the community as a whole of potential reforms.
Box 1.1 Key regulatory functions of local government

Key regulatory functions of councils include:

- **Planning** – eg, development controls, development consents, certification of complying developments, and change of use approvals.
- **Building and construction** – eg, certification and compliance with building standards, and fire safety requirements.
- **Environmental protection** – eg, native vegetation, noxious weeds, waste management, noise control, coastal protection, underground petroleum storage systems, stormwater drainage, sewage and grey water systems, contaminated land, and solid fuel heaters.
- **Public health and safety** – eg, food safety, mobile food vendors, skin penetration businesses, cooling towers, warm water systems, and swimming pools.
- **Parking and transport** – eg, road openings and closures, structures in or over roadways or footways, traffic management plans and controls, public car parks, and road access.
- **Companion animals management** – eg, registration of dogs and cats, dangerous dogs, and surrendered animals.
- **Liquor & restaurants** – eg, controls on licensed premises, and restaurants on footpaths.
- **Public areas & issues** – eg, graffiti, hoardings, signs, waste bins, protection of public places, busking, street theatre, parks and playgrounds, public events, trees, and filming.
- **Other activities** – eg, hairdressers, beauty salons, mortuaries, backpacker accommodation, boarding houses, camping grounds, and caravan parks.

1.3 Our findings

The sections below provide a high level summary of our findings and recommendations. In general, our recommendations reflect our views that significant gains (including reduced red tape and improved outcomes for business and the community) can be achieved through enhanced:

- interaction and coordination between State Government agencies and local councils – both at the regulatory development phase and in ‘on-the-ground’ implementation
- council regulatory capacity and capability (eg, through reduced delays, more consistency across and within councils, less prescriptive and overly conservative decisions and approaches)
- collaboration between councils (to maximise economies of scale, improve consistency where appropriate and share expertise)
- sharing of ideas and leading practices amongst councils (to also maximise the benefits of separate councils).

We engaged a consultant, the Centre for International Economics (CIE), to conduct an assessment of the impact of the draft recommendations in this report.

Overall, CIE’s assessment suggests that our recommendations will:

- reduce red tape by at least $177.7 million per year
- save councils approximately $42.4 million per year
- save the NSW Government about $1.3 million per year
- provide net benefits to the community of NSW of $220.5 million per year.

Further, in addition to the above savings, our recommendations to strengthen regulatory impact assessment processes could avoid $48 million per year of new red tape, on average, over the next 10 years and provide $21 million per year in net benefits for NSW.7

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7 The former Better Regulation Office’s guidelines for estimating red tape savings towards the $750 million target indicate that these savings should be considered separately, as they relate to minimising the burden of potential future regulation, rather than minimising the impact of the existing stock of regulation.
The recommendations that account for the largest part of the reduction in red tape are in the planning, building and construction, and road transport areas, in particular:

- Improving road access for heavy vehicles could reduce red tape by $59.2 million per year. Potentially the gains are far larger, with heavy vehicle access restrictions estimated to cost $366 million per year in NSW.

- Preventing councils from imposing conditions of consent above what is required by the National Construction Code would reduce red tape by about $36 million per year, as consistency across councils has significant benefits for builders that work across multiple local government areas.

- Implementing a partnership arrangement between the NSW Department of Planning and Infrastructure (DoPI) and local government would reduce red tape by around $19.4 million per year and have net benefits of $17.9 million per year. There are substantial additional benefits possible from continued improvement in planning, with the excessive costs associated with planning estimated to be in the order of about $300 million per year.

Also of note, our recommendations to increase sharing of regulatory services and resources amongst councils could reduce council costs by $30 million per year.

These, and our other key recommendations, are outlined further below. The red tape savings and other impacts of our recommendations are also summarised in Table 1.1 below.
Table 1.1  CIE's analysis of our recommendations (by group)

<table>
<thead>
<tr>
<th>Area</th>
<th>Reduction in red tape ($m/year)</th>
<th>Savings to councils ($m/year)</th>
<th>Savings to State Govt. ($m/year)</th>
<th>Other impacts ($m/year)</th>
<th>Net Benefits&lt;sup&gt;a&lt;/sup&gt; ($m/year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning: partnership model</td>
<td>19.4</td>
<td>2.3</td>
<td>-3.9</td>
<td></td>
<td>17.9</td>
</tr>
<tr>
<td>Planning: annual fire safety statement</td>
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<td>0.4</td>
<td>-0.1</td>
<td></td>
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</tr>
<tr>
<td>Supporting better local government implementation of regulation</td>
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<td>8.6</td>
<td>7.0</td>
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<td>46.5</td>
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<td>Transparent local government fees and charges</td>
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<td></td>
<td></td>
<td>3.3</td>
</tr>
<tr>
<td>Streamlining approvals under the Local Government Act</td>
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<td>0.3</td>
<td></td>
<td></td>
<td>5.1</td>
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<tr>
<td>Improving the ability to share services</td>
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<td></td>
<td>30.0</td>
</tr>
<tr>
<td>Improving regulatory outcomes</td>
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<td></td>
<td></td>
<td>10.0</td>
</tr>
<tr>
<td>Building and construction</td>
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<td></td>
<td></td>
<td></td>
<td>36.0</td>
</tr>
<tr>
<td>Environment: waste management plan</td>
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<td></td>
<td>6.5</td>
</tr>
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<td>Public health: food safety</td>
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<td></td>
<td></td>
<td>3.2</td>
</tr>
<tr>
<td>Public health: swimming pools</td>
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<td>1.6</td>
<td>-4.2</td>
<td></td>
<td>4.7</td>
</tr>
<tr>
<td>Parking</td>
<td></td>
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<td></td>
<td></td>
<td>0.4</td>
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<tr>
<td>Road transport</td>
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<td>-1.4</td>
<td></td>
<td>54.9</td>
</tr>
<tr>
<td>Companion animals</td>
<td>-0.2</td>
<td>1.6</td>
<td>-0.3</td>
<td></td>
<td>1.1</td>
</tr>
<tr>
<td>Other areas</td>
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<td></td>
<td></td>
<td></td>
<td>0.02</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>177.7</strong></td>
<td><strong>42.4</strong></td>
<td><strong>1.3</strong></td>
<td><strong>-0.8</strong></td>
<td><strong>220.5</strong></td>
</tr>
</tbody>
</table>

<sup>a</sup>  Net benefits are the total of reduction in red tape, savings to local councils, savings to NSW Government and other impacts.

**Note:** Rows and columns may not add due to rounding. Only includes recommendations where partial or full quantification has been possible.

**Source:** The CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations*, June 2013, p 5.
1.3.1 Need to improve State and local government interactions

As noted above, local government regulatory responsibilities are determined by State Government legislation. Further, the regulatory responsibilities within a particular area are often shared or split between State Government agencies and councils (eg, planning, building, environment, food). This highlights the need for effective and well-coordinated interactions between the State Government and local government.

In our view, there is a need for more effective interaction between the 2 levels of government. Stakeholders expressed concern with poor state and local government coordination in several regulatory areas. They suggest this results in delays, confusion, inconsistency, duplication and, therefore, unnecessary red tape and regulatory burden.

In contrast, many stakeholders supported the Food Regulation Partnership instituted between the NSW Food Authority and local government. They considered this to be a framework that has been effective for both government and regulated businesses. The model provides a structured, consistent and enduring relationship between a State Government agency and local government. It provides:

- clear delineation of regulatory roles and responsibilities
- clear guidance and assistance from the State agency, including (where appropriate) standard forms, templates and other regulatory tools or resources
- a 2-way exchange of information, which allows the State agency to monitor, assess and provide feedback on councils’ regulatory performance
- a dedicated forum for strategic consultation with councils and other key stakeholders.

We consider the elements of this ‘Partnership Model’ are best practice and implementation of the model should be considered in regulatory areas that are relatively complex, high risk and/or high cost to the community. This includes planning, building and the environment.

Effective partnerships have the potential to enhance councils’ regulatory capacity and capability, as well as the quality and culture of regulatory services. It is a means for achieving greater standardisation and consistency in the enforcement of state-based regulations by local councils, where appropriate. In our view, there is scope to reduce costs to the community, and enhance regulatory outcomes, if the collective efforts of the State and local government are better coordinated and harnessed.
This is also consistent with the State’s recognition of the need for more effective partnerships between state and local government through the recent signing of the Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships.8

1.3.2 Need to build council capacity and capability

The capacity and capability of councils to efficiently undertake their regulatory responsibilities can vary across councils. The regulatory challenges can also vary. Larger councils have more resources, but also possibly more demands. Urban councils may have a different regulatory focus to rural and regional councils, and so on.

Regardless, a consistent concern amongst all stakeholders (council and non-council) was the capacity and capability of councils to undertake their regulatory roles effectively and efficiently. Lack of resources and expertise can add considerably to costs through delays; poor decision-making; inconsistent, incorrect or unclear advice; inaction; and overly prescriptive or conservative approaches to regulation.

The concerns expressed in submissions to our review are consistent with the results of the NSW Business Chamber’s 2012 Red Tape Survey.9 According to this survey, 44% of NSW businesses are either directly or somewhat required to comply with poorly enforced regulations or regulations where the behaviour of the regulator was considered ‘poor’. Specific concerns included:

- too much selective and personal interpretation of requirements, and
- inconsistent performance by regulators in assessing similar businesses with similar issues, but providing different outcomes.10

Local government was also rated the most complex regulatory authority to deal with, with more than 57% of respondents rating the complexity of dealing with local government as either high or moderate. Local government was also the most utilised regulatory authority, with 77% of respondents having dealings with councils in the past year.11

Given the extent to which businesses must deal with councils in their regulatory roles, the scope for reductions in unnecessary costs to business and the community are clearly considerable if improvements can be made to councils’ capacity and capabilities. Our draft recommendations seek to do this through a number of systemic and area specific reforms.

8 Signed on 8 April 2013.
There was widespread support for greater consistency and standardisation in the implementation of council regulatory functions amongst businesses, individuals and councils. This is seen as a way of:

- reducing costs for businesses – particularly those operating across a number of council areas
- achieving efficiencies in the local government sector (ie, savings from developing and using 1 form or template, rather than 152).

In our view, substantial unnecessary costs for business and the community arise from a lack of consistency and the absence of standardised forms, guidance, policies and processes. As a general proposition, the enforcement of state-based regulation is an area where consistency of approach generally makes sense. In the interests of fairness and equity, the enforcement of State laws should be subject to a consistent approach across the State. It can also result in greater efficiency. Consistency of approach is more challenging with 152 different council regulators, than with a single State agency regulator. For example, State agency regulators enforce State regulations under a single enforcement policy and standard procedures/processes state-wide.

Standardisation and consistency does not preclude taking into account local circumstances or individual situations. For example, there is scope under an enforcement policy to exercise discretion appropriately to respond to the particular circumstances at hand. The Food Authority has partnered with particular councils with high numbers of food retail businesses operated by people with a non-English speaking background to use special education programs (ie, joint inspection and training programs that included workshops in different languages) to increase compliance (rather than increase the use of fines and prosecutions).12

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12 Personal communications, meeting between NSW Food Authority and IPART, 25 October 2012 and email from Food Authority, 17 July 2013.
Where we have considered it more efficient and fair, we have sought to promote consistency and standardisation in our draft recommendations. However, we have also been mindful of the need to reflect local preferences in councils’ approaches, as there are also benefits in diversity. These include a competition of ideas and regulatory innovation. Our list of council regulatory ‘best practices’, identified in Chapter 6 (listed at the end of this chapter) and in Appendix D, demonstrate the benefits of such diversity and innovation. It should also be noted that the regulatory roles of councils can directly require the application of local preferences or diverse approaches. For example, the development of new Local Plans under the planning reforms will involve councils in close consultations with their local community to develop an instrument that reflects the community’s values and goals.

1.3.4 Improving the State framework and managing regulations

We make a number of recommendations to improve local government regulatory capacity and capability through systemic reforms. As the State develops regulation and delegates it to councils to implement, we consider it necessary to ensure the regulation-making process adequately considers any impacts on local government. This includes cumulative impacts and issues in relation to capacity and capability.

Substantial benefits can also be achieved by managing the number of regulations and preventing new regulations from imposing unnecessary costs on the community. We have therefore made a number of recommendations to improve the State’s current regulation-making processes to prevent red tape and create better local government regulation. This is also consistent with our ToR, which require us to consider the Productivity Commission’s leading practices in this area.

We also make recommendations for the State Government to set high-level policy to guide councils’ enforcement activities. These include introducing a regulators’ compliance code to lead cultural change in how councils undertake their enforcement activities, which enshrines:

- a risk-based and graduated enforcement approach to regulation to minimise inspections to when necessary, and
- greater consideration of the economic or business impacts of councils’ enforcement activities.

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1.3.5 Enhancing regulatory collaboration

There was considerable support for greater collaboration between councils to achieve better regulatory outcomes for business and the community, particularly through shared or pooled resources.

Enhanced council collaboration can potentially improve each council’s regulatory performance, by improving capacity, capability and cooperation across councils. Collaborations can reduce costs to councils and the regulated community through:

- allowing councils to realise economies of scale in the provision of regulatory services
- reducing delays
- enhancing consistency (eg, in relation to forms, guidance, processes, decisions)
- allowing councils’ to share experiences, expertise and innovation.

There are currently a range of collaborative arrangements in place between councils in relation to regulatory activities and services, with Regional Organisations of Councils (ROCs) being the most prevalent and developed form. However, there is still relatively limited effective council collaboration on regulatory activities. We have identified several factors that are impeding more effective use of such arrangements, including:

- legislative impediments
- lack of guidance on governance frameworks
- the start-up costs of collaborative arrangements (and hence the need for better incentives for councils to establish such arrangements).

In order for the State and councils to develop stronger, more effective partnerships, there is a need for stronger inter-council structures (or collaborative arrangements), particularly in the compliance and enforcement area. It is not possible to effectively consult and partner with 152 separate councils. There is greater potential for consistency of approach and efficient regulation if the State can partner with collaborative entities (often with a regional basis) or Local Government NSW. The successful partnership between the Environment Protection Authority and the Western Sydney Regional Illegal Dumping Squad and the extension of this initiative to other regional groupings of councils (as discussed in Chapter 2 of this report) provides a good example of this in practice.

As a result, we recommend a range of reforms by the State, including amendments to the LG Act to remove impediments, the provision of greater guidance to facilitate arrangements, and the establishment of a small repayable fund to assist with start-up costs (eg, a loan with a concessional rate of interest).
1.3.6 Improving the local government framework

A number of submissions, mostly from councils, suggested ways to remove unnecessary costs arising from existing approval requirements under the LG Act.

We have analysed the existing requirements for approvals under section 68 of the LG Act and have identified considerable scope to streamline these approvals. This includes providing more exemptions, removing duplications, providing longer duration and periods for renewal, and reducing the need to apply to multiple councils (ie, applying mutual recognition).

Some stakeholders also argued for a consolidated Act of local government enforcement powers and sanctions, including cost recovery mechanisms. Currently, council officers have a myriad of slightly different powers and sanctions under each of the 67 Acts that delegate enforcement responsibilities to councils. The provisions under the LG Act are not as effective or efficient to use as provisions under other Acts (eg, Protection of the Environment Operations Act 1997 (NSW)).

We see value in the consolidation and modernisation of local government enforcement powers, sanctions and cost recovery provisions in the LG Act. It will enhance council capacity and capability if council officers can work under a simplified, consistent and consolidated framework of powers under the LG Act, and enable the use of these powers across the spectrum of local government enforcement activities under other Acts.

1.3.7 Improving the assessment of regulatory performance

In accordance with our ToR, we have considered ways to ensure regular assessment of regulatory performance. There are currently various programs and reporting requirements imposed on councils. However, the majority of these programs focus on the service delivery aspects of councils. There are a number of initiatives at the State level that we consider could be used to improve the assessment of local government enforcement activities. In particular, as part of the State’s Quality Regulatory Services initiative, we believe State agencies should consult with and consider councils’ responsibilities in defining the regulatory outcomes of the regulations they administer and in setting monitoring mechanisms to measure these outcomes.

Our recommendation to institute the ‘Partnership Model’, if implemented, will also result in an improved assessment of local government’s regulatory performance in key regulatory areas.
1.3.8 Best practice

Our report attempts to highlight a number of examples or suggestions of best practice regulatory approaches stakeholders have provided to us in the course of the review (see Chapter 6 and Appendix D). These practices have scope to further reduce red tape and benefit councils, businesses and the community, if more broadly adopted.

1.3.9 Priority areas

The major concerns of stakeholders in relation to the creation of red tape and unnecessary cost were in the areas of planning, building and construction. A large proportion of the concerns raised are expected to be addressed through the NSW planning system review. Our recommendations in this area seek to maximise the benefits of these reforms through implementation of the ‘Partnership Model’ in planning and building regulation, as well as the development of more standardised conditions of consent.

We have reached the view that there are substantial impediments to achieving efficient local government regulation within the current regulatory framework for the building industry. There is an acute lack of clarity, and therefore accountability, concerning the regulatory roles and responsibilities of councils, certifiers, builders and the Building Professionals Board. This is resulting in both poor enforcement by councils in some instances, and a perceived duplication of regulation or ‘interference’ in the building certification system by councils in others. Both outcomes can impose substantial costs on businesses and the community.

For any improvements to be made in this area, we believe it is necessary to reform the current regulatory framework, as well as its implementation. We have therefore recommended improving interactions, coordination, accountability and clarity of roles between councils and the State Government by centralising the regulation of both builders and certifiers under a single regulatory authority for the building industry.

As noted earlier, we have also recommended reforms to prevent councils from imposing conditions of consent above what is required by the National Construction Code. Achieving consistency across councils has significant benefits for builders that work across multiple local government areas ($36 million per year).14 Our proposed ‘gateway’ mechanism will still allow councils to deviate from the Code if justified by a cost benefit analysis. This will accommodate any issues that result from deficiencies in the Code or particular local conditions (eg, addressing salinity).

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14 The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, p 71.
In our view, there is also scope for the NSW Government to provide councils with technical assistance and guidance on how to assess amenity issues when making heavy vehicle road access decisions through the establishment of an interim unit. This would assist the efforts of the recently established National Heavy Vehicle Regulator to improve access decision capacity of councils, which could take considerable time to implement on a national basis. As noted earlier, the gains from reforms that increase access by removing unnecessary impediments, without compromising community amenity or safety, are likely to be significant ($59.2 million per year or more in red tape).\(^{15}\) Given this, the costs of an interim unit to realise these potential gains sooner appear to be justified.

We have also made specific recommendations in relation to the other priority areas, namely public health, safety and the environment; parking; and companion animal management.

### 1.4 Other related reviews

There are a number of other related reviews currently taking place, which we have closely consulted with in order to coordinate our efforts. The recommendations in this Draft Report seek to maximise the opportunities that arise from these other reviews. These include reviews of:

- the Independent Local Government Review Panel
- the Local Government Acts Taskforce
- the NSW planning system
- the Companion Animals Taskforce.

**The Independent Local Government Review Panel**

The Independent Local Government Review Panel (the ILGRP) has been investigating and identifying options for governance models, structural arrangements and boundary changes for local government in NSW.\(^{16}\) The ILGRP published its “Future Directions” paper outlining proposed reform options in April 2013.\(^ {17}\) Submissions on this paper closed on 28 June 2013. The ILGRP’s final report is due to be provided to the NSW Government in late October 2013.

The proposed reforms of the ILGRP are discussed further in this report, in particular in Chapters 2 and 4.

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\(^{15}\) The CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations*, June 2013, pp 5, 104.


The Local Government Acts Taskforce

The Local Government Acts Taskforce has been undertaking a review of the *Local Government Act 1993* (NSW) (the LG Act) and the *City of Sydney Act 1988* (NSW). It released a discussion paper in April 2013, and is due to provide a final report to the NSW Government in late October 2013.

The Taskforce will:

- adopt the decisions of the Government in relation to the recommendations of the ILGRP, and
- make recommendations for legislative changes necessary for a new LG Act.

These Acts establish the statutory basis for local government in NSW, including how it is constituted, administered, financially managed, financed, operated and made accountable. These Acts also set out core local government service and regulatory functions, and general enforcement powers. However, these Acts do not capture the full scope of regulatory functions and enforcement powers conferred or delegated on local government, as these are conferred or delegated under numerous other pieces of State legislation (as discussed in Chapter 3).

The work of the Taskforce is discussed further in this report, in particular in Chapter 5.

NSW Planning System Review

The NSW Planning System Review is a comprehensive review of the State’s planning system, with the aim of creating a new planning system to meet today’s needs and priorities. The NSW Government released a White Paper and draft exposure Bills for comment in April 2013, outlining its proposed reforms in the areas of cultural change, community participation, strategic planning, development assessment and infrastructure.

The White Paper also proposed changes to building regulation and certification to ensure better quality of construction and fire protection over the life of buildings.

The NSW Government has recently introduced the new planning legislation into Parliament on 22 October 2013.

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20 Ibid, p 5.
The planning and building reforms are discussed further in Chapters 2, 7 and 8. This discussion is currently based on the White Paper and will need to be updated in our Final Report to reflect the reforms as passed by Parliament.

The Companion Animals Taskforce

The Companion Animals Taskforce was established to provide advice on key companion animal issues and, in particular, strategies to reduce the current rate of companion animal euthanasia.

The Taskforce was commissioned in 2011 to provide advice on key cat and dog issues and, in particular, strategies to reduce the current rate of cat and dog euthanasia.

A discussion paper was released in May 2012 which received over 1,400 public submissions. In March 2013, 2 final reports were released:22


The NSW Government received over 5,300 submissions in relation to the final reports. In August 2013, the Government released its response to the review. It intends to adopt most of the Taskforce’s 38 recommendations in full or in part, and introduce legislation into the spring session of Parliament to implement these measures.23

The work of the Taskforce is discussed further in Chapter 11.

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1.5 How and when you can provide input to this review?

We invite all interested parties to make written submissions in response to this Draft Report.

In general, we seek your response on the draft recommendations explained in this report and listed below, including any information on:

- the impacts of the suggested reforms, such as the costs or benefits, and
- any alternative ideas for reforms to reduce unnecessary costs on business and the community from local government compliance and enforcement activity.

Submissions may also comment on any other issues stakeholders consider relevant to the review.

Submissions are due by 4 July 2014. In accordance with IPART’s public submission policy, late submissions may not be accepted at the discretion of the Tribunal. All submissions will be posted online as soon as possible after the closing date for submissions. Further information on how to make a submission can be found on page iii, at the front of this report.

After we have considered all the information and views expressed in submissions, we will submit our Final Report to the NSW Government.

Table 1.2 sets out our indicative timetable for this review.

<table>
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<th>Table 1.2 Indicative review timetable</th>
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<tr>
<td><strong>Task</strong></td>
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<tr>
<td>Release Issues Paper</td>
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<td>Release register of local government regulatory functions</td>
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<tr>
<td>Stakeholder submissions due</td>
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<tr>
<td>Hold public roundtable discussion</td>
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<tr>
<td>Preliminary Draft Report to DPC</td>
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<td>Consultation with Government agencies</td>
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<td>Revised Draft Report to DPC</td>
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<td>Further consultation with agencies undertaken by DPC</td>
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<td>Further revised Draft Report to Department of Premier and Cabinet</td>
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<td>Release Draft Report</td>
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<tr>
<td>Receive submissions in response to Draft Report</td>
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<tr>
<td>Deliver Final Report to Government</td>
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**Note:** These dates are indicative and may be subject to change.
1.6 What does the rest of this Draft Report cover?

The rest of this report explains our draft recommendations, including relevant information provided in stakeholder submissions. The report is structured as follows:

- **Chapter 2** discusses a new partnership between State and local government based on the Food Regulation Partnership, to be applied to other key areas where councils have a significant regulatory role.

- **Chapter 3** discusses how to improve the regulatory framework at a State level, including ways to create better local government regulation and guide improved implementation of these regulations.

- **Chapter 4** explores ways to enhance regulatory collaboration amongst councils to improve regulatory capacity and consistency of approach.

- **Chapter 5** discusses ways to improve the regulatory framework at the local level – specifically the LG Act – to streamline approvals and improve council’s compliance and enforcement ‘tools’.

- **Chapter 6** discusses how to improve regulatory outcomes through the assessment of regulatory performance, and also sets out a number of suggested ‘best practices’ for consideration and potentially wider adoption by councils.

- **Chapters 7-11** discuss specific improvements in the ‘priority areas’ of:
  - planning
  - building and construction
  - public health, safety and the environment
  - parking and road transport
  - companion animals management.

- **Chapter 12** discusses a number of improvements in other areas, such as leases for footway restaurants, approval processing times and community events.

- **Appendices A-E** include:
  - a copy of the ToR
  - consideration of the Productivity Commission’s leading practices
  - other issues raised by stakeholders not dealt with in the body of the report
  - best practice regulatory approaches to onsite sewage management systems
  - meetings and consultations with regulators and other stakeholders.

1.7 List of draft recommendations on which we seek comment

We seek your comment on the following list of draft recommendations and findings on best practice. Next to each recommendation and finding is a page
A new partnership between State Government and local government

1 Subject to cost benefit analysis, the NSW Department of Planning and Infrastructure (DoPI) should engage in a Partnership Model with local government, similar to the Food Regulation Partnership, to enhance the capacity and capability of councils to undertake their regulatory functions. This should include:

- enshrining the partnership model in legislation
- clear delineation of regulatory roles and responsibilities
- a risk-based approach to regulation supported by a compliance and enforcement policy
- use and publication of reported data to assess and assist council performance
- a dedicated consultation forum for strategic consultation with councils
- ability for councils to recover their efficient regulatory costs
- a system of periodic review and assessment of the partnership agreement
- a dedicated local government unit to provide:
  - a council hotline to provide support and assistance
  - a password-protected local government online portal
  - guidelines, advice and protocols
  - standardised compliance tools (eg, forms and templates)
  - coordinated meetings, workshops and training with councils and other stakeholders.

2 Subject to cost benefit analysis, the NSW Environment Protection Authority should engage in a Partnership Model with local government, similar to the Food Regulation Partnership (as per Draft Recommendation 1).

Improving the regulatory framework at the State level

3 The Department of Premier and Cabinet should revise the NSW Guide to Better Regulation (November 2009) to include requirements for developing regulations involving regulatory or other responsibilities for local government, in particular:

- consideration of whether a regulatory proposal involves responsibilities for local government

number in this report. Our discussion on each recommendation or finding can be found by turning to that page number in this report.
Executive summary

1. Clear identification and delineation of State and local government responsibilities
2. Consideration of the costs and benefits of regulatory options on local government
3. Assessment of the capacity and capability of local government to administer and implement the proposed responsibilities, including consideration of adequate cost recovery mechanisms for local government
4. Consultation with local government to inform development of the regulatory proposal
5. If establishing a jointly provided service or function, agreement with local government as to the objectives, design, standards and shared funding arrangements, and
6. Development of an implementation and compliance plan.

4. The NSW Government should establish better regulation principles with a statutory basis. This would require:
   - Amendment of the Subordinate Legislation Act 1989 (NSW) or new legislation, and
   - Giving statutory force to the NSW Guide to Better Regulation (November 2009) and enshrining principles in legislation.

5. The NSW Government should maintain the register of local government regulatory functions (currently available on IPART’s website) to:
   - Manage the volume of regulation delegating regulatory responsibilities to local government
   - Be used by State agencies in the policy development of regulations to avoid creating duplications or overlaps with new or amended functions or powers.

6. The Department of Premier and Cabinet should:
   - Develop a Regulators’ Compliance Code for local government, similar to the one currently in operation in the UK, to guide local government in undertaking enforcement activities. This should be undertaken in consultation with the NSW Ombudsman and State and local government regulators.
   - Include local government regulators in the former Better Regulation Office’s Regulators’ Group or network.
   - Develop simplified cost benefit analysis guidance material for local government to undertake proportional assessments of the costs and benefits of regulatory actions or policies, including consideration of alternatives.
1 Executive summary

- Develop simplified guidance for the development of local government policies and statutory instruments. 85

7 The NSW Ombudsman should be given a statutory responsibility to develop and maintain a more detailed model enforcement policy and updated guidelines for use by councils to guide on-the-ground enforcement:

- The model policy should be developed in collaboration with State and local government regulators. 89

- The model policy should be consistent with the proposed Regulators’ Compliance Code, if adopted. 89

- The NSW Ombudsman should assist councils to implement the model enforcement policy and guidelines, through fee-based training. 89

All councils should adopt the new model enforcement policy, make the policy publicly available and train compliance staff in exercising discretion and implementation of the policy. 89

8 The Local Government Act 1993 (NSW) should be amended to abolish Local Orders Policies (LOPs), as the function of LOPs will be replaced by adoption of the new model enforcement policy. 91

9 The NSW Government should publish and distribute guidance material for:

- councils in setting their regulatory fees and charges (to apply to fees and charges, where councils have discretion), and 99

- State agencies in setting councils’ regulatory fees and charges. 99

This guidance material should include principles and methodologies for estimating efficient costs, setting fees and charges, and reviewing and updating these fees and charges over time. 99

Enhancing regulatory collaboration amongst councils

10 The Local Government Act 1993 (NSW) should be amended to remove any impediments to, or facilitate the easier use of, shared regulatory services. In particular, consideration should be given to:

- removing or amending section 379 – which currently restricts the delegation of a council’s regulatory functions under Chapter 7 of the Local Government Act, including to shared services bodies 119

- amending section 377, which prohibits any delegation by a council of the acceptance of tenders. 119

If Regional Organisations of Councils (ROCs) continue as the preferred form of council collaboration, consideration should also be given to whether the Act
should specify how and in what form ROCs should be established (including whether management frameworks should be prescribed).

11 The NSW Government should encourage and develop incentives to form collaborative arrangements in relation to regulatory functions. This should include training, guidance and promotion of leading practice collaborative arrangements, and the establishment of a small repayable fund to assist in setting up shared regulatory services. Councils could obtain a loan with a concessional rate of interest that is repayable within a specified period. This should tend to be cost neutral over time, as cost savings to councils would be achieved from the collaborative arrangements.

Improving the regulatory framework at the local level

12 The Local Government Act 1993 (NSW) should be amended to:

– remove duplication between approvals under the Local Government Act 1993 (NSW) and other Acts, including the Environmental Planning & Assessment Act 1979 (NSW) and Roads Act 1993 (NSW) in terms of: footpath restaurants; mobile vendors; installation of amusement devices; installation and operation of manufactured homes; stormwater drainage approvals

– remove low-risk activities from the list of activities currently requiring approval under section 68 of the Local Government Act, including: Busking; Set up, operation or use of a loudspeaker or sound amplifying device; and Deliver a public address or hold a religious service or public meeting

– allow for longer duration and automatic renewal of approvals

– provide more standard exemptions or minimum requirements from section 68 approvals, where possible, initially in the areas of: footpath restaurants; A-frames or sandwich boards; skip bins; domestic oil or solid fuel heaters

– abolish Local Approvals Policies (LAPs) or, alternatively: reduce the consultation period to 28 days in line with Development Control Plans; remove sunsetting clauses; require Ministerial approval only for amendments of substance; centralise LAPs in alphabetical order in one location on DLG’s website; consolidate activities within 1 LAP per council; and DLG to provide a model LAP in consultation with councils

– enable councils to recognise section 68 approvals issued by another council (ie, mutual recognition of section 68 approvals), for example with mobile vendors and skip bins.

13 The NSW Government, as part of its reforms of the Local Government Act 1993 (NSW), should amend the Act to provide a modern, consolidated, effective suite of compliance and enforcement powers and sanctions for councils and council enforcement officers.
The powers would be applicable to all new State Acts or regulations. This suite should be based on the best of existing provisions in other legislation and developed in consultation with the NSW Ombudsman, Department of Premier and Cabinet, State and local government regulators. This should include effective cost recovery mechanisms to fund enforcement activities.

Councils should support the use of alternative and internal review mechanisms (for example, the NSW Ombudsman, NSW Small Business Commissioner, and private providers of ADR services) to provide business and the community with a path of redress for complaints (not including complaints concerning penalty notices) that is less time-consuming and costly than more formal appeal options.

Improving regulatory outcomes

As part of the State’s Quality Regulatory Services initiative, the NSW Government should require all State agencies that devolve regulatory responsibilities to local government to:

- consider councils’ responsibilities in developing their risk-based approach to compliance and enforcement
- consider councils’ responsibilities in defining the regulatory outcomes and setting monitoring mechanisms to measure the outcomes, and
- identify what information needs to be obtained from councils in relation to their regulatory activities to measure regulatory outcomes and how this data will be used or published to assess and assist council performance.

These requirements should be developed in consultation with local government regulators and commence by the end of 2014.

Planning

DoPI, in consultation with key stakeholders and on consideration of existing approaches, should:

- identify which development consent conditions may be applied across council areas, including regional groupings of councils, and which conditions will vary across council areas
- then develop (where appropriate) a standardised and consolidated set of development consent conditions for councils to utilise for different forms of development.

The NSW Government (eg, DoPI) should enable building owners to submit Annual Fire Safety Statements online to councils and the Commissioner of the Fire and Rescue Service.
Executive summary

Building and Construction

18 The NSW Government should:
   – subject to a cost benefit analysis, create a stronger, single State regulator,
     the Building Authority, containing, at a minimum, the roles of the Building
     Professionals Board and the building trades regulation aspects of NSW
     Fair Trading, and
   – create a more robust, coordinated framework for interacting with councils
     through instituting a ‘Partnership Model’ (as discussed in Chapter 2).

19 The Building Professionals Board or Building Authority (if adopted) should:
   – initially, modify its register of accredited certifiers to link directly with its
     register of disciplinary action
   – in the longer term, create a single register that enables consumers to
     check a certifier’s accreditation and whether the certifier has had any
     disciplinary action taken against them at the same time.

20 Councils seeking to impose conditions of consent above that of the Building
   Code of Australia (BCA) (now part of the National Construction Code (NCC))
   must conduct a cost benefit analysis (CBA) justifying the benefits of these
   additional requirements and seek approval from an independent body, such
   as IPART, under a ‘gateway’ model.

21 Certifiers should be required to inform council of builders’ breaches if they are
   not addressed to the certifier’s satisfaction by the builder within a fixed time
   period. Where councils have been notified, they should be required to
   respond to the certifier in writing within a set period of time. If council does
   not respond within the specified period, then the certifier can issue an
   occupation certificate.

22 The Building Professionals Board (BPB) or Building Authority (if adopted)
   should incorporate into the current Principal Certifying Authority signage
   information setting out contact details for specific complaints (eg, off-site
   impacts like building refuse or run-off and onsite issues). The BPB or
   Building Authority should trial the use of such a sign in a specific local
   government area to see if time is reduced in redirecting complaints for
   councils, the BPB/Authority and certifiers.

Public health, safety and the environment

23 All councils should adopt the NSW Food Authority’s guidelines on mobile food
   vendors. This will allow for food safety inspections to be conducted in a
   mobile food vendor’s ‘home jurisdiction’, which will be recognised by other
   councils.
The NSW Food Authority, in consultation with councils, should stipulate a maximum frequency of inspections by councils of retail food businesses with a strong record of compliance to reduce over-inspection and costs.

The NSW Food Authority should finalise its internal review and work with councils to implement its reforms within 18 months of its review being completed to:

- remove any regulatory overlap (eg, of related retail and non-retail food business on the same premises)
- develop a single register of notification for all food businesses, or a suitable alternative, to avoid the need for businesses to notify both councils and the Food Authority
- review the notification system to determine whether negligible risk food businesses should be exempt from the requirement to notify
- ensure the introduction of the standard inspections template for use by all councils in NSW, to enhance the consistency of inspections across the State.

DLG should:

- develop a ‘model’ risk-based inspections program to assist councils in developing their own programs under the *Swimming Pools Act 1992* (NSW)
- issue guidance material on the implementation of amendments to the *Swimming Pools Act 1992* (NSW)
- provide a series of workshops for councils (by region) on how to implement and comply with their new responsibilities under the *Swimming Pools Act 1992* (NSW)
- promote the use of shared services or ‘flying squads’ for swimming pool inspections, if a backlog becomes apparent under the new regulatory regime
- review the *Swimming Pools Act 1992* (NSW) in less than 5 years to determine whether the benefits of the legislative changes clearly outweigh the costs.

Ageing, Disability and Home Care, Department of Family and Community Services, in consultation with the Division of Local Government, should:

- develop a ‘model’ risk based inspections program, including an inspections checklist, to assist councils in developing their own programs under the *Boarding Houses Act 2012* (NSW)
- issue guidance material on the implementation of the *Boarding Houses Act 2012* (NSW)
Executive summary

- co-ordinate a series of workshops for council employees (by region) on how to implement and comply with responsibilities under the *Boarding Houses Act 2012* (NSW).

28 **DoPI**, in consultation with the EPA and other relevant stakeholders, should:

- develop standard waste management requirements for inclusion in the *NSW Housing and NSW Industrial and Commercial Codes*, which establishes site waste management standards and requirements for exempt and complying development, and
- remove the need for applicants to submit separate Waste Management Plans to councils for these types of developments.

Parking and road transport

29 **Councils** should either:

- solely use the State Debt Recover Office (SDRO) to handle parking fine requests for review or appeals to remove current confusion, duplication and reduce costs, or
- adopt the SDRO’s guide for handling representations where a council is using SDRO’s basic service package and retains the role of handling parking fine requests for review or appeals, to ensure consistency and fairness across the state.

30 **DLG** should review and, where necessary update, its free parking area agreement guidelines (including model agreements). Councils should then have a free parking area agreement in place consistent with these guidelines.

31 That the NSW Government:

- notes the potential red tape savings and net benefits that could accrue to NSW through the National Heavy Vehicle Regulator (NHVR) providing:
  - technical assistance to councils in certifying local roads for access by heavy vehicles, and
  - guidelines to councils for assessing applications for heavy vehicle access to local roads in relation to potential amenity and safety impacts; and
- in the event of delay in the NHVR providing these elements of the national reforms, funds an interim unit to provide this assistance to local government.
Companion animal management

32 DLG should allow for an optional 1-step registration process, whereby:
   – the owner could microchip and register their pet at the same time
   – the person completing the microchipping would act as a registration agent
     for councils either by providing access to online facilities (per
     recommendation below) or passing the registration onto councils (on an
     opt-in, fee-for-service basis).

33 DLG should allow for online companion animals registration (including
   provision to change details of registration online).

34 DLG should implement targeted, responsible pet ownership campaigns with
   councils in particular locations/communities of concern with the input of
   industry experts, providing accessible facilities for desexing where these
   campaigns are rolled out.

35 DLG should amend the companion animals registration form so an owner’s
   date of birth is mandatorily captured information, as well as other unique
   identifiers such as driver’s licence number or official photo ID number or
   Medicare number.

36 DLG should amend the Companion Animals Act 1998 (NSW) to enable fees
   to be periodically indexed by CPI.

Other areas

37 The NSW Government should amend section 125 of the Roads Act 1993
   (NSW) to extend the lease terms for footway restaurants to 10 years, subject
   to lease provisions ensuring adequate access by utility providers.

38 DLG should collect data on the time taken for Section 68 approvals to be
   processed by councils. This data should be collated and reported as an
   indicator of performance in this area to reduce delays.

39 Councils should issue longer-term DAs for periods of 3 to 5 years for
   recurrent local community events (subject to lodging minor variations as
Draft Findings

1 The use of portable technology such as iPads by council enforcement officers (eg, in tree assessments by Sutherland Shire Council) has the potential to cut costs to councils and the public. 161

2 Greater use of existing networks such as AELERT and HCCREMS (Hunter Councils Inc.) provide greater resources, consistency of approach and build expertise or capability in undertaking council environmental compliance activities. 161

3 Councils would benefit from the use of the following self-assessment tools: 163
   – the Hunter Council Inc. (HCCREMS) Compliance System Self-assessment tool to assess regulatory capacity to enhance regulatory performance 163
   – the Hunter Council Inc. (HCCREMS) Electronic Review of Environmental Factors (REF) Template to assist councils in undertaking Part 5 assessments under the Environmental Planning & Assessment Act 1979 (NSW) of their own activities 163
   – the Smart Compliance Approach, currently used by Newcastle City Council and adapted from the US EPA, to provide a framework for using performance data to achieve better regulatory outcomes 163
   – the NSW EPA’s online “Illegal Dumping: A Resource for NSW Agencies” tool/guide available through AELERT and EPA websites. 163

4 Publication of more significant individual local government regulatory instruments on a central site, such as the ‘NSW Legislation’ website, will allow a stocktake, and facilitate review and assessment, of such instruments. These regulatory instruments would be formal plans or policies developed by councils under State legislation (eg, Local Environmental Plans, Development Control Plans, Local Approvals Policies and Local Orders Policies). 165

5 The use of ‘SmartForms’ by councils, through the Federal Government’s ‘GovForms’ or individual council websites, reduces costs to businesses and councils by enabling online submission and payment of applications directly to councils. 166

6 The provision of guidance material to assist businesses in obtaining approvals and complying with regulatory requirements, such as the guidance provided by the Federal Government’s Australian Business Licence and Information Service (ABLIS) or the Queensland Local Government Toolbox (www.lgtoolbox.qld.gov.au), can reduce the regulatory burden on businesses and the community. 169

7 Projects like the Electronic Housing Code provide considerable benefits to businesses and the community by providing a single, consistent, time-saving, online process to obtain an approval. 172
8 The development of central registers (eg, Companion Animals register) by State agencies that devolve regulatory responsibilities to councils can substantially reduce administrative costs for regulated entities and councils, and assist with more efficient implementation of regulation (eg, assist with data collection and risk analysis).

9 Memorandums of Understanding between State agencies and councils in relation to enforcement and compliance activities (eg, between local police and local council) facilitate information sharing to achieve better communication, coordination and enforcement outcomes.

10 Councils engaging independent panels or consultants where development applications or DAs relate to land owned by local government improves transparency and probity.

11 Where proponents seek to develop infrastructure on public land owned by the council, providing notice of the relevant leasing or licencing options and conditions likely to be attached to the use of the land (where practical) prior to the requirement for a DA to be submitted could reduce unnecessary costs for proponents.

12 Councils can use Order powers under the *Environmental Planning & Assessment Act 1979 (NSW)* (eg, under s121O) to allow certain modifications to developments. This circumvents the need for the applicant to obtain additional council approvals or development consents when there are concerns with existing structures (eg, safety concerns).

13 Council policies that identify, prioritise and if possible, fast-track emergency repair works within existing regulatory processes (eg, urgent tree trimming work following a storm or urgent repair works following a flood) would reduce costs.

14 Broadening the scope of DLG’s current Promoting Better Practice program would strengthen its assessment of regulatory performance. Greater promotion of DLG’s better practice findings amongst all councils would improve regulatory outcomes.
A new partnership between State Government and local government

This chapter considers how State Government agencies and councils can work together to ensure councils implement State Government regulation as efficiently as possible. Efficient implementation will minimise costs to business and the broader community while still achieving the objectives of the regulation.

This is in line with our Terms of Reference (ToR), which require us to consider:

...ways to improve governance of local government compliance and enforcement, including:

• roles and responsibilities relative to NSW Government
• interaction, consultation, and co-ordination with NSW Government.

Effective interaction and coordination between the State Government and local government can also enhance council regulatory capacity and capability, the quality of regulatory administration, and the culture of regulatory services. These are other elements of our ToR and also central to stakeholder concerns.

Accordingly, the sections below discuss:

• the ‘Partnership Model’ or Food Regulation Partnership (FRP) – which is a leading model of interaction between the NSW Government and councils
• our recommendation that the Partnership Model should be applied to other areas where councils have a significant regulatory role, namely planning and environmental regulation
• our consideration of whether the full Partnership Model should be applied to other regulatory areas, such as public health
• our consideration and rejection of a potential alternative to the Partnership Model to enhance state and local government interactions – ie, a Local Better Regulation Office (LBRO).
We recognise that the Department of Planning and Infrastructure (DoPI) and Environment Protection Authority (EPA) have already provided considerable guidance, training and support to councils. We also note that further support to councils is proposed as part of the planning reforms.\textsuperscript{24} However, DoPI and the EPA are significant regulators. Therefore, we consider there should be more structured, consistent and sustained regulatory partnerships between these bodies and local government. This will enhance councils’ regulatory performance and ultimately reduce costs for business and the community.

Further, our proposed Partnership Model is in keeping with the Independent Local Government Review Panel’s (ILGRP) finding that one of the essential elements of an effective system of local government is “effective mechanisms for State-local consultation, joint planning, policy development and operational partnerships”.\textsuperscript{25} Specifically, the ILGRP propose:

Establishing State-local relations as a key function of the Premier’s cluster of departments – the Premier’s Department itself, Division of Local Government, Department of Planning and Infrastructure, and Office of Environment and Heritage, which together could lead a new culture of cooperation with local government.\textsuperscript{26}

According to the ILGRP, the State and local government need to be seen as complementary elements of a broader NSW public sector.\textsuperscript{27} Our proposed Partnership Model between local government and DoPI and EPA (both of which are within the Premier’s cluster of departments) would be one method of achieving better relations and greater cooperation between State agencies and local government. A formal commitment between State agencies and local government through this Partnership Model strengthens the opportunity for future regulatory reforms and red tape reductions in the key areas of planning and the environment.

Our proposed Partnership Model also builds on the recently signed \textit{Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships}.\textsuperscript{28}

\textsuperscript{24} NSW Government, \textit{A New Planning System for NSW - White Paper}, April 2013 (White Paper), available at \url{http://www.planning.nsw.gov.au/a-new-planning-system-for-nsw}, accessed on 18 June 2013. For example, see the proposed reforms set out on pages 34, 37, 60 and 83.


\textsuperscript{26} Ibid, p 55.

\textsuperscript{27} Ibid.

Other aspects of State Government and local government interactions are discussed in Chapter 3, including reforms to the regulation-making framework and the establishment of a regulators’ compliance code for local government.

### 2.1 The Partnership Model based on the Food Regulation Partnership (FRP)

The NSW Food Authority administers the *Food Act 2003 (NSW)* (the Food Act) and the *Food Regulation 2010 (NSW)*. Both the State Government (the Food Authority) and local government have key roles in monitoring and enforcing compliance with food safety regulatory requirements. These roles are defined and governed through the Food Regulation Partnership (FRP).

According to the Food Authority, under the FRP, regulatory responsibilities are assigned between the Food Authority and councils using a risk-based approach to food safety. Councils are required to:

- Inspect high and medium risk food retail businesses annually. Businesses may be inspected more frequently, depending on their performance history and the council’s inspection policy. Low risk food businesses are not inspected routinely.

- Report their inspections to the Food Authority.

In order to undertake inspections and report to the Food Authority, councils maintain registers of all retail food businesses in their area. As a result, some councils require food businesses to notify them and the Food Authority.

The Food Authority developed the FRP with councils in 2008, following extensive consultation with stakeholders. The Food Act was amended in 2007 to formalise the FRP, set out the food surveillance role of councils, and provide capacity for councils to recover their enforcement costs.

The creation of the FRP followed a period of inconsistent local government regulation of the retail food sector in regard to inspections, enforcement action, recording and reporting regulatory activities, and cost recovery.

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29 NSW Food Authority’s submission to IPART, October 2012.
31 *Food Act 2003 (NSW)*, section 113(1).
32 NSW Food Authority’s submission to IPART, October 2012.
The FRP aims to improve the efficiency, effectiveness and consistency of local government food inspection. The benefits are, consequently, reduced retail food sector related foodborne illness and duplication of inspection services between state and local government.\(^{33}\)

### 2.1.1 Key elements of the FRP

We consider the FRP to be leading practice in regard to State and local government regulatory interactions. This is supported by the findings of the Productivity Commission.\(^{34}\)

Key elements of the FRP, outlined by the Food Authority, include:\(^{35}\)

- Legislated commitment from the Food Authority and councils: the Food Act was amended in 2008 to formalise the FRP.\(^{36}\)

- Clear delineation of the respective regulatory roles and responsibilities of the Food Authority and councils, through protocols and legislation.

- Guidance and assistance to councils in undertaking their regulatory roles and responsibilities.

- The promotion of a risk-based approach to regulation, through adherence to a National Enforcement Guideline. According to the Food Authority:

  This allows an officer to exercise discretion to apply a proportionate response based on the risk to food safety and compliance history. This generally results in a higher number of warning letters, fewer improvement and penalty notices, and even fewer applications of punitive tools such as seizure, prohibition orders and prosecution.\(^{37}\)

- The Food Authority’s use and publication of reported data to assess and assist councils’ regulatory performance (councils are required to provide specified data on their enforcement activities).

- A dedicated forum (the Food Regulation Forum) for strategic consultation with councils and other key stakeholders.\(^{38}\)

- A system of periodic review and assessment of the FRP.\(^{39}\)

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\(^{33}\) Ibid.


\(^{35}\) NSW Food Authority’s submission to IPART, October 2012, p 6.

\(^{36}\) See *Food Amendment Act 2007* (NSW), Schedule 1 (commenced 1 January 2008).

\(^{37}\) NSW Food Authority’s submission to IPART, October, 2012, p 6.

\(^{38}\) The FRP is guided by a statutory consultation mechanism known as the Food Regulation Forum (FRF), which comprises key local government stakeholders including the Local Government and Shires Associations (now Local Government NSW), Australian Institute of Environmental Health (now Environmental Health Australia), Local Government Managers Australia, Development and Environmental Professionals Association, and NSW Small Business Commissioner: see *Food Act 2003* (NSW), sections 115A and 115(B).

\(^{39}\) NSW Food Authority’s submission to IPART, October, 2012, p 5.
Notably, the Food Authority provides its assistance to, and oversight of, councils through a dedicated Local Government Unit (LGU), comprising 5 Full Time Equivalents (FTEs). The Food Authority’s LGU:

- Provides support and assistance to councils via advice, guidelines, protocols, standardised compliance tools, a dedicated telephone ‘hotline’ and a dedicated website portal for council officers. Specifically, this has included the Food Authority:
  - making recommendations on the frequency of council inspections
  - introducing a food inspection/reporting template for councils, to improve consistency
  - establishing a graduated enforcement policy, with accompanying training for council officers
  - setting indicative council inspection fees and administration charges, and providing other guidance on recovering costs of regulatory activities
  - promoting resource sharing amongst councils (eg, the Riverina group of councils) and the use of private contractors for those councils with resource issues.

- Collates and publishes information on council performance in regard to food safety surveillance.

- Coordinates meetings, workshops and training with councils and other stakeholders.

An important feature of the FRP is the 2-way flow of information and communication between the Food Authority and councils. It is a partnership between the responsible State Government agency and local government in implementing food regulation.

The figure below depicts the key elements of the Food Regulation Forum, a key component of the Partnership.

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40 NSW Food Authority’s submission to IPART, October 2012, p 9.
41 Food Act 2003 (NSW), section 113A.
42 NSW Food Authority’s submission to IPART, October 2012, p 4.
A new partnership between State Government and local government

Local government compliance and enforcement

Figure 2.1 The Food Regulation Forum

Data source: From the NSW Food Authority’s submission to IPART, October 2012, p 5.

2.2 Assessment of the FRP

The FRP has been reviewed and evaluated 3 times in its 4 years of operation. It has been found to be working as intended to improve regulation and compliance, and is well regarded by councils and food retail businesses (see below). Nevertheless, as the Food Authority itself recognises, there are some improvements that can be made. We have recommended changes as outlined in Chapter 9.

The recurrent funding of the LGU is $850,000 per year. In its initial cost benefit analysis, the benefits of the FRP were estimated at $16.5 million over 5 years, versus the costs of $8.0 million.43

43 NSW Food Authority’s submission to IPART, October 2012, pp 20-21.
The most recent evaluation of the FRP was in 2011/12. Five evaluation projects were undertaken and these included surveying local councils and managers of multi-outlet food businesses. The Food Authority reports the Partnership is working as intended and it is well regarded by stakeholders (councils and retail/food businesses). Key findings of the Food Authority’s review indicate:

- improved compliance rates for retail food businesses
- improved levels of cooperation between the Food Authority and councils
- low levels of duplication of regulatory services (but examples were provided where duplication still exists)
- improved levels of council regulatory services
- improved efficiency of council officers, and
- some improvement in food surveillance and enforcement (but more work is needed).

The major benefits of the FRP, according to the Food Authority, have been:

- avoided health and business costs associated with foodborne illnesses (eg, avoided loss of productivity; avoided morbidity, lost income and mortality; reduced healthcare expenditure)
- reduced costs of council regulatory activity (eg, avoided costs of duplication of developing policies, educational tools and materials; greater consistency in enforcement; improved intergovernmental collaboration; stronger resource pool for emergency management; increased community awareness).

The ILGRP expects that its recommendations would achieve many of the benefits that result from the Food Regulation Partnership, namely:

- improved levels of cooperation, participation and involvement
- improved intergovernmental collaboration and a stronger resource pool
- increased community awareness and shared vehicles for implementation of relevant strategies and programs at local (and regional) levels.

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45 Ibid.
46 NSW Food Authority’s submission to IPART, October 2012, pp 3-4.
47 ILGRP Future Directions Paper, pp 55-6.
2.2.1 Stakeholder views on the FRP

Many submissions to our review supported, and even advocated wider application of, the FRP or Partnership Model.48 For example:

Orange City Council notes:

The roll out of the NSW Food Blueprint, through the NSW Food Authority has been a great success. This process was carried out over some years, and involved the commitment of State and Local resources to ensure the State provided adequate training and ongoing support required in order to mandate the role of Local Government in food surveillance.49

Campbelltown City Council recommends the State Government adopts the FRP for all State agencies who share a regulatory role with councils.50

The NSW Business Chamber notes:

The establishment of the Food Regulation Partnership (“the Partnership”) in 2008 helped to better clarify the relationship and food enforcement role between the Food Authority and local councils…

While the Chamber is aware of a number of complaints from businesses in respect of the inspection fees charged by councils, as well as incidences where councils have repeatedly targeted demonstrably compliant businesses, in the main the introduction of the regulation framework has been a positive for both councils and local food businesses.51

The Food Authority has recognised there is scope to improve some aspects of food regulation within the FRP (eg, the notification system) and, as such, is currently conducting a review of these arrangements. This is discussed further in Chapter 9.

2.3 Applying the Partnership Model to Planning

As outlined below, we consider the Partnership Model should be applied to planning. This is an area well suited to such a Partnership Model, as it requires a high degree of interaction and coordination between State and local government, and is of significant regulatory cost and concern to stakeholders.

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48 See Leichardt City Council submission to IPART, November 2012; Sydney of City Council submission to IPART, October 2012; Local Government and Shires Association (now Local Government NSW) submission to IPART, October 2012.
49 See Orange City Council’s submission to IPART, November 2012.
50 See Campbelltown City Council’s submission to IPART, October 2012.
51 See NSW Business Chamber’s submission to IPART, October 2012.
The sections below discuss stakeholder concerns in relation to planning, and our recommendation for the establishment of a formal Planning Regulation Partnership between the Department of Planning and Infrastructure (DoPI) and local government.

We consider how our recommendation would complement the planning reforms, which include reform of building regulation. Our discussion focuses on the planning and building reforms as outlined in the White Paper. However, we note that the new planning legislation has now been introduced into Parliament (on 22 October 2013). Where necessary, we will update our analysis in light of the new legislation as passed by Parliament for our Final Report.

2.3.1 Stakeholder concerns and reported sources of regulatory burden

As discussed in Chapter 7, stakeholder concerns (and sources of regulatory burden) in planning include:

- delays, primarily in the development application (DA) process, which are often the result of:
  - the inherent complexity of the current planning system – including councils’ own development policies, referrals and duplications that occur in the process (eg, concurrence from State agencies) and community consultation requirements
  - a lack of council capacity and capability – in terms of assessing the volume of applications, handling more unique or complex development issues, and/or timely enforcement action for breaches of development consents

- inconsistencies across councils and within councils regarding planning policies and regulatory requirements, including:
  - development consent conditions which can be overly complex, restrictive and unnecessary
  - other onerous requirements imposed by some councils in undertaking their compliance objectives (eg, related to Waste Management Plans or the need for third party expert reports)

- Development Control Plans (DCPs), including the number of plans some councils have and how these can conflict with other higher-order planning policies (eg, Local Environmental Plans (LEPs) and State Environmental Planning Policies (SEPP))

- zoning issues, including the complexity of zoning requirements in LEPs, and what are considered by some stakeholders to be inflexible zoning definitions.

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52 Planning Bill 2013 and Planning Administration Bill 2013.
53 Holroyd City Council noted in its submission that significant delays are experienced when developments require concurrence from the State.
2.3.2 Our recommendation

We recommend the Partnership Model be applied to planning, subject to cost benefit analysis. The Partnership Model has been successful in enhancing council regulatory capacity and capability, encouraging best practice approaches to regulation (eg, risk-based approaches), and consistency (where appropriate). Therefore, application of this model or framework to planning, comprising a partnership between DoPI and councils, has the potential to address many of the above-mentioned stakeholder concerns.

We recognise that DoPI already engages in many elements of the Partnership Model, to some extent. For example, it has consultation forums with councils, provides guidance and explanatory material to councils (eg, Planning Circulars, a DA toolkit for councils), and collects and publishes data relating to councils’ regulatory performance. Further, DoPI now has a dedicated “Development assessments, systems and approvals team” which includes local government support functions. This is in addition to the ‘cultural change’ program proposed in the White Paper, which includes:

- Establishing a Cultural Change Action Group to design and oversee the implementation of culture change actions, alongside implementing the planning reforms. The membership of this group will be from all relevant stakeholder groups, including local government.

- Training in all areas of the new planning system (eg, evidence based strategic planning, community participation, etc).

- Creation of a centre of excellence for professional guidance and tools that promote best practice planning.

- Sharing professional expertise through online discussions and regular workshops to assist planners in other sectors and in areas where planning is under resourcing constraints.

- Promoting professional exchange and secondments between DoPI and local councils.

- Identifying culture change champions and leaders, including in local government, to provide guidance and support to the profession.\(^{54}\)

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\(^{54}\) White Paper, p 39.
The partnership between DoPI and local councils will be strengthened under this program, along with the following further initiatives of the White Paper:

- Enhanced and clearer partnership between state and local government for the preparation of Regional Growth Plans and Subregional Delivery Plans.\(^{55}\)
- Creation of Subregional Planning Boards, with representatives from each council in a subregion and state representatives or experts to oversee the preparation of Subregional Delivery Plans and assist councils to prepare Local Plans.\(^{56}\)
- A new performance monitoring framework to apply to all strategic plans, including the performance of the development assessment system.\(^{57}\)

However, stakeholder submissions (see above) indicate there is further scope to improve consistency, capacity and capability across councils, as well as interactions and coordination between DoPI and councils. Other information and analysis also indicates that planning is considered one of the most burdensome areas of regulation in the economy. For instance, a recent Productivity Commission survey found planning and building to be the key areas of concern for businesses in their interactions with local government.\(^{58}\) CIE estimates that the excessive or unnecessary costs of the NSW planning system are currently at least $300 million per annum.\(^{59}\)

We therefore consider there is benefit in DoPI adopting a comprehensive regulatory Partnership Model, drawing on the elements and experience of the FRP, including a dedicated LGU. In particular, this can help in:

- achieving more consistent regulatory instruments, approaches and decisions (including more consistent information and advice from councils to businesses)
- promoting a risk-based approach to regulation, targeting or prioritising efforts
- achieving better compliance and enforcement of planning laws by working more closely with councils
- providing information and ongoing support to councils from DoPI, and feedback to DoPI from councils on the quality and usefulness of this support
- getting ‘buy in’ from councils in adopting DoPI guidance and advice
- monitoring of councils’ regulatory performance, and working with councils to improve performance.

\(^{55}\) Ibid, pp 73 and 81.
\(^{56}\) Ibid, p 83.
\(^{57}\) Ibid, pp 40-41.
\(^{59}\) The CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations*, June 2013.
We also acknowledge that many of the above stakeholder concerns are targeted by the planning reforms (see Chapter 7) and ILGRP reforms (see Chapter 4). However, a Partnership Model between councils and DoPI can further assist in implementing the reforms. Further, this model provides a strong framework for ongoing review and refinement of councils’ implementation and enforcement of regulation – which is important in such a critical and high cost area.

Under the planning reforms, more developments will be approved under streamlined assessment processes, using code assessment. A more robust, transparent and effective compliance and enforcement regime is also proposed, with greater consistency in the exercise of discretion within that framework. These reforms will improve the integrity of the certification system, and make councils’ role in enforcing compliance with planning and building regulation more important.

As per the FRP, the Planning Regulation Partnership, and its key elements, should be established in close consultation with key stakeholders, including councils, Local Government NSW and the Division of Local Government (DLG).

Examples of potential applications of the Partnership Model to planning

Under the proposed model, the dedicated LGU within DoPI could, for example:

- **Enhance standardisation and consistency of planning information** provided to councils, including the development of a standard DA form for different classifications of development (ie, code assessable and merit-based development) and standard consent conditions (as per the recommendation in Chapter 7), and provide this information online where possible.

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60 White Paper, p 8.
61 Ibid, p 146.
62 The NSW Government indicated that DoPI will refine a standard DA form for code assessable development, which is available in its Electronic Housing Code, as part of the planning reforms. There may also be value in the proposed DoPI LGU developing other standard templates and guidance where possible (eg, for merit-assessed development) and making these available online.
**Promote best practice** in how councils’ approach and administer planning regulation through providing guidance material and examples, such as how some councils minimise delays in ‘change of use’ applications, or reduce the need for unnecessary DA processes. For example, Campbelltown City Council uses Order powers under section 121O of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) to bypass the need to obtain separate council approvals or consents when there are safety concerns with existing structures eg, a retaining wall. Stakeholders identified Wagga Wagga Council’s (former) requirements for awnings to be particularly onerous (eg, engineering reports required every 5 years for all structures); whereas Canada Bay’s awnings policy was considered best practice in minimising compliance costs for building owners.

**Regularly consult** with Local Government NSW, regional groupings of councils, councils and other stakeholders to develop and refine support materials and guidance, and to identify best practice and areas of concern.

**Ensure compliance with planning legislation** by working with councils to produce standard guidance, checklists, enforcement policies or other tools to assist councils to carry out their compliance functions efficiently and effectively. This would include working together to implement a risk-based approach to compliance, and to institute the new compliance and enforcement regime under the planning reforms (eg, new powers and offences).

**Tailor council performance reporting requirements** to better capture data on specific areas of concern.

**Provision feedback and, where necessary, assistance to councils based on reported data** – eg, work with consistently poor performing councils to improve performance.

**Provide guidance on setting regulatory fees** (where councils have discretion) – eg, for pre-DA meetings. Further guidance on setting fees for pre-DA lodgement meetings may be particularly beneficial. The Productivity Commission has noted how some councils offer pre-lodgement meetings to expedite the assessment process, and that there is evidence to suggest a faster DA process as a result of these meetings. However, the NSW Business Chamber noted that:

If pre-DA meetings are to be supported as a leading practice, appropriate mechanisms to ensure councils are not charging excessively need to be put in place.

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63 Submission from Campbelltown City Council to IPART, October 2012, p 3.
64 See NSW Business Chamber’s submission to IPART, November 2012.
66 See NSW Business Chamber’s submission to IPART, November 2012.
▼ Promote and encourage sharing of regulatory resources across councils. Sharing planning resources or services across councils can reduce costs, enhance council capacity and capability, reduce delays, and lead to more consistent approaches and outcomes. We understand that some councils have previously contracted another council to undertake their development assessment work (at that council’s offices), and that this reduced delays and enhanced consistency.67

▼ Assist councils who may have insufficient capacity to consider and process DAs in a timely manner - eg, by managing a ‘Flying Squad’ of planners, based on the Victorian model. Under this model, Victoria assists councils to overcome planning shortages in the medium to long term by providing specialist, onsite support (see Box below). This would better equip local councils, primarily in rural and regional areas, to implement the new planning reforms, progress major development projects and address their planning assessment delays or backlogs. As well as moderating the effects of skills shortages, the Productivity Commission noted that the ‘Flying Squad’ can facilitate the transfer of knowledge, skills and processes across council areas and encourage consistent decision-making between different councils.68

As outlined in section 2.4.1 below, the Planning Partnership Model should also cover councils’ ‘building’ enforcement role (under planning legislation), but exclude its role as building certifier.

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67 The Urban Taskforce of Australia recommended the sharing or regionalisation of planning and assessment staff. The Taskforce submitted that bringing a larger number of local government staff together in a shared services centre will improve the sharing of skills and knowledge amongst staff and expose assessment staff to a wider range of projects. The Taskforce also contended that a regional shared services centre will have access to a larger pool of funds to attract more skilled and experienced staff. See Urban Taskforce of Australia’s submission to IPART, November, 2012.

A new partnership between State Government and local government

Box 2.1 The Planning Flying Squad

The Victorian Rural Planning Flying Squad

The Victorian squad was launched in November 2011. It provides specialist expert and technical assistance to rural councils on issues such as major projects and developments, long-term land use issues and strategic plans, and also provides immediate planning support with planning permit and amendment work.

The type of assistance granted varies for each council depending on local needs. Most services are provided by consultants managed by the Victorian Department of Planning and Community Development and supplemented with 3 senior departmental planners.

Since its inception, the Flying Squad has received over 45 requests for assistance from councils in rural Victoria, with 31 contracts being awarded to consultants to provide assistance. To fund the squad, the Victorian Government has provided $2.8 million over 3 years to June 2014.

Application to NSW

With significant delays and inconsistencies evident in the current planning system, we see potential value in such a squad being offered in NSW. The squad would likely provide support to rural and regional councils primarily, but could also be made available to assist consistently poor performing metropolitan councils, based on reported assessment data.

In summary, the squad in NSW could:

- assist rural and regional councils in undertaking their planning functions, given they tend to have more limited resources and skills bases
- assist in enhancing the planning culture and expertise in the recipient council
- assist in progressing bigger/major projects
- assist councils finding it difficult to undertake strategic planning or aligning local plans with regional/state plans
- help to achieve better planning outcomes across local government through enhanced consistency and reduced delays.

Initially, the squad program could be offered on an interim basis, perhaps over 1 to 3 years, with a review to gauge the continued need for, and net benefits of, the squad beyond this period.

Draft Recommendation

1 Subject to cost benefit analysis, the NSW Department of Planning and Infrastructure (DoPI) should engage in a Partnership Model with local government, similar to the Food Regulation Partnership, to enhance the capacity and capability of councils to undertake their regulatory functions. This should include:

- enshrining the partnership model in legislation
- clear delineation of regulatory roles and responsibilities
- a risk-based approach to regulation supported by a compliance and enforcement policy
- use and publication of reported data to assess and assist council performance
- a dedicated consultation forum for strategic consultation with councils
- ability for councils to recover their efficient regulatory costs
- a system of periodic review and assessment of the partnership agreement
- a dedicated local government unit to provide:
  - a council hotline to provide support and assistance
  - a password-protected local government online portal
  - guidelines, advice and protocols
  - standardised compliance tools (eg, forms and templates)
  - coordinated meetings, workshops and training with councils and other stakeholders.
Box 2.2  CIE’s analysis of this recommendation

CIE estimates this recommendation would:

- produce a net economic benefit of between $6.2 million and $29.5 million per annum (mid-point of $17.9 million per annum)
- reduce red tape costs for businesses and individuals by between $8.3 million and $30.5 million per annum (mid-point of $19.4 million per annum)
- increase NSW Government costs by between $3.0 million and $4.7 million per annum (mid-point of $3.9 million per annum)
- reduce council costs by between $0.9 million and $3.8 million per annum (mid-point of $2.3 million per annum).

CIE conservatively estimates that the excessive or unnecessary costs of the NSW planning system are between $260 million and $305 million per annum.

CIE notes that the costs of the problems associated with the planning system are difficult to quantify, but it is clear that the impacts are large. NSW is viewed as worse than other states:

- CIE has estimated that planning delays and uncertainties and excessive land prices from zoning restrictions add $48 000 per dwelling for a greenfield dwelling or $78 000 for an infill dwelling in Sydney.
- Developers surveyed by CIE in 2010 indicated that they applied a risk premium for operating in NSW of an additional 1% to their gross margin. They also indicated substantial variation in the performance of councils across NSW.
- The time taken for councils to process development approvals can be long and is extremely variable eg, time taken can be over 1000 days after the development application is lodged. Additional time prior to lodging a DA is also required for businesses to put together the information required.

CIE calculates that if this recommendation could reduce these excess costs by between 3.2% and 10%, as occurred under the Food Regulation Partnership, red tape savings would be between $8.3 million and $30.5 million per annum.

CIE notes this recommendation could achieve these red tape savings through:

- improving consistency of planning across NSW
- improving the outcomes of the planning process
- reducing costs to councils and those seeking approvals.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 8-20.
2.4 Applying the Partnership Model to Environmental Regulation

As outlined below, we also consider the FRP model should be applied to environmental regulation, subject to cost benefit analysis. Like food and planning, the environment is an area well suited to a robust, sustained and coordinated regulatory partnership between councils and the State regulator.

This is an area where regulatory responsibilities are split between councils and the key State regulator, there are some complex and highly technical regulatory issues, and costs to business and the community can be high.

The sections below discuss councils’ environmental regulatory roles, stakeholder concerns in relation to environmental regulation, and our recommendation for establishment of a formal Environmental Partnership Model between the Environment Protection Authority (EPA) and local government.

2.4.1 Councils’ regulatory roles

The regulatory roles of the EPA and councils in relation to environmental protection are defined in the Protection of the Environment Operations Act 1997 (NSW) (POEO Act), which establishes the concept of Appropriate Regulatory Authority (ARA). The EPA is the ARA for activities that require an environment protection licence (as specified in the Schedule of the Act) and for activities operated by public authorities. Councils are the ARA for all other regulatory activities.69

Non-scheduled activities that come under councils’ jurisdiction are wide-ranging and often require a reactive response. Examples include:

- noise and dust pollution from a development site
- noise in general from households (eg, barking dogs, noisy alarms)
- illegal dumping of waste
- stormwater pollution, spills, soil and groundwater contamination from sites.70

As the consent authority under the EP&A Act, councils also impose conditions on developments that are aimed at mitigating or avoiding adverse environmental impacts.71

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69 Protection of the Environment Operations Act 1997 (NSW), section 6(2).
70 The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013.
71 Environmental Planning and Assessment Act 1979 (NSW), section 4.

### 2.4.2 Stakeholder views on interactions between EPA and councils

**The EPA**

According to the EPA, its regulatory roles and those of councils are clearly defined under the POEO Act.\(^{72}\) It also notes that it works with councils to coordinate and deliver effective compliance campaigns, audit programs and regulatory responses.\(^{73}\) It states these activities provide an opportunity to share skills and experiences, leading to a more consistent regulatory approach. Some examples of these are presented in the Box below.

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72 See NSW EPA’s submission to IPART, November 2012.
73 Ibid.
Box 2.3  Examples of EPA’s involvement with councils

Joint compliance audit programs

The EPA and councils recently conducted a joint compliance audit program of facilities that pose a high risk of environmental harm. A total of 34 premises regulated by the EPA and another 6 premises regulated by the councils were audited. The EPA shared its audit tools and provided guidance on regulatory follow up action to be taken by the councils.

Accredited Site Auditor Scheme

The EPA Accredited Site Auditor Scheme under the Contaminated Land Management Act 1997 (NSW) provides skilled practitioners to councils who require support in making planning decisions where the land is contaminated. This provides certainty for councils in making planning decisions. The EPA also runs workshops on contaminated land management.

Waste management regulation activities

The EPA works collaboratively with local councils by drawing on their expertise, and facilitating coordinated responses to waste management problems. For example:

- The Litter Prevention Council Reference Group, comprising 22 councils, provides feedback on anti-littering materials, evaluation tools and training programs. The EPA provided $5,000 per council to assist council officers to attend the workshops, trial resources/materials, provide feedback on resources and consult with their community.

- The EPA hosted a forum for public agencies in the Southern Region in March 2012, which was attended by 26 stakeholders, including 6 councils. The discussions were used to develop an online illegal dumping resource for the stakeholders, as well as to help the EPA plan its strategy for combating illegal dumping. The EPA launched the new online Illegal Waste Dumping resource for public land managers and councils in November 2012.

- The EPA conducts regular joint compliance campaigns to identify and reduce illegal dumping. It works closely with the Western Sydney Regional Illegal Dumping (RID) Squad to provide operational and technical advice, as well as funding. It is working to establish 2 new RID squads with the Southern Councils Group and the Hunter.

Implementation of the Underground Petroleum Storage Systems (UPSS) Regulation

Until June 2017, the EPA is responsible for enforcing this regulation, after which responsibility will be transferred to councils. In the interim, it has been working to build council capacity through joint inspections and the development of guidance material.

Capacity building courses

The EPA runs training courses focusing on compliance and enforcement activities. It also organises workshops through the Australasian Environmental Law Enforcement and Regulators neTwork (AELERT), which are well attended by councils.

Other stakeholders

Other stakeholder submissions, however, indicate there is scope to improve the EPA’s interactions with councils, at least in some areas. They have raised the following concerns in relation to environmental regulation:

- overlap or uncertainty of roles and responsibilities between State Government regulators (primarily EPA, but also the Office of Environment and Heritage) and councils
- a lack of council capacity and capability
- a lack of guidance and assistance provided to councils by State Government regulators.74

These concerns can increase costs to councils, businesses (eg, due to delays or inconsistent or incorrect advice or decisions), NSW Government regulators and the community in general.

Councils

Several councils said there was overlap or uncertainty in relation to their regulatory roles relative to the EPA. For instance, City of Sydney, Shoalhaven, Shellharbour, Newcastle, Warringah, Hurstville and Lismore councils said there can be confusion or uncertainty as to who is the ARA under the POEO Act.75 Specific examples cited were:

- cement premises (Warringah)
- contaminated land, premises owned by the State but occupied by third parties, major spills, and non-licensed activities by licence holders – although this uncertainty can be addressed at the local level (Newcastle)
- waste disposal, in particular when “large amount[s] of fill [are] dumped on private property” (Shellharbour believed EPA was ARA, EPA believed Shellharbour was ARA)
- pollution from State-owned utility (Hurstville).76

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74 See submissions to IPART from City of Sydney Council; Shoalhaven City Council; Shellharbour City Council; Newcastle City Council; Warringah Council; Hurstville City Council; and Lismore City Council, October/November 2012.
75 Ibid.
76 Ibid.
Warringah said it has limited interaction with, and help from, the EPA (amongst a range of other NSW Government agencies). City of Sydney stated that, whilst councils often liaise with locally based state officers, interactions between both levels of government need to be more structured and coordinated. The City of Sydney also argued State Government agencies should engage in more effective partnership arrangements with local government (as per the FRP Model). Similarly, Leichhardt noted that communication between State Government agencies and local government requires more structure and coordination, “especially between the EPA and councils.”

Lake Macquarie suggested that further guidance and local government capacity building is required in relation to the regulation of air quality, contaminated land and underground petrol storage systems. Likewise, Randwick stated that it is unrealistic to expect each council to have the specialist staff to deal with occasional complex regulatory issues such as significant air, noise or water pollution matters.

CIE reports that 1 council estimated it receives about 1,000 complaints each month with respect to POEO Act matters, and its resources required for POEO Act compliance and enforcement was 10 times its requirements for food matters.77

On the other hand, Liverpool Plains stated the EPA openly and actively supports it through regulatory training and legislative ‘handovers’.78

**Business**

In its submission to our concurrent review of licensing in NSW, the Australian Sustainable Business Group asserted that councils often lack the necessary expertise to efficiently regulate contaminated land. It noted this results in overly cautious or prescriptive regulatory requirements, meaning the regulated business incurs unnecessary costs.79

Caltex supports this view. It recommends that the EPA set environmental standards and requirements, with councils simply responsible for monitoring compliance and reporting to the EPA. Alternatively, it states councils should pool their regulatory resources, to enhance capacity and capability, and deliver better regulatory outcomes at lower cost.80

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77  The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013.
78  Liverpool Plains Shire Council’s submission to IPART, October 2012.
79  The Australian Sustainable Business Group’s submission to IPART’s Licence Rationale and Design Review, November 2012.
80  See Caltex’s submission to IPART, November 2012.
Caltex also notes the following:

- Petrol station forecourt refuelling area effluent control is subject to regulatory overlap. The EPA monitors quality standards under the POEO Act\(^{81}\), while councils set conditions through the development assessment process\(^{82}\). Both the EPA and councils have inspectors to monitor compliance, and standards often differ. In Caltex’s experience, this often leads to confusion, delays and poor outcomes.

- Councils impose unnecessary or overly prescriptive environmental requirements on sites as part of the development assessment process – particularly in relation to Underground Petroleum Storage Systems and petrol stations. This unnecessarily increases the costs of developing and operating a site, and sometimes can even result in poorer environmental outcomes.

- The distribution of Caltex’s environmental protection expenditure is distorted by variations in capabilities and requirements across councils. That is, lower risk sites sometimes require more expenditure, due to the unnecessary or overly prescriptive requirements of some councils. According to Caltex, this is not good for Caltex, the environment or the community as a whole.

### 2.4.3 Our recommendation

For the reasons outlined earlier in this chapter, we also recommend the Partnership Model be applied to environmental regulation.

The application of this model – comprising an Environmental Regulation Partnership between the EPA and councils – has the potential to address many of the above-mentioned stakeholder concerns.

We recognise that the EPA already engages in many elements of the Partnership Model, to some extent, and that it has made considerable efforts to provide guidance, training and support to councils. However, as evidenced from submissions to our review, these efforts do not appear to be sufficiently sustained, coordinated, consistent or well-resourced to result in the benefits achieved from a full Partnership Model.

The EPA has regional offices that have liaised effectively with some councils. However, these offices are not distributed consistently across NSW. Further, they don’t have a state-wide coordinating role, which means the work they do with councils doesn’t necessarily get used or applied consistently across the State.

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\(^{81}\) Protection of the Environment Operations Act 1997 (NSW), section 6(1).

\(^{82}\) Environmental Planning and Assessment Act 1979 (NSW), section 4.
A more structured and formalised partnership arrangement can:

- clearly delineate regulatory roles and responsibilities
- provide consistent and sustained guidance and support to councils
- ensure information on the regulatory performance of councils is consistently collected, which assists in both guiding and supporting councils but also holding them accountable for their regulatory performance
- enhance consistency of regulatory approaches and decisions (the EPA’s submission recognises that significant gains could be made by councils harmonising regulatory practices, such as adopting common guidelines, protocols, compliance and enforcement templates, applications)
- promote and facilitate the use of best practice regulatory approaches – such as a risk-based approach to regulation, targeting or prioritising efforts.

The regulatory roles of the EPA and councils cover a range of environmental areas, which vary in terms of risk, complexity, and potential impact on the community. In particular, we consider a structured Environmental Regulation Partnership (ERP) could assist councils and enhance regulation in high risk, high cost, complex areas, such as contaminated land or water pollution in the drinking water catchments. As per the FRP, the ERP and its elements should be established in close consultation with key stakeholders, including councils, Local Government NSW and DLG. The Sydney Catchment Authority has indicated its support of an ERP and being part of such a partnership.83

Draft Recommendation

2. Subject to cost benefit analysis, the NSW Environment Protection Authority should engage in a Partnership Model with local government, similar to the Food Regulation Partnership (as per Draft Recommendation 1).

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83 Personal communication, Department of Premier & Cabinet, Email to IPART, 24 September 2013.
A new partnership between State Government and local government

Box 2.4 CIE’s analysis of this recommendation

CIE notes that there may be a benefit of establishing a partnership model for environmental regulation of the POEO Act to improve consistency of compliance and enforcement requirements amongst councils. CIE notes that the number of local council staff involved in POEO Act matters may be 10 times greater than the number of staff involved under the Food Act (i.e., over 1,500 staff). This highlights the scale of EPA’s involvement with councils and potential scale of benefits of applying a Partnership Model to the environment.

CIE estimates the costs of implementing a Partnership Model for environmental regulation would be approximately $1.9 million per annum. CIE were unable to determine whether the partnership would have any net benefit due to the uncertainty of the scope and scale of the issues identified by stakeholders.

However, it expects the following benefits from a Partnership Model:

▼ improved consistency, resulting in lower costs for businesses that operate across multiple jurisdictions
▼ closer to ‘optimal regulation’, leading to a better trade-off between environmental outcomes and costs
▼ reduced duplication and excessive effort, resulting in lower costs for businesses and individuals, and
▼ reduced likelihood that businesses or individuals could escape appropriate compliance and enforcement for environmental regulation, leading to better outcomes.

CIE supports a full cost benefit analysis be conducted if the Partnership Model is to be applied to environmental regulation.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 73-77.

2.5 Applying the Partnership Model to other areas?

As outlined below, we also considered whether the Partnership Model should be applied to other regulatory areas, such as building and public health.
2.5.1 Building

Given that the planning and building sectors are closely related, the Partnership Model should also apply to building.

There appears to be significant uncertainty associated with councils’ role in building regulation relative to the role of certifiers (council or private); and council consent conditions can have a significant impact on building issues and stakeholders (see Chapter 8). The White Paper proposes to address these issues through:

- clarifying roles and responsibilities of the certifying authority, consent authority and the council\(^84\)
- removing building and construction requirements from consents and addressing these issues through the construction certification process\(^85\)
- developing consistent consent conditions.\(^86\)

However, as noted above, the planning reforms will increase the reliance on the certification system and accentuate the importance of councils’ enforcement role in maintaining the integrity of that system. Therefore, at a minimum, the Partnership Model between the State Government and councils in relation to building regulation should cover:

- The implementation of proposed reforms, including to clarify regulatory roles (eg, who should act, and when) and to conditions of consent.
- Ensuring councils can carry out their compliance functions efficiently and effectively, by working with councils to produce standard guidance, checklists, enforcement policies or other tools. This would include working together to implement a risk-based approach to compliance.

This partnership should primarily focus on councils’ enforcement role in relation to development consents and building regulations, but exclude its role as building certifier. This is because the Building Professionals Board, within DoPI, is the regulator of certifiers (both council and private). Therefore, it would not be appropriate for this role to be included in a partnership arrangement.

In Chapter 8, we recommend the establishment of a Building Authority. If this Authority is created, we recommend it enter into a Partnership Model with local government. If not, then a building component should be included in the DoPI/council Partnership Model discussed above.

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\(^84\) White Paper, p 192.
\(^85\) Ibid, p 186.
\(^86\) Ibid, p 187.
2.5.2 Public Health

Councils’ compliance and enforcement of public health matters are shared between councils and the NSW Ministry of Health (MoH) under the Public Health Act 2010 (NSW) and the Public Health Regulation 2012 (NSW). This relates to the regulation of public swimming pools, warming/cooling towers and skin penetration procedures.

Like the environment and planning, health is potentially a high risk or high cost area. However, unlike these areas, it was not a major area of concern amongst stakeholder submissions to our review. Some councils cited poor consultation in relation to the recently amended Public Health Act 2010 (NSW), while others expressed positive views.

Further, the regulatory task for councils in public health is small compared to food safety, planning and the environment. For example, there are approximately 50,000 food businesses across NSW compared with fewer than 7,000 businesses involved in the 3 areas of public health for which council is the regulator.

For these reasons, combined with the costs of establishing a Partnership Model, we have not recommended formal application of the full Partnership Model to public health.

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87 Public Health Act 2010 (NSW), Part 3, Division 3.
88 Public Health Act 2010 (NSW), section 31.
89 Public Health Act 2010 (NSW), Part 3, Division 4.
90 See submissions from Campbelltown City Council, Holroyd City Council, and Sutherland Shire Council to IPART, October/November 2012.
91 See positive views in submissions from Lismore City Council and Orange City Council to IPART, October/November 2012.
2.5.3 Principles and elements for all State Government agencies and councils to consider

However, we encourage the MoH and other State Government agencies to review the Partnership Model and consider adopting key elements of it, including:

- clear guidance on the roles and responsibilities of councils
- promoting a risk-based approach to regulation, supported by a compliance and enforcement policy
- collection of information from councils on their regulatory activities and the use and publication of this data to assess and assist council performance
- periodic review of regulatory arrangements, including the relationship with councils.

In this context, we endorse the actions of the MoH in recently releasing additional guidelines and templates on its website to improve communication with businesses, individuals and councils in relation to their respective regulatory requirements. For example, a standardised notification form for businesses and an inspection form for councils are now available on the NSW Health website. These forms can reduce time costs to councils, businesses and individuals.

2.6 An alternative to the Partnership Model?

The Partnership Model involves a partnership between state and local government focused on a specific regulatory area (ie, food). As discussed above, we see merit in extending this to other key regulatory areas, namely planning and the environment.

An alternative model is to focus on the regulatory relationship between state and local government across regulatory areas. This was the role of the Local Better Regulation Office (LBRO) in the United Kingdom.

2.6.1 A Local Better Regulation Office (LBRO)

The functions of the UK LBRO (a statutory body now dissolved) have now been assumed by the Better Regulation Delivery Office (BRDO) within the Department for Business, Innovation and Skills.

The LBRO/BRDO focuses on the regulatory activities of local government and has responsibilities and powers to implement, monitor, coordinate and prioritise regulatory activities between and within levels of government.
The role of LBRO/BRDO is to:

- develop formal partnerships with regulators across all levels of government
- provide advice to central government on regulatory and enforcement issues associated with local government
- issue statutory guidance to local government in respect of regulatory services
- nominate and register ‘primary authorities’ to provide advice and approve inspection plans for businesses that operate across council boundaries and arbitrate any disputes
- maintain a list of National Priority Regulatory Outcomes (NPROs) for local government.93

Other work undertaken or being developed by LBRO/BRDO includes:

- a Compliance and Enforcement Policy template for local authorities
- proposals for developing a common approach to risk assessment.94

As outlined in Chapter 3, we have recommended that the former NSW Better Regulation Office’s (BRO) Guide to Better Regulation95 be revised to acknowledge the impact state regulation has on local government. This and other measures we have recommended in Chapter 3 lead us to view the creation of an entity similar to LBRO as not warranted in NSW.

**The Primary Authority Scheme (PAS)**

One of the biggest initiatives of LBRO/BRDO is the ‘Primary Authority Scheme’ (PAS). The PAS is aimed at providing more regulatory consistency and certainty for businesses that operate across a number of local authority areas. Under this scheme, the business can form a partnership with a single council who becomes the primary authority with which other councils must defer to in relation to regulatory compliance issues (see Box below).96

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The Victorian Competition and Efficiency Commission (VCEC) have examined the advantages and disadvantages of the PAS. On balance, the VCEC concluded:

The primary authority scheme is a promising innovation, which could reduce inconsistencies that impose significant costs on businesses ... However ... more information is needed before the proposal is considered in Victoria.97

However, in our assessment it is unlikely the benefits of a primary authority scheme would outweigh its costs if implemented in NSW. For example, it does not cover planning or building regulation – the areas of biggest regulatory burden in NSW. Also, one of the biggest regulatory areas covered by it appears to be food safety, the area currently best handled in NSW by councils. This reinforces our view not to recommend a separate LBRO for NSW.

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**Box 2.5 The UK’s Primary Authority Scheme (PAS)**

Key features of the PAS are:

- Any company operating across local authority boundaries can form a partnership with a single local authority in relation to regulatory compliance. These agreements can cover all environmental health legislation, or a specific function such as food safety.

- A central register of the partnerships, held on a secure database, provides an authoritative reference source for businesses and councils.

- If a company cannot find an appropriate partner, it can ask the Local Better Regulation Office to find a suitable local authority for it to work with.

- A primary authority provides robust and reliable advice on compliance that other councils must take into account, and may produce a national (or state-wide) inspection plan at the request of the business, to coordinate activity.

- Before other councils impose sanctions on a company, including formal notices and prosecutions, they must contact the primary authority to see whether the actions are contrary to appropriate advice it has previously issued. (This requirement to consult is waived if consumers or workers are at immediate risk.) If the proposed action is inconsistent with advice previously issued by the primary authority, it can prevent that action being taken.

- Where the authorities cannot agree, the issue can be referred to the Local Better Regulation Office for a ruling, which is made within 28 days.

- The question of resourcing the partnership is up to the councils and businesses concerned. Where necessary, a primary authority can recover its costs.


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2 A new partnership between State Government and local government

2.6.2 LBRO vs. Partnership Model (Area-Specific Regulation Partnerships)

The Partnership Model has limitations in providing over-arching whole-of-government coordination that a LBRO could arguably provide.

However, this can be achieved through central agencies such as BRO, NSW Ombudsman and DLG undertaking some overarchign initiatives (eg, see Draft Recommendations 6 and 7 of this report).

Further, we consider the area-specific regulation partnership approach (eg, the Partnership Model) is more targeted and thus likely to achieve more significant reforms and gains – particularly when applied to high impact areas such as food, planning and the environment. The Food Regulation Partnership is also strongly supported by stakeholders and the results of its reviews.
Widespread stakeholder concern has been expressed by councils, businesses and the community as to the capacity and capability of councils to undertake their regulatory roles effectively and efficiently. Some councils have raised this concern in the context of alleged cost shifting from the State Government to local government.

Councils are responsible for a large range of regulatory functions. Our consultants, Stenning & Associates, found 121 local government regulatory functions, involving 309 separate regulatory roles. These functions emanate from 67 State Acts, which are administered by 8 Departments or Ministries and 23 Agencies.

Substantial benefits can be achieved by managing the number of regulations and, where regulations are removed to allow the operation of new ones, preventing new regulations from imposing unnecessary costs on the community. As the State develops these regulations, it is necessary to ensure the regulation-making process adequately considers local government implementation and enforcement issues in order to create better local government regulation.

The State Government can also set high-level policy to guide councils’ enforcement of these regulations to enable better outcomes for business and the community. Better management of the stock of regulation devolved to councils will also enhance outcomes. Ensuring the stock of regulation does not continue to grow unnecessarily or without regard to the cumulative effect on councils will result in more efficient regulation, improved capacity for effective enforcement by councils, and lower costs to businesses and the community.

In Chapter 2, we considered how NSW Government agencies and local government could work together to improve compliance and enforcement activities and reduce red tape in several key regulatory areas (particularly planning and the environment). Recommendations in this chapter reinforce that partnership approach between State and local government.

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99 Ibid.
In this chapter, we focus on achieving and implementing better local government regulation through:

- revising the *Guide to Better Regulation*\textsuperscript{100} (the Guide) to ensure adequate consideration of local government capacity and capability at the regulatory design stage and provide a ‘check’ on cost-shifting from the State to local government

- managing the stock of local government regulation by maintaining the register of local government regulatory functions

- introducing a regulators’ compliance code for local government to lead cultural change in how councils undertake their compliance and enforcement activities and to minimise unnecessary impacts on businesses or the community

- introducing a standard enforcement policy to support the implementation of the regulator’s compliance code and assist local government to undertake their regulatory roles and responsibilities effectively

- providing greater guidance to councils in developing their regulatory policies and instruments

- increasing transparency for local government fees and charges to ensure efficient fees and charges.

### 3.1 Achieving and implementing better local government regulation

Improvements are needed to the current regulation-making framework if unnecessary costs are to be avoided and better local government regulation is to be created.

This section explains the current regulation-making framework and the role of the Department of Premier and Cabinet as the regulatory gatekeeper in NSW. It then recommends specific improvements to this framework.

#### 3.1.1 Department of Premier and Cabinet

The role of the former Better Regulation Office (BRO) was to develop and implement the NSW Government’s regulatory reform agenda to reduce the regulatory burden and cut red tape for business, including:

- Acting as a regulatory gatekeeper, reviewing and advising the NSW Premier on compliance of all regulatory proposals with the requirements outlined in the Guide.

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Improving the regulatory framework at the State level

Local government compliance and enforcement

BRO worked with State regulators on various initiatives. For instance, it had a regulators’ group or network, and was developing guidance on risk-based enforcement and measuring regulatory outcomes. The Department of Premier and Cabinet (DPC) was recently restructured. As a result, BRO no longer exists as a separate office within DPC. However, DPC will continue to undertake BRO’s former functions as part of its broader role.

3.1.2 Stakeholder concerns

Submissions raised a number of concerns that relate to the regulation-making process and State and local government interactions. These concerns are summarised below and presented in the following Box.

Council stakeholders noted:

- the devolution of regulatory responsibilities from State to local government without extra resources to match, as the reason for eroding council resources

- State Government agencies appear to give little consideration to resource/cost implications to councils when developing regulations that delegate responsibilities to local government (eg, recent Swimming Pools Act 1992 (NSW) amendments and Boarding Houses Act 2012 (NSW))

- a desire for greater partnership with State Government

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103 See submission from Albury City Council to IPART, October 2012.

104 See submissions from Sutherland Shire Council to IPART, November 2012; Lismore City Council to IPART, November 2012.

105 See submission from Campbelltown City Council to IPART, October 2012.
Business stakeholders commented on:

- the lack of council resources and expertise adding to business costs through increased delays; poor decision-making; inconsistent, incorrect or unclear advice; and/or overly prescriptive approaches to regulation\(^{106}\)
- delays as a result of the lack of co-ordination between State and local government (eg, planning approval concurrences and referrals)\(^{107}\)
- confusion, costs and delays arising from overlapping or unclear roles between State and local government in the areas of building regulation, noise, waste, asbestos, fire safety, native vegetation, stormwater requirements and manufactured homes.\(^{108}\)

Community stakeholders noted:

- councils do not sufficiently enforce regulatory breaches because of cost considerations or only enforce laws to maximise revenue rather than social benefits (eg, parking fines over alcohol free zones)\(^{109}\)
- poor coordination between the State Debt Recovery Office (SDRO) and councils in relation to fines
- difficulties with inconsistent and overlapping operational boundaries between NSW Government departments and local government, impeding effective coordination and service delivery to the community.\(^{110}\)

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\(^{106}\) See submissions to IPART from Caltex; Small Business Commissioner; and NSW Business Chamber, October/November 2012.

\(^{107}\) See submission from Urban Taskforce Australia to IPART, November 2012.

\(^{108}\) See submissions from Housing Industry Association to IPART, November 2012; NSW Business Chamber to IPART, October 2012; Caltex to IPART, October 2012.

\(^{109}\) See Banyard D’s submission to IPART, October 2012.

\(^{110}\) Personal communication, Councillor Bob Wheeldon, Wentworth Shire Council, Email to IPART, 26 February 2013.
Box 3.1 Concerns with local government capacity and capability and interactions with the State

Councils

*Sutherland Shire Council:*

The concept of “placing the administrative burden on the regulator” already exists in the culture of State Government, requiring local government to undertake functions with no regard for resource implications.

*Lismore City Council:*

The recent amendments to the Swimming Pools Act and Regulations in NSW to take effect in 2013 (will mean) obligations and cost burdens placed upon local government for compliance and enforcement activity, without any serious consideration of cost implications for councils.

*Campbelltown City Council:*

NSW Government agencies have a key role to play as an effective support partner to local councils in the delivery of new and shared compliance functions…the potential for improved coordination and greater consistency will avoid unnecessary regulatory burdens.

*Albury City Council:*

The continual shift of regulatory, inspectorial and reporting responsibility from State to local government bodies and the increasing demands and expectations from local communities are having an adverse effect on the ability of local government to maintain and provide a consistent level and quality service.

Small Business Commissioner

In my view, given their broad array of functions, many councils are not equipped with sufficient resources to undertake the extensive regulatory activities that they are responsible for. In addition to this, appropriately skilled staff can be difficult to employ especially in regional areas.

NSW Business Chamber

The majority of local government’s regulatory functions are conferred by State Government legislation, co-ordination between the 2 tiers is therefore vitally important. Unfortunately there are far too many instances where the sharing of knowledge and basic interaction between the 2 tiers is sorely lacking.

Source: Various submissions from councils to IPART, October/November 2012 and submissions from Small Businesses Commissioner and NSW Business Chamber to IPART, October/November 2012.
There is general agreement amongst stakeholders that there is a need for:

- greater provision of guidance, training and resources to local government\(^{111}\)
- greater consultation, communication and coordination between State and local government\(^{112}\)
- consideration of the capacity and capability of councils prior to delegating regulatory roles to local government\(^{113}\)
- enhancement of regulatory capacity and capability of councils through the development of standardised systems and processes to be used across all councils\(^{114}\).

Ultimately, where councils lack resources, skills and support to undertake regulatory roles they either fail to undertake the roles or undertake them inefficiently or ineffectually. These effects are seen more acutely in small rural and regional councils (e.g., Wentworth Shire Council, with a population of 6,000, does not employ a dedicated enforcement officer\(^{115}\) and Liverpool Plains Shire Council does not undertake regular inspections of on-site sewage systems or developments\(^{116}\)).

### 3.1.3 Current regulatory framework

NSW has well-established regulatory impact analysis (RIA) processes established under the *Subordinate Legislation Act 1989* (NSW) (SL Act) and the Guide.

There are also Inter-governmental Agreements (IGAs) between Federal, State and local governments aimed at preventing cost shifting to local government from the Federal and State Governments. These are outlined below.

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\(^{111}\) For example, see submission from the Business Council of Australia to IPART, October 2012.

\(^{112}\) For example, see submissions from Caltex to IPART, November 2012; Ashfield City Council to IPART, November 2012; Lake Macquarie Council to IPART, November 2012.

\(^{113}\) See submissions from Caltex to IPART, November 2012; NSW Business Chamber to IPART, October 2012; Randwick City Council to IPART, November 2012.

\(^{114}\) See submissions from the Small Business Commissioner to IPART, November 2012; Warringah Council to IPART, November 2012; NSW Business Chamber to IPART, October 2012.

\(^{115}\) See submission from Wentworth Shire Council to IPART, October 2012.

\(^{116}\) See submission from Liverpool Plains Council to IPART, October 2012.
Inter-governmental agreements

The Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters (the Federal IGA) was signed by the Federal Government and all States and Territories, and the Australian Local Government Association in April 2006 to address cost shifting onto local government.117 Following this, an Intergovernmental Agreement between the NSW State Government and the Local Government and Shires Associations of NSW on behalf of NSW Councils was signed on 25 October 2010, which sought to complement the objectives of the federal agreement at the NSW level.118 More recently this has been replaced with the Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships (the NSW IGA), which was signed on 8 April 2013.119

The IGAs are aimed at fostering stronger relationships or partnerships between the Federal/State Governments and local government, and addressing claims of ‘cost shifting’. Under the NSW IGA, there is agreement that prior to a responsibility (ie, service or function) being devolved to councils, local government is consulted and the financial impact is to be considered within the context of the capacity of local government.120

Regulatory Impact Analysis (RIA) processes

In NSW, RIA relating to the regulatory design process is implemented largely through administrative requirements imposed via the Guide. Under the Guide, State agencies are required to prepare a Better Regulation Statement for all significant new and amending regulatory proposals. For all other regulatory proposals, State agencies are required to demonstrate compliance with the ‘better regulation principles’, which are set out in the Guide. There are also formal requirements for a Regulatory Impact Statement (RIS) to be prepared in relation to new regulations only (not Acts or other statutory instruments) under the SL Act.121

120 Ibid, clause 5.
121 Subordinate Legislation Act 1989 (NSW), section 5.
Consideration of impacts on local government

There is currently no explicit requirement to have regard to the impact of regulatory proposals on local government (as distinct from government in general) in the Guide or the SL Act. This is not consistent with the principles agreed under the IGAs.

Review of the Guide and SL Act

In September 2011, BRO commenced a review of the Guide and SL Act to determine if changes were necessary to enhance existing arrangements. BRO noted in its issues paper overlap and inconsistency in the requirements of the Guide and the SL Act, and a lack of transparency in current RIA processes.122

The Productivity Commission’s recent findings on RIA processes

The Productivity Commission has recently completed benchmarking RIA processes in Australia.123 It identified a number of barriers to RIA processes improving regulatory outcomes, including:

- a lack of commitment to RIA processes, including:
  - a top-down approach to policy-making by some Ministers
  - reliance on exclusions from RIS requirements
- a lack of incentives for agencies to develop RIA capacity
- the administrative burden of RIA processes
- inadequate analysis for many proposals with significant impacts, including a lack of robust quantification of the impacts
- lack of transparency in the implementation of RIA, including:
  - inadequate stakeholder engagement and infrequent publication of RISs, and
  - exemptions and non-compliance not routinely reported or explained.124

The Productivity Commission has also identified the establishment of better regulation principles with a statutory basis as a leading practice in its benchmarking report into the role of local government as regulator.125

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124 Ibid.
State operational boundaries and local government

According to one stakeholder, another issue impeding effective coordination between State agencies and local government is the currently overlapping and inconsistent operational boundaries adopted by State agencies in relation to local government areas.126 This issue does not just affect regulatory functions. It can impact on the effectiveness with which both the State and local government can deliver services and regulatory functions to the community. There is no simple solution to achieve an alignment of operational boundaries at the State and local government level. However, at the regulatory design phase, there may be scope for State agencies, in consultation with local government, to consider how their operational boundaries will align with local government areas to ensure the efficient delivery of new services or regulatory functions.

3.1.4 Our recommendations

Expand the Guide to Better Regulation

To be effective, the IGAs need to be implemented at the regulatory design phase by the relevant State agency on behalf of the State Government. One vehicle for ensuring that the principles of the IGA’s are implemented is to move them clearly into the sphere of State agencies via the RIA process.

We recommend the current Guide be revised to ensure State agencies consider the impact of regulatory proposals on local government and, in particular, their capacity and capability, prior to devolving regulatory responsibilities to local government.

This is consistent with the Productivity Commission’s leading practice127 and would address widespread stakeholder concerns. It would also be consistent with the process undertaken by the Food Authority prior to introducing amendments to the Food Act that created the Food Regulation Partnership (FRP) or Partnership Model discussed earlier in Chapter 2. (The Food Authority undertook substantial consultation with local government in developing the FRP, which included consideration of funding and resourcing.)

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Where regulatory proposals involve responsibilities for local government, the State agency should also prepare an implementation and compliance plan. This plan would aim to:

- clearly define roles and responsibilities of councils and State Government
- align State agency operational boundaries with local government areas to best enable co-ordination between councils and State Government, and efficient delivery of services or regulatory functions to the community
- set out proposed structures for ongoing consultation and partnership arrangements with councils, to ensure coordination between the 2 tiers of government
- identify the regulatory or other tools and infrastructure to be provided by the State Government to councils (eg, registers, databases, portals or online facilities, standardised or centralised forms, inspection checklists, templates for orders/directions, etc)
- identify the use of best practice approaches, such as risk-based enforcement, at the local government level
- set out mechanisms for recovering councils’ efficient regulatory costs (eg, fees, charges, debt recovery, funding arrangements, hypothecated revenue, etc)
- identify the training or certification needs of councils to undertake their responsibilities and how this will be met
- set out how council regulatory or service performance will be efficiently monitored and reported, and ensure such reporting requirements are targeted, utilised and not unnecessarily burdensome
- provide review mechanisms or procedures for the implementation plan.

Proper consultation and consideration of impacts on local government should result in the following benefits:

- enhanced capacity and capability of local government to undertake compliance and enforcement activities through the creation of ongoing consultation, coordination, guidance, regulatory tools and funding to local government (to the extent needed by the regulatory proposal)
- genuine partnerships with State Government in achieving regulatory goals.

**Supporting RIA process improvements**

Changes to the Guide, however, will have limited impact if the Guide is not implemented by State agencies. For example, a Better Regulation Statement was not prepared for the recent Swimming Pools Act amendments or the new Boarding Houses legislation. Both these pieces of legislation introduce significant new or expanded regulatory responsibilities for local government.
We therefore also recommend that the current RIA process be improved to ensure the benefits of our proposed changes to the Guide in relation to local government are realised. This should include enshrining better regulation principles and RIA requirements in legislation.

Our recommendation to establish better regulation principles with a statutory basis is consistent with the Productivity Commission’s leading practice 2.1, which we were required to consider under the Terms of Reference for this review.128

Our recommendation should also result in general improvements to the RIA process that should help eliminate and prevent the creation of red tape from state regulations enforced by local government, including:

- improving the level of commitment by Ministers and State agencies to the RIA process
- strengthening the regulation-making processes by having 1 set of clear and cohesive requirements, rather than the current overlapping and inconsistent framework.

Consideration should also be given to improving related administrative processes. There may be better compliance with the Guide and improved quality of analysis if, for example, an assessment of the adequacy of Better Regulation Statements / RISs or instances of non-compliance with RIA requirements were published.

Draft Recommendations

3 The Department of Premier and Cabinet should revise the NSW Guide to Better Regulation (November 2009) to include requirements for developing regulations involving regulatory or other responsibilities for local government, in particular:

- consideration of whether a regulatory proposal involves responsibilities for local government
- clear identification and delineation of State and local government responsibilities
- consideration of the costs and benefits of regulatory options on local government
- assessment of the capacity and capability of local government to administer and implement the proposed responsibilities, including consideration of adequate cost recovery mechanisms for local government
- consultation with local government to inform development of the regulatory proposal

128 Our Terms of Reference refer us to consider the leading practices identified in the Productivity Commission’s report Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator, July 2012, Vol 1, p 21.
3 Improving the regulatory framework at the State level

- if establishing a jointly provided service or function, agreement with local government as to the objectives, design, standards and shared funding arrangements, and
- development of an implementation and compliance plan.

4 The NSW Government should establish better regulation principles with a statutory basis. This would require:
- amendment of the *Subordinate Legislation Act 1989* (NSW) or new legislation, and
- giving statutory force to the NSW *Guide to Better Regulation* (November 2009) and enshrining principles in legislation.

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**Box 3.2 CIE’s analysis of these recommendations**

CIE found that, as benefits accumulate over time, recommendations 3 and 4 would:
- produce a net benefit of $21 million per annum on average over 10 years (ie, the benefits to society are greater than costs)
- reduce red tape by $48 million per annum on average over 10 years
- increase costs to State Government, with no change to council costs.

CIE noted that there are weaknesses in the current RIA processes to prevent new state regulations that are enforced by councils from imposing unnecessary costs on businesses and the community. Unless addressed, these weaknesses could result in increased red tape costs of around $35.5 million per year and a net cost to the community of about $15.6 million per year. These costs will accumulate over time and, over the next 10 years, the increase in red tape could average around $192 million per year and the net cost to the community could average $84 million.

CIE noted that if recommendations 3 and 4 prevented even one quarter of these additional costs, the red tape savings over the next 10 years could average about $48 million per year. The net benefit to the community could average around $21 million per annum over 10 years.

**Source:** The CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, June 2013, pp 21-25.
3.2 Register of local government regulatory functions

3.2.1 Background

For this review, we commissioned consultants Stenning & Associates to create a register of local government regulatory functions. This was required by our Terms of Reference. Such a register is also one of the Productivity Commission’s leading practices.129

The register has been useful in:

- enabling a stocktake of all local government regulatory functions and an appreciation of the number and scope of these functions
- identifying that the source of all council’s regulatory functions is State legislation
- assisting with the analysis of these functions and understanding some of the overlapping or duplicating regulations (e.g., manufactured homes are regulated by councils under the LG Act130 and EP&A Act131).

Stenning & Associates estimated it would cost between $14,000 and $20,000 per annum to maintain the register. It also estimated it would cost between $65,000 and $95,000 to develop the register into an online, searchable database with hyperlinks to the Acts and regulations.132

3.2.2 Stakeholder feedback on the register

Many council submissions considered the register to be beneficial in highlighting the complexity of regulations and their cumulative impacts on councils. However, most argued it would only be useful if kept up to date. There was some concern about the cost of the register, and some support for the State to centrally maintain and fund it.133

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131 Environmental Planning and Assessment Act 1979 (NSW), section 121(B).
133 For example see submissions from Liverpool City Council to IPART, November 2012; Liverpool Plains Shire Council to IPART, October 2012; Orange City Council to IPART, November 2012; Randwick City Council to IPART, November 2012.
Feedback from business stakeholders was mixed:

- Caltex and the Small Business Commissioner believed the register could be useful, but that its value would be determined through use.
- Others (HIA and the NSW Business Chamber) believed the benefit of the register would be minimal.

Two community stakeholders were supportive of the register and of making it publicly available.\(^{134}\)

In general, there was a lack of clarity amongst stakeholders as to how the register could be used. Some suggestions were that it could:

- assist in identifying duplications and overlaps between State and local government regulatory functions or across legislation
- assist in drafting legislation, to consolidate disparate and various enforcement powers across various Acts into a consistent, consolidated set of powers
- act as a reference point for the community.\(^{135}\)

Other regulatory registers

Some of the bigger, well-resourced councils maintain Legislative Compliance Registers. These tend to be a list of every piece of legislation that contains responsibilities for councils. Local Government Legal, the legal services division of Hunter Councils Inc., is currently in the process of developing a Legislative Compliance Database to provide subscribing (fee paying) councils with a summary of all State and Federal Acts and regulations that a council must comply with, with hyperlinks to the provisions of the legislation.\(^{136}\)

However, the focus of these compliance registers is the council’s own compliance (ie, with financial, employee or work safety requirements, etc). These registers do not attempt to classify or filter these responsibilities or powers in the way the Stenning & Associates register has sought to do (eg, into approvals; directions, fines, inspections, charges, etc).

Managing the stock of local government regulation

There is value in using the Stenning register of local government regulatory functions as a stocktake to ensure that no new regulations are added without consideration of the existing regulations in the register. Such a register serves to make the State, local government, businesses and the community aware of the volume, nature and cumulative effect of State regulation impacting on local government.

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\(^{134}\) See submissions from Banyard, R and Jewell, M to IPART, October 2012.

\(^{135}\) See submission from Pittwater Council to IPART, October 2012.

\(^{136}\) Personal communication, Local Government Legal, email to IPART, 23 January 2013.
The register can be used as a management tool by State agencies in their consideration of new or amended regulations that relate to local government.

According to the Productivity Commission, a complete, current and accessible list of local government regulatory functions would enhance understanding of local government regulatory responsibilities and compliance burdens placed on the community. This would assist the State and local government in setting priorities and allocating resources.\(^{137}\)

### 3.2.3 Our recommendation

We consider the register is most useful to State agencies for managing the stock of regulation, and the regulatory responsibilities delegated to local government. In particular, it could be used to ensure regulation in this sphere does not continue to grow, consistent with the principles of the NSW Government’s ‘one on, two off’ approach to new regulation.\(^ {138}\) It could also be used to manage the cumulative impact of regulation, which is a key concern of stakeholders, including councils. To provide a more complete picture of the total responsibilities of councils, consideration could be given to including service functions, as well as regulatory functions, in the register.

Consideration would also need to be given to which State agency or body would maintain the register. For example, IPART or another body could be suitable to undertake this role.

**Draft Recommendation**

5. **The NSW Government should maintain the register of local government regulatory functions (currently available on IPART’s website) to:**

- manage the volume of regulation delegating regulatory responsibilities to local government
- be used by State agencies in the policy development of regulations to avoid creating duplications or overlaps with new or amended functions or powers.

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Box 3.3  
CIE’s analysis of this recommendation

CIE found that this recommendation would be likely to:

- produce a net benefit (ie, the benefits to society are greater than costs)
- reduce red tape
- reduce costs to councils
- increase costs to State Government by between $0.02 million and $0.03 million per annum.

CIE’s analysis found the annualised cost of an online, user-friendly system (over 10 years) would be between $23,000 and $33,500. The main benefits (as outlined by the Productivity Commission) include:

- better business understanding of their compliance obligations
- clarity and more information for State and local governments
- better understanding of the regulatory burden on business
- a clearer idea of the regulatory roles and responsibilities of local government and whether they are adequately resourced to fulfil these obligations.

CIE was unable to quantify these benefits, as the benefits will be a function of who uses the register and how it is used.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 32-34

3.3  
Supporting better implementation of regulation

According to the NSW Business Chamber’s 2012 Red Tape Survey, 44% of NSW businesses are either directly or somewhat required to comply with poorly enforced regulations or regulations where the behaviour of the regulator was considered ‘poor’.139 Specific concerns included:

- too much selective and personal interpretation of requirements, and
- inconsistent performance by regulators in assessing similar businesses with similar issues, but providing different outcomes.140

Local government was also rated the most complex state-based regulatory authority to deal with, with more than 57% of respondents rating the complexity of dealing with local government as either high or moderate. Local government was also the most utilised state-based regulatory authority, with 77% of respondents having dealings with councils in the past year.141

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The State Government can support better implementation or enforcement of regulations by councils by setting high-level policy or guidance to enable better outcomes for business and the community.

### 3.3.1 Stakeholder submissions

Council stakeholders gave support to various initiatives including:

- Greater use of the NSW Ombudsman's *Enforcement Guidelines for Councils*\(^{142}\) and training to assist in exercising discretion and balancing competing factors when undertaking compliance work. Lismore City Council noted that:
  
  Enforcement policies, as provided by the NSW Ombudsman’s Office, are an excellent tool for staff to refer to in determining appropriate enforcement action.\(^{143}\)

- Standardised guides, forms, inspection checklists, graduated compliance or enforcement policies and templates for orders, directions and notices, developed by the relevant State agency to assist with greater consistency in local government enforcement activities.\(^{144}\)

- A State-wide standard or model enforcement policy to be adopted by all councils to guide risk-based enforcement. Campbelltown City Council noted that:
  
  In order to make an immediate impact (from a time and cost perspective) the State Government should: …[Develop a] State wide Enforcement Policy in consultation with local government.\(^{145}\)

Councils are currently having difficulties in adopting reasonable policies or statutory instruments that are supported by cost benefit analysis. For example, Development Control Plans, consent conditions, Awnings and Parking Policies.\(^{146}\) This is illustrated further in the Box below. There was also general support amongst councils and the NSW Business Chamber for a risk-based approach to enforcement.

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\(^{143}\) See submission from Lismore City Council to IPART, November 2012.

\(^{144}\) See submission from NSW Business Chamber to IPART, October 2012; Liverpool City Council to IPART, November 2012; Pittwater Council to IPART, October 2012; Strathfield City Council to IPART, November 2012; Sutherland Shire Council to IPART, November 2012; Wollongong City Council to IPART, November 2012.

\(^{145}\) See submission from Campbelltown City Council to IPART, October 2012.

\(^{146}\) See submissions to IPART from Housing Industry Association; Urban Taskforce Australia; and NSW Business Chamber, October/November 2012.
Box 3.4  An example of where State guidance would help councils

The NSW Business Chamber presented a case where the application of risk assessment skills and cost benefit analysis would assist councils in developing local policies to the benefit of the local community.

Wagga Wagga City Council developed an awnings policy which did not reflect an adequate assessment of the risks and without consideration of alternative policy options that may have placed less costly burdens on businesses and the local community. The NSW Business Chamber noted:

- An alternative approach by Canada Bay Council places fewer burdens on councils and businesses and demonstrates a much clearer appreciation of the risk mitigation approach to regulation. The requirement under Canada Bay’s policy that a property owner is to provide a structural engineering report if and when the owner wishes to apply for a footpath dining approval is appropriate and sensible and reflects the higher level of risk that might arise when customers are spending more time under the awning structure.

The implication of this example is that if the State Government provided guidance to councils on how to design local policy using risk-based approaches and cost benefit analysis, councils would be better equipped to ensure a suitable outcome for their communities and reduce regulatory red tape.

Source: Submission from the NSW Business Chamber to IPART, October 2012.

3.3.2 Background

The UK Regulators’ Compliance Code

The UK Regulators’ Compliance Code is a high level policy document that is a mixture of statements, duties and requirements that regulators (including local governments) use to define their compliance requirements. It is specifically focused on ensuring that policy makers and implementers consider the costs of regulation. A summary of the UK Regulators’ Compliance Code is provided in the Box below.
Box 3.5 UK Regulators’ Compliance Code

**Economic progress:** Regulators should consider the impacts of their regulatory interventions on economic progress, including considering the costs, effectiveness and perceptions of fairness of regulation. In particular, regulators should try to ensure the burdens of their interventions fall fairly and proportionately on small businesses, given the size and nature of their activities.

**Risk assessment:** Risk assessment should precede all regulatory activities, including data collection, information requirements, inspection programs, advice/support programs and enforcement/sanctions. Risk assessment involves the identification and measurement of capacity of harm and an evaluation of the likelihood of the occurrence of harm. By basing regulatory work on an assessment of the risks to regulatory outcomes, regulators are able to target resources where they will be most effective and risk is highest.

**Advice and guidance:** Regulators should provide general information, advice and guidance to make it easier to understand and comply with regulation. Advice should be clear, concise and accessible.

**Inspections:** Regulators should focus their greatest inspection effort where risk assessment shows a breach would pose a serious risk to a regulatory outcome and there is a high likelihood of non-compliance. Burdens of inspections from the same or different regulators should be minimised through joint or coordinated inspections.

**Information requirements:** Regulators should undertake an analysis of costs and benefits of data requests when determining what data they require, and should consider varying data requests according to risk, reducing frequency of data collection, obtaining data from other sources and allowing electronic submission. Duplication of data collection by regulators should be avoided by sharing data.

**Compliance and enforcement actions:** Regulators should publish an enforcement policy. In accordance with the Macrory Review, regulators should also:

- measure outcomes not just outputs
- justify their choice of enforcement actions year on year to interested parties
- follow-up enforcement actions where appropriate
- enforce in a transparent manner
- be transparent in the way in which they apply and determine penalties
- avoid perverse incentives that might influence the choice of sanctioning response.

**Accountability:** Regulators should increase transparency by reporting on outcomes, costs and perceptions of their enforcement approach.

Improving the regulatory framework at the State level

The Better Regulation Delivery Office (UK) is currently undertaking a complete review of the UK Regulators’ Compliance Code across all regulators, and their enforcement, to ensure that government departments think carefully about how regulations will be enforced – and the costs of enforcement.¹⁴⁷

There are several key lessons to be learnt from the UK experience, which should be considered in the design of such a Code for local government in NSW. These include:

- keep the content of the Code simple
- need for clearer requirements and expectations of regulators
- require regulators to publish clear and detailed service standards, including a compliance and enforcement policy
- use of the Code to hold regulators to account for their activities
- better visibility and understanding of the Code amongst businesses and some front line regulatory officers.¹⁴⁸

Other support mechanisms

Although councils in NSW, unlike other jurisdictions, cannot make their own ‘local’ laws (ie, by-laws or ordinances), they are able to make statutory instruments, policies and other quasi-regulations with significant impacts on businesses and the community.

For example, they are empowered to issue consent instruments attaching conditions of approval and make statutory instruments under various legislation, such as:

- Local Approvals Policies (LAPs) and Local Orders Policies (LOPs) under the Local Government Act 1993 (NSW) (LG Act)¹⁴⁹
- Development Control Plans (DCPs)¹⁵⁰ and Local Environmental Plans (LEPs)¹⁵¹ under planning legislation.

While the content of these instruments is limited to what is set out in the primary legislation, these instruments can prescribe actions to a greater level of detail than the primary legislation. As a result, the regulatory requirements or burdens imposed can be significant.

¹⁴⁸ Personal communication, Better Regulation Delivery Office (UK), email to IPART, February 2013 and Department for Business Innovation and Skills (UK), Consultation Paper – Amending the Regulators’ Compliance Code, March 2013, p 9.
¹⁴⁹ Local Government Act 1993 (NSW), sections 158 and 159 respectively.
¹⁵⁰ Environmental Planning and Assessment Act 1979 (NSW)), Part 3, Division 6.
¹⁵¹ Environmental Planning and Assessment Act 1979 (NSW), Part 3, Division 4.
Local government can also develop guidelines, policies or codes that are not generally legally binding. Usually these instruments are developed to assist councils to implement, and the community to understand, requirements under law (eg, guidelines for applying for a particular permit). Depending on how it is designed, this ‘quasi-regulation’ can potentially reduce or increase the regulatory burden faced by business and the community.

In Victoria, the Department of Planning and Community Development has developed guidance for councils in developing local laws or policies (Guidelines for Local Laws Manual).\footnote{152} These guidelines are considered leading practice by the Productivity Commission.\footnote{153} They provide information on preparing, creating, implementing and enforcing, reviewing and amending local laws.

In NSW, the former BRO developed guidance material for the benefit of State agencies on how to develop better regulation and undertake proportionate cost benefit analysis to ensure regulations do not impose unnecessary regulatory burdens (See Measuring the Costs of Regulation\footnote{154} and Appendix C of the Guide\footnote{155}).

### 3.3.3 Our recommendations

We consider there would be merit in DPC offering the following support to local government as part of their role as regulatory gatekeeper and champion of best practice regulation:

- Developing a code for local government regulators, based on the UK’s Regulators’ Compliance Code, to provide high level principles to improve the quality and consistency of local government regulatory enforcement and inspection activities, and minimise any unnecessary burdens of these activities on businesses.

- Providing simplified guidance for councils:
  - in the development of policies and statutory instruments
  - to undertake proportional assessments of the costs and benefits of these policies or instruments (including consideration of alternatives).

- Extending its current forum with State regulators to include local government regulators.

\footnote{152}{Victorian Department of Planning and Community Development, \textit{Guidelines for Local Laws Manual}, February 2010.}
\footnote{154}{Better Regulation Office, \textit{Measuring the Costs of Regulation}, June 2008.}
\footnote{155}{Better Regulation Office, \textit{Guide to Better Regulation}, November 2009.}
The development of a compliance code would embed a risk-based enforcement approach and efforts to reduce red tape for business and the community in councils. The Productivity Commission supported the use of a regulators’ compliance code, such as the one currently used in the UK, as leading practice.156 In considering the development of a regulators’ compliance code for local government, it may also be appropriate to consider whether the code should have broader application to all State regulators.

Extending the former BRO’s regulators’ forum to local government will help to build networks and capacity in local government. It will also foster a whole-of-government approach to achieving the regulatory goals of State legislation – which both State and local government have a part to play in delivering – through greater collaboration and understanding.

Producing simplified cost benefit analysis and other policy development guidance (eg, risk analysis material)157 will assist local governments to make statutory instruments that do not impose unnecessary regulatory burdens. This guidance could be based on Appendix C of the Guide158 and Measuring the Costs of Regulation159 with suitable modifications (eg, step-by-step guidance) to make it easy to use. For instance, it should explain how to identify and assess all viable policy options, including simple methods for identifying and determining all potential costs and benefits to local businesses and the community.

The application of such guidance may avoid situations like the one raised in submissions concerning the Awnings Policy developed by Wagga Wagga City Council, detailed in the Box above.

This is also consistent with the Productivity Commission’s leading practices to provide assistance to councils in writing ‘local laws’ or policies and assist councils to undertake cost benefit analysis of ‘local laws’ and policies.160

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157 The Better Regulation Office’s Risk Based Compliance Guide (September 2008) could be easily modified to provide some local government specific case studies.
Draft Recommendation

6 The Department of Premier and Cabinet should:

- Develop a Regulators’ Compliance Code for local government, similar to the one currently in operation in the UK, to guide local government in undertaking enforcement activities. This should be undertaken in consultation with the NSW Ombudsman and State and local government regulators.

- Include local government regulators in the former Better Regulation Office’s Regulators’ Group or network.

- Develop simplified cost benefit analysis guidance material for local government to undertake proportional assessments of the costs and benefits of regulatory actions or policies, including consideration of alternatives.

- Develop simplified guidance for the development of local government policies and statutory instruments.

Box 3.6 CIE’s analysis of this recommendation

CIE found that this recommendation would:

- produce a net benefit of $7.5 million (ie, the benefits to society are greater than costs)
- reduce red tape by $7.5 million per year
- reduce costs to councils
- increase costs to State Government.

CIE assumes that $150 million of the NSW Government’s red tape reduction target of $750 million a year will be met through reductions in the burden of local government regulation. They note that the introduction of a Regulators’ Compliance Code in the UK was estimated to contribute between 0% and 10% towards meeting this red tape reduction target. If the recommendation results in a similar reduction in red tape for NSW, the reduction in red tape and net gains to society would be between $0 and $15 million per year. $7.5 million is the mid-point of this range.

The upfront cost of creating a Regulators’ Compliance Code would be small (less than $100,000). However the ongoing costs of engaging with councils regarding the code would be higher.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 28-29, 34.
3.4 An enforcement policy for local government

In order to effectively implement a Regulators’ Compliance Code for local government in NSW, an enforcement policy needs to be designed in conjunction with this Code to provide guidelines for implementation. As noted earlier, a number of council stakeholders appear to support a State-wide standard or model enforcement policy to be adopted by all councils to guide risk-based enforcement.

3.4.1 Background

The NSW Ombudsman developed the *Enforcement Guidelines for Councils* in June 2002, which includes a model enforcement policy.161 This document is well regarded by councils and appears to be quite widely used by councils.

It is particularly useful at guiding council officers’ use of discretion in undertaking compliance and enforcement activities. That is, assisting officers to determine what is the appropriate action or enforcement tool (warning, education, fines, etc) in a range of circumstances. Numerous council submissions highlighted the value of this guidance and supported council officers undertaking the Ombudsman’s training in this area.162

However, the current guidelines have some limitations. It is complaints focused, and does not incorporate risk-based enforcement approaches. It also has a largely planning focus.

In the UK, the Regulators’ Compliance Code runs alongside the UK Enforcement Concordat (see Box below). The Enforcement Concordat provides ‘case studies’ on how to implement principles of good practice.

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162 For example, see submissions from Lismore City Council to IPART, November 2012; Wollongong City Council to IPART, November 2012.
Box 3.7  The UK Enforcement Concordat

The Enforcement Concordat is a voluntary, non-statutory code of practice. It aims to achieve best practice regulatory enforcement. The Concordat is based on the ‘Principles of Good Enforcement’:

- setting clear standards
- providing clear and open information
- helping businesses by advising and assisting with compliance
- having a clear complaints procedure
- ensuring that enforcement action is proportionate to the risks involved
- ensuring consistent enforcement practices.


Other enforcement policies

Enforcement policies and guidance material has been developed by a range of other institutions in NSW and Australia – in particular by Hunter Councils Inc., the Food Authority, and Queensland Ombudsman.

- The Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS), which is part of Hunter Councils Inc., has developed a Compliance Assurance Policy and associated guidelines for adoption by member councils. This provides a model policy that can be adapted by any council and very detailed supporting guidelines to assist with the exercise of discretion. This was developed using a project-based grant, and is now available from the HCCREMS website for use by any council for a fee. As HCCREMS relies on grants funding, it is unclear whether this documentation will continue to be maintained into the future. HCCREMS has the capacity to provide associated training on this document to some extent.

- The Food Authority’s compliance and enforcement policy has been adopted by a number of councils. It incorporates a risk-based enforcement approach and is tailored to food regulation, with a graduated enforcement approach in using the enforcement tools available. It was not written for councils but can be adapted for their purposes.

- The Queensland Ombudsman has developed an extensive guideline ‘Tips and Traps for Regulators’ which provides useful guidance to regulators and incorporates risk-based, as well as complaints based, enforcement.


3.4.2 Our recommendation

The NSW Ombudsman is well placed to provide a new model enforcement policy and guidance to councils that should be:

- consistent with, and complementary to, the new regulators’ code (if adopted)
- updated to include risk-based enforcement, consistent with the NSW Government’s Quality Regulatory Services initiative (see Chapter 6, Box 6.1 for further discussion of this initiative)
- draw on the existing work in this area, including any relevant government policy or guidelines.

We recommend that the development and maintenance of this enforcement policy should be given to the NSW Ombudsman as a standing responsibility under statute. The Ombudsman should also provide fee-based training associated with the Code, and consider working with other training providers such as HCCREMS. If the new regulators’ code does not proceed the Ombudsman can still develop an enforcement policy based on existing best practice.

We recommend that all councils should adopt the new model enforcement policy. This will provide a consistent risk-based enforcement framework and a clear basis for councils to exercise discretion in undertaking their enforcement activities. There is scope under a standardised enforcement policy to exercise discretion to respond to the particular local circumstances or individual situation at hand. For example, the Food Authority operates under a single state-wide enforcement policy, which many councils have adopted in relation to their food regulation activities. Within that framework, the Food Authority has been able to partner with particular councils with high numbers of food retail businesses operated by people with a non-English speaking background to use special education programs (i.e., joint inspection and training programs that included workshops in different languages) to increase compliance (rather than increase the use of fines and prosecutions).\(^\text{165}\)

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\(^{165}\) This program was in response to repeated salmonellosis outbreaks associated with certain specialty foods. The ongoing problems associated with these outbreaks made it clear that an additional approach to fines and prosecutions was needed to rectify the issue. The program enabled businesses to fully understand and appreciate the level of risk associated with certain foods, and how these should be handled to avoid foodborne illness. The initial program was a success, so it was expanded to include additional councils. A training package is now being developed to enable Environmental Health Officers from other local councils to implement similar programs for businesses in their areas: Personal communications, meeting between NSW Food Authority and IPART, 25 October 2012 and email from Food Authority, 17 July 2013.
Draft Recommendation

7 The NSW Ombudsman should be given a statutory responsibility to develop and maintain a more detailed model enforcement policy and updated guidelines for use by councils to guide on-the-ground enforcement:

– The model policy should be developed in collaboration with State and local government regulators.

– The model policy should be consistent with the proposed Regulators’ Compliance Code, if adopted.

– The NSW Ombudsman should assist councils to implement the model enforcement policy and guidelines, through fee-based training.

All councils should adopt the new model enforcement policy, make the policy publicly available and train compliance staff in exercising discretion and implementation of the policy.

Box 3.8 CIE’s analysis of this recommendation

CIE found that this recommendation was likely to:

▼ produce a net benefit (ie, benefits to society greater than costs)

▼ reduce red tape

▼ increase costs to State Government

▼ decrease costs to councils.

According to CIE, having a single model enforcement policy that can be adopted by all local councils:

▼ will eliminate costs to local councils of having to develop their own enforcement policy, and

▼ has the potential to reduce cost to business and community from improvements in consistency and transparency of enforcement across and within local councils.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 29-31, 34.
3.5 Local Orders Policies (LOPs)

Local Order Policies (LOPs) under the LG Act specify the criteria a council must take into consideration when deciding whether or not to issue an order to individuals or businesses that create hazards, environmental damage or fail to comply with standards or approvals issued under the LG Act. Orders can either direct a person to undertake a specific action (eg, repair a fence), or to refrain from undertaking a specific action (eg, not to conduct an activity that poses a public health risk).

Like Local Approvals Policies (LAPs), LOPs are subject to a public consultation and feedback period. They also automatically lapse or ‘sunset’ within 12 months of a council election. Similar to LAPs, we have noted a very low number of LOPs are currently in existence. Clearly, most councils have found little value in developing and using such instruments. This may be due in part to the cumbersome process involved (as is the case with LAPs, as discussed in Chapter 5). Many councils, on the other hand, have developed broader enforcement policies and/or adopted the NSW Ombudsman’s model enforcement policy and the Food Authority’s specific enforcement policy for food regulation to guide the proper exercise of enforcement functions.

As noted earlier, the use of a standardised enforcement policy does not preclude taking into account local circumstances or individual situations. There is still scope to exercise discretion to respond to the local conditions or particular circumstances at hand. It is preferable to have a consistent State-wide approach to the exercise of council discretion in issuing orders under the LG Act, rather than multiple, varying LOPs.

Our analysis is supported by the preliminary findings of the Local Government Acts Taskforce. The Taskforce notes that few councils appear to have considered it necessary to adopt LOPs to deal with issues of local significance. Some councils specify their process for making orders through their compliance and enforcement policies. They note that this raises the question of whether the ability of councils to make LOPs should be retained.

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166 See sections 124 and 159 of the Local Government Act 1993 (NSW).
167 Section 124 of the Local Government Act 1993 (NSW) provides a full list of the orders a council can make in order to restrain or require a person to do certain things to protect public places, maintain healthy conditions, maintain premises or comply with section 68 approvals.
168 Local Government Act 1993 (NSW), section 160.
169 Local Government Act 1993 (NSW), section 165(4).
171 Ibid.
3.5.1 Our recommendations

Given our recommendation for the NSW Ombudsman to develop a model enforcement policy for all councils to adopt, we believe the framework of LOPs is redundant. The value of LOPs is to provide transparency and consistency for the community and council enforcement officers in the exercise of councils’ discretion to take a specific type of enforcement action, namely section 124 orders under the LG Act.

A model enforcement policy should provide that framework and give consistent State-wide criteria and guidance on when it is appropriate for councils to issues orders, as well as take other types of enforcement action, within a context of graduated and risk-based enforcement.

Draft Recommendation

8 The Local Government Act 1993 (NSW) should be amended to abolish Local Orders Policies (LOPs), as the function of LOPs will be replaced by adoption of the new model enforcement policy.

Box 3.9 CIE’s analysis of this recommendation

CIE found that this recommendation would:
- produce a net benefit (ie, benefits to society greater than costs)
- reduce red tape
- produce savings to State Government
- decrease costs to councils of $49,000 per year.

CIE assume there are between 20 and 40 LOPs in place across NSW per year. They estimate that removing LOPs could make an administrative cost saving of between $32,500 and $65,000 per year. $49,000 per year is a mid-point estimate.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 31-32, 34.

3.6 Transparent fees and charges

State Government guidance on how regulatory fees should be determined by local government is currently limited.

Consistent with the Productivity Commission’s leading practices in fee setting and stakeholders’ concerns, we consider that there is a need for the State Government to provide more guidance material on efficient fee setting for councils and State agencies in setting council charges.
Stakeholder concerns and suggestions

Stakeholders have raised the following concerns in relation to this area:

- Excessive fees – eg, in relation to security bonds, environmental enforcement levies, pre-DA lodgement meetings, sewer/water/stormwater fees, and notification of DAs to neighbours.172

- For example, the Housing Industry Association notes:

  HIA members have raised concerns to the type, cost and explanations for council imposing fees and charges such as environmental levies and security bonds, which are generally not refundable. For example, some councils charge an inspection fee from $70.00 to $200.00. While some councils charge Security Bonds from $600.00 to $13,000.00 plus for a similar project.173

- Subsidised or anti-competitive fees – some private building certifiers argue councils are undercharging or providing discounts for council certifiers which is viewed as being anti-competitive.174

- Fees capped at levels below cost recovery by legislation (eg, development control fees).175

- The need for greater cost recovery mechanisms in State legislation to alleviate resourcing constraints (eg, Holroyd City Council, City of Sydney Council).

- Differences in fees across councils or a lack of transparency in how councils set fees (where they have discretion) – eg, fees for skip bins, heavy vehicle access, food inspection fees, stills photography, outdoor fitness training.

See the Box below for specific stakeholder concerns.

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172 See submissions to IPART from Housing Industry Association; NSW Business Chamber; Vesco J; Advanced Building Certifiers; and Small Business Commissioner, September-November 2012.

173 See submission from the Housing Industry Association to IPART, November 2012.

174 See submission from Association of Accredited Certifiers to IPART, November 2012.

175 See submissions to IPART from Lismore City Council; Newcastle City Council; Orange City Council; Sutherland City Council; Wollongong City Council; and Rolfe H; October/November 2012.
Box 3.10 Council discretion and fees and charges

Fitness Australia

Fees for outdoor fitness training access should be reasonable and reflect only those additional administrative costs councils incur managing commercial activities.

NSW Business Chamber

These changes (introduction of the Local Government Filming Protocol, 2009) however failed to introduce similar cost restrictions on councils imposing fees and charges on stills photography. Councils are able to charge for stills photography as part of their normal fees and charges revenue.

The NSW Business Chamber provides examples of ranges of stills photography fees from nil (eg, City of Sydney, Randwick Councils) to up to $825 for a day (eg, Manly Council).

Small Business Commissioner

In the Eastern Suburbs of Sydney 2 neighbouring councils have entirely different policies regarding the cost of using skip bins. In one council area it is free, whilst the neighbouring council requires a permit and fee.

Source: Various submissions to IPART, October/November 2012.

Stakeholders made the following suggestions to improve council fee-setting:

- the wider introduction of statutory cost recovery mechanisms (eg, prescribed statutory fees reflecting efficient costs) – as provided for in the Food Act176, the POEO Act177 and the new Public Health Act178,179
- more transparency in relation to how councils set fees and charges180
- more consistency in councils’ approaches to setting fees and charges (eg, standard methodologies and/or fees)181
- more guidance or direction to be provided to councils in terms of how they should set their fees and charges.

We note that while some fees set by councils do appear to be excessive and potentially above efficient costs (eg, some pre-DA lodgement meeting fees), some businesses and community stakeholders are likely to be opposed to certain fees and fee levels, even when they are cost reflective.

176 See Food Act 2003 (NSW), sections 32(3), (4) and section 49.
177 See Protection of the Environment Operations Act 1997 (NSW), section 104.
178 See Public Health Act 2010 (NSW), sections 17(2), 20(2) and 23(4).
179 See submission from Newcastle City Council to IPART, November 2012.
180 See submission from Jewell, M to IPART, October 2012.
181 See submission from Housing Industry Association to IPART, November 2012.
3.6.2 Background

Council regulatory fees and charges

Section 608 of the LG Act allows councils to charge an approved fee for any service it provides, other than a service for which it can make an annual charge (ie, waste management, water supply, sewerage and drainage services, and any services prescribed by the regulations).

Under section 610D of the LG Act, a council must take into account the following factors in considering the service fee amount (noting that this excludes some specific business activities such as abattoirs and gas production):

- the cost to the council of providing the service
- the price suggested for that service by any relevant industry body or in any schedule of charges published, from time to time, by the Division of Local Government (DLG)
- the importance of the service to the community, and other factors.\(^{182}\)

The cost to the council of providing a service need not be the only basis for determining the approved fee for that service (s.610D (2)).

The LG Act allows annual charges (for waste management, etc) to be set at a level that enables part or full cost recovery. The fees charged must also be based on service use. In the case of domestic waste management charges, the LG Act (s.496) also specifies that the amount of the charge is limited to cost recovery and we understand that DLG requests audits of councils’ waste management charges periodically to check whether they are cost reflective.\(^{183}\) DLG has provided some guidance on fees in the *Council Rating and Revenue Raising Manual*.\(^{184}\) This essentially captures the information provided in section 608 and section 610 of the LG Act.

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\(^{182}\) There are other factors specified in the Act. See *Local Government Act 1993* (NSW), Schedule 6, sections 20 (on rates and charges) and 21 (miscellaneous).


The NSW Government published its policy statement on the application of National Competition Policy to Local Government\textsuperscript{185} in June 1996 to provide guidance to councils on competitive neutrality policy matters, including pricing for business activities. The former Department of Local Government and the former NSW Local Government and Shires Associations also published a guide in July 1997 to assist councils with implementing competitively neutral pricing arrangements.\textsuperscript{186} It includes some guidance on how to calculate price based on full cost recovery and discusses relevant costing methodologies.

Apart from the guidance under the LG Act, there is also some specific fee guidance for particular fees (eg, for Development Application (DA) fees).\textsuperscript{187} Councils can also charge for other regulatory activities if specified in other pieces of legislation. For example, the \textit{Environmental Planning and Assessment Act 1979} (NSW) (EP&A Act) allows councils to charge fees for development on land. Also, some provisions for fees in the EP&A Act and the \textit{Public Health Act 2010} (NSW) (which commenced in September 2012) have increased councils’ ability to recover costs for inspections and other enforcement actions.\textsuperscript{188}

In some cases, statutory restrictions apply to the fees that councils can charge (eg, DA fees under the EP&A Regulation (NSW) 2000).\textsuperscript{189} Some councils\textsuperscript{190} have argued that instead of placing limits on fees, providing statutory cost recovery mechanisms will allow councils to better recover their costs and properly resource areas where skills shortages are apparent.

See the Box below for examples of statutory fees for councils under other Acts.


\textsuperscript{187} \textit{Environmental Planning and Assessment Act 1979} (NSW), section 137.

\textsuperscript{188} See \textit{Public Health Act 2010} (NSW), sections 17(2), 20(2) and 23(4).

\textsuperscript{189} See \textit{Environmental Planning and Assessment Regulation 2000} (NSW), Part 15, Division 1, Division 1AA.

\textsuperscript{190} See submissions from Leichhardt Municipal Council to IPART, November 2012; Lismore City Council to IPART, November 2012; Newcastle City Council to IPART, November 2012.
Box 3.11  Examples of different inspection fees in State legislation

Public Health Act

Notification fee: the local government authority for the area in which the premises are located is prescribed, and the notice is to be in writing and is to be accompanied by the fee (not exceeding $100) determined by the local government authority.

Fee for re-inspection of premises subject to prohibition order: The fee payable by an occupier of premises who is subject to a prohibition order for an inspection of the premises by an authorised officer under section 46 (1) of the Act is $250 per hour, with a minimum charge of half an hour and a maximum charge of 2 hours (excluding time spent travelling).

Food Act

The charge payable for the carrying out by an authorised officer of a relevant enforcement agency of any inspection of a food business under section 37 of the Act (other than an inspection in relation to a licence or an application for a licence) is $250 per hour, with a minimum charge of half an hour (excluding time spent in travelling).

Swimming Pools Act

Councils may charge a fee for each inspection (up to a maximum of $150 for the first inspection and $100 for one re-inspection resulting from the first inspection).

Source: Public Health Act 2010 (NSW); Food Act 2003 (NSW); Swimming Pools Act 1992 (NSW).

As noted earlier in the chapter, we recommend NSW Government regulators consider cost recovery mechanisms (eg, ability to levy fees and charges to recover efficient costs) when delegating regulatory responsibility to councils. If adopted, this recommendation should address concerns that, in some instances, councils are not able to recover the efficient costs of their regulatory activities.

Guidance on fees and charges is also an element of the Partnership Model, which we advocate be applied to other areas involving council regulation in Chapter 2. The Food Regulation Partnership (which includes representatives from councils and the Food Authority) sets indicative inspection fees and administration charges and protocols for charging fees.
Guidance for councils on regulatory fees and charges

This guidance material should aim to ensure that councils’ regulatory fees and charges:

- reflect efficient costs – unless there are cases for exemptions (e.g., negative or positive externalities, the use of scarce public resources, policy objectives, etc)
- are consistent with competitive neutrality principles
- are adequately reviewed and updated over time.

It should also clearly explain how councils can estimate or access information on the efficient costs of undertaking regulatory activities, as well as other potentially relevant variables.

Examples of appropriate guidelines include the Victorian Treasury’s Cost Recovery Guidelines\(^1\) or the Productivity Commission’s leading practice example from New Zealand.\(^2\)

Transparency around council regulatory fees and charges

Councils have wide discretion in setting fees and charges. Currently, councils are required under legislation to publish an annual prices report detailing all the fees and charges they levy.\(^3\) However, the way they do this, and the accessibility of the information, seems to vary. Examples include:

- Blacktown City Council’s prices report is 251 pages. However, it also has a 1-page document outlining fees and charges applicable to a number of common development application types.
- Mosman Council’s website has a simple excel calculator, which provides an estimate of development application costs prior to submission.
- Councils also report their fees and charges in their annual report.

In most cases, whether or not the fees are based on full or part cost recovery is not stated by the councils. Only in cases where there is a legislative requirement for cost recovery (i.e., domestic waste management charges) are councils careful to ensure they have information which shows that their costs are set on this basis (especially since these charges are subject to audit).\(^4\)

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\(^1\) Victorian Department of Treasury and Finance, Cost Recovery Guidelines, May 2010.
\(^3\) Local Government Act 1993 (NSW), sections 608 and 610F.
3.6.3 Our recommendation

We acknowledge that there is some high level guidance available to councils on the principles of setting regulatory fees and charges provided by DLG in existing manuals/guides and in the LG Act. We also recognise the ability for local councils to be able to reflect local preferences in setting their fees and charges for regulatory services, where they have discretion.

However, there would be value in providing councils with updated, more detailed and extensive, user-friendly guidance to enable them to review their fees and charges and apply the principles of efficient cost recovery. State agencies should also be provided with guidance material to assist them when it is the State’s responsibility to set regulatory fees and charges for councils. Guidance material should be in line with relevant government policy. For example, reference should be made to the NSW Treasury’s Guidelines for Pricing of User Charges195, June 2001. Although these guidelines apply to NSW Government agencies rather than local government, there are elements that could be adapted for inclusion in guidance for local government.

There may also be benefits in encouraging councils to publish the rationale for their fees and charges (ie, how they are determined), with their fees and charges. Greater transparency in council fee setting could have the following additional benefits:

- making councils more accountable for the fees they charge and ensuring that there is a reasonable basis or rationale for their fees
- ensuring people/businesses know in advance the costs they may face (allowing them to be fully informed when making decisions).

However, we consider the effort councils go to in explaining each of their fees and charges should be proportionate to the level of each fee or charge. That is, councils should provide more information and explanation for larger fees, and only minimal information for small fees.

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Whilst any decrease in regulatory fees and charges would be considered a red tape reduction,196 we note that some fees may increase if they are set on a cost recovery basis. Nevertheless, there are considerable net benefits in setting efficient fees and charges:

- **Economic efficiency**: cost reflective charges ensure the efficient use and allocation of resources across the economy.

- **Greater equity**: equitable distribution of the costs to the user rather than the general ratepayers (i.e., ‘beneficiary pays’ principle).197

- **Increased accountability**: where user charges reflect the efficient cost of providing the service, this increases accountability of the council to users and can create an incentive to improve efficiency.198

- **Enhanced capacity**: providing councils with a source of revenue, which helps councils to maintain an acceptable quality of service and financial viability.

**Draft Recommendation**

9 The NSW Government should publish and distribute guidance material for:

- councils in setting their regulatory fees and charges (to apply to fees and charges, where councils have discretion), and

- State agencies in setting councils’ regulatory fees and charges.

This guidance material should include principles and methodologies for estimating efficient costs, setting fees and charges, and reviewing and updating these fees and charges over time.

**Box 3.12 CIE’s analysis of this recommendation**

According to CIE, there are likely to be net benefits from the NSW Government providing guidance material for local government on fees and charges of around $3.3 million per year.

Whether or not this leads to a red tape reduction will depend on whether fees increase on average or decrease, as a result of this guidance (BRO’s guidance material indicates that fee reductions equate to red tape reductions).

Similarly, the budgetary impacts of this recommendation are uncertain.

**Source:** The CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations*, June 2013, pp 35-38.

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4 Enhancing regulatory collaboration amongst councils

In this chapter, we consider ways in which councils can work together to improve the way they undertake their regulatory responsibilities. Enhanced council collaboration has the potential to address several key elements of our Terms of Reference, which are also key stakeholder concerns raised in our review. These include:

- the current capacity and capability of councils to undertake their regulatory responsibilities, whether and how these can be improved;
- ways of improving the quality of regulatory administration by local government, including consistency of approach, economies of scale and recognition of registration in multiple local government areas.

Our recommendations in Chapters 2 and 3 will go some way to enhancing local government regulatory capacity and consistency of approach, and also address some stakeholder concerns.

Stronger inter-council structures (or collaborative arrangements) are needed, particularly for compliance and enforcement, to enable the State Government and councils to develop more effective partnerships. It is not possible to effectively consult and partner with 152 separate councils. There is greater potential for consistency of approach and efficient regulation if the State can partner with collaborative entities (often with a regional basis) or Local Government NSW. The successful partnership between the Environment Protection Authority and the Western Sydney Regional Illegal Dumping Squad and the extension of this initiative to other regional groupings of councils (as discussed in Chapter 2) provides a good example of this in practice.

While we recognise that council collaboration is already occurring, we consider there is scope to enhance collaboration to improve the implementation and administration of regulation. This can occur via amendments to the Local Government Act 1993 (NSW) (LG Act) and NSW Government initiatives to encourage collaboration on regulatory functions.
The sections below discuss:

- the potential benefits of enhanced council collaboration in relation to regulatory resources and activities
- current council collaborative arrangements
- current impediments to collaboration and how collaborative arrangements could be improved
- implications for the benefits of collaborative arrangements if council amalgamations were to occur
- our recommendations to enhance council collaboration.

### 4.1 The benefits of enhanced council collaboration

As outlined below, a lack of council capacity and capability, as well as consistency and cooperation, are cited by stakeholders as major sources of unnecessary regulatory costs and red tape.

Enhanced council collaboration can potentially improve each council’s regulatory capacity and capability, as well as regulatory consistency and cooperation across councils. Therefore, there are potentially significant benefits from this.

Such collaboration can reduce costs to councils and the regulated community through:

- allowing councils to realise economies of scale in the provision of regulatory services
- reducing delays
- enhancing consistency (eg, in relation to forms, guidance, decisions)
- councils recognising each other’s approvals (avoiding the need for businesses to submit multiple applications).

This is supported by results of council collaborative arrangements, both in the United Kingdom\(^{199}\) and Australia.\(^{200}\)

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4.1.1 Enhancing regulatory capacity and capability

The Independent Local Government Review Panel (ILGRP) and Productivity Commission have both found there is scope to enhance the capacity and capability of councils.

Findings of the ILGRP

The ILGRP has stated that “much stronger frameworks and new entities for regional collaboration, advocacy and shared services” are needed to address council capacity constraints.201

The ILGRP has not specifically focused on regulatory services. However, it noted that increasing the sharing of services, particularly in areas where amalgamations and boundary changes may not be appropriate,202 would assist the “efficiency, productivity and competitiveness” of councils.203

In its first consultation paper, The Case for Change, the ILGRP found that many councils face sustained challenges in relation to their resources. Key challenges include:

- large and growing infrastructure backlogs204
- financial sustainability and/or management concerns205
- increasing expectations of service delivery by communities206
- demographic pressures of changing lifestyles with an aging population207
- workforce shortages in crucial areas.208

Challenges are particularly pronounced in rural and remote councils (where populations are small and falling further), and in urban fringe councils (which are rapidly expanding).209 The ILGRP considered a range of collaborative options to address these challenges, such as models of shared services in other states. An example is Queensland’s Council of Mayors (COMs) model, which has some similarities to the voluntary structure of Regional Organisations of Councils (ROCs).

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202 Ibid, p 27. For example, in rural areas, where amalgamations of financially weak councils would simply create a larger financially weak council, without addressing low population and hence rates collection density, nor underlying staffing issues.
204 Ibid, p 20.
209 Ibid, pp 13, 23.
The ILGRP released its second consultation paper, *Future Directions*, in April 2013.\(^{210}\) It considers a range of solutions to improve council capacity and collaboration, including a series of voluntary amalgamations or County Council options. Section 4.3 provides further detail on the ILGRP’s *Future Directions* paper.

The ILGRP’s final report is due to the NSW Government in late October 2013.

**Findings of the Productivity Commission**

Similarly, the Productivity Commission has noted that “many local governments do not have sufficient resources to effectively undertake their regulatory functions”.\(^{211}\) Only 49% of NSW councils surveyed by the Productivity Commission considered their resources were sufficient to undertake their regulatory roles.\(^{212}\) As demonstrated in the table below, the perception of poor capacity is especially evident in Queensland and NSW.\(^{213}\)

<table>
<thead>
<tr>
<th>Table 4.1</th>
<th>Local governments who consider they have insufficient resources to undertake their regulatory responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>By jurisdiction</strong></td>
<td><strong>%</strong></td>
</tr>
<tr>
<td>Queensland</td>
<td>50</td>
</tr>
<tr>
<td>New South Wales</td>
<td>49</td>
</tr>
<tr>
<td>Victoria</td>
<td>40</td>
</tr>
<tr>
<td>South Australia</td>
<td>32</td>
</tr>
<tr>
<td>Western Australia</td>
<td>18</td>
</tr>
<tr>
<td>Tasmania</td>
<td>17</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>0</td>
</tr>
</tbody>
</table>

**Note:** ‘Resources’ is defined as finances and sufficiently qualified employees.


\(^{212}\) Ibid, p 134.

\(^{213}\) Ibid.
Stakeholder concerns

Submissions to our review also expressed concern with council regulatory capacity and capability, and make the link between this and unnecessary regulatory costs. Submissions noted that a lack of council capacity and capability to efficiently undertake their regulatory functions results in:

- delays in approvals
- inconsistent or unclear information, and
- overly cautious or conservative approaches to implementing regulation.

Specific stakeholder views are presented in the Box below.

Box 4.1 Stakeholder concerns with council capacity and capability

**Business stakeholders**

- Caltex noted the difference in skills between large and small councils, with a lack of capacity particularly evident in building and construction delays.
- The Urban Taskforce stated there is a chronic capacity issue for remote and regional councils in the planning area, particularly for projects in the $20m-$100m range.
- The Small Business Commissioner noted that often council staff do not have the experience to understand small business needs, particularly the effect of delays.
- The NSW Business Chamber considers that councils have difficulty in recruiting and retaining well-equipped staff, particularly in rural and remote areas.
- The Business Council of Australia noted the negative effect of delays (in receiving council approvals) on investment certainty and infrastructure projects. These delays stem from many councils having poor capacity in planning and zoning matters.

**Councils**

- Campbelltown City Council reported a chronic shortage of key skills: planners, certifiers, engineers and environmental health officers (EHO’s), with strong competition from the private sector for staff (particularly in building and construction).
- City of Sydney Council noted that council resource shortages are worsened by a lack of inter-council networking opportunities. Further, many councils have a ‘blinkered’ approach to compliance and enforcement due to a lack of skills in exercising nuanced discretion.
- Lake Macquarie City Council argued the State Government should provide increased funding and training of staff when it devolves new regulatory responsibilities to the local government level.

**Regional Organisations of Councils (ROCs)**

- CENTROC (Central NSW Councils ROC) suggested some council compliance staff take a box ticking approach rather than a merits-based discretionary analysis.

*Source: Various submissions to IPART’s Local Government Compliance and Enforcement Review.*
4.1.2 Enhancing consistency and cooperation across councils

Stakeholders, including some councils, also expressed concern about a lack of consistency and cooperation across councils, as discussed in the Box below. This particularly affects businesses operating across multiple council boundaries. In general:

- Businesses noted that inconsistencies between councils lead to increases in red tape and delays, and called for greater standardisation across the State.
- Councils agreed that consistency and cooperation between councils has benefits, but some argued inconsistencies were also the result of different community priorities.

Box 4.2 Stakeholder concerns with council cooperation and consistency

Business stakeholders

- The Australian Institute of Building Surveyors argued there are inefficiencies created by duplication, overlap and inconsistencies across council procedures and requirements.
- The Business Council of Australia noted that councils inconsistently interpret statutes, codes and conditions.
- The Property Council of Australia stated that councils impose widely disparate conditions (particularly planning conditions) across boundaries - even when councils sit within regionally similar or geographically contiguous areas.
- The Small Business Commissioner mirrored concerns that different councils interpret legislation differently, which creates high uncertainty and cost.
- The Australian Logistics Council noted strong inconsistency in how councils assess the roadworthiness of their roads, using ‘community preferences’ to block heavy vehicle access.

Councils

- Randwick City Council recognised the challenges to businesses operating across multiple councils; with different tender processes, lease and licence requirements, approval processes, service levels, standards, fees, priorities and community expectations.
- Pittwater Council noted consistency is poor and needs to be improved in the issuing of permits and attached conditions.
- Strathfield Council mirrored concerns with consistency being poor and noted this can reflect different community priorities, as well as a lack of capacity. It suggested risk-based frameworks as a way to institute more standard processes.
- Sutherland Shire Council noted that while there is good consistency and standardisation across council boundaries in some regulatory areas (eg, health and food safety), other issues were regulated in noticeably different ways, imposing high cost on business (eg, skip bins, planning).

Source: Various submissions to IPART’s Local Government Compliance and Enforcement Review.
4.2 Current collaborative arrangements amongst councils

The sections below discuss current collaborative arrangements amongst councils.

4.2.1 Examples of current arrangements

Currently, there are a number of forms of collaborative arrangements used by councils in relation to their compliance and enforcement functions. These include:

- **Sharing of rangers** for councils with adjacent boundaries for environmental and companion animals enforcement.\(^{214}\)

- **Sister cities** agreements, which involve a partnership between 2 councils on specific issues of concern – although the main focus seems to be cultural and educational exchange.\(^{215}\) Both Holroyd City and Sutherland Shire Councils have sister city arrangements in place.\(^{216}\) Sutherland Shire Council noted that sister city arrangements allow bilateral sharing of staff to address areas of concern.\(^{217}\) They are usually between councils which are geographically distant from one another (i.e., between metropolitan and rural councils).

- **Sharing support services** such as IT, records management, procurement arrangements and tendering – for example, the Hunter Councils’ shared records repository.\(^{218}\)

- **County Councils**, which can be created by the Minister of Local Government to undertake specific functions under the LG Act.\(^{219}\) A County Council comprises a number of councils within a regional area, represented by local councillors. Whilst there is no legislative limit on the functions County Councils can perform, only 4 functions are currently exercised by the 14 NSW County Councils. These include water supply, water and sewerage services, floodplain management, and the eradication of noxious weeds.\(^{220}\) Eight of 14 County Councils are focused solely on eradication of noxious weeds.\(^{221}\)

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\(^{216}\) Holroyd City Council, submission to IPART, 5 November 2012.

\(^{217}\) Sutherland Shire Council, submission to IPART, November 2012.


\(^{219}\) *Local Government Act 1993* (NSW), sections 387-394.


\(^{221}\) Ibid.
Reciprocal arrangements include informal checks and reviews, such as the arrangement between Liverpool Plains Shire and Gunnedah Councils for reciprocal referrals of development applications. Each council provides an objective assessment or review of the other’s assessment of development applications, to ensure compliance with planning law and local codes or policies. Governance is by mutual agreement. Approvals are assessed and determined by 1 council, and then forwarded to the other council for adoption.footnote{222}

Formal networking opportunities (eg, forums) for staff to exchange ideas, and examples of innovation and best practice. For example, the Australasian Environmental Law Enforcement and Regulators neTwork (AELERT) provides a platform for environment officers to exchange information.

Regional Organisations of Councils (ROCs) - ROCs are explicitly enabled by the LG Actfootnote{223} with 139 of 152 councils currently a member of one of the 18 ROCs.footnote{224} They are formed voluntarily by councils in specific regions to act as a representative grouping of regional councils, both in an advocacy capacity to other levels of government, and also to deliver shared services to their community. ROCs are the most prevalent and developed form of collaboration amongst councils, and are discussed in more detail below.

Regional Organisations of Councils (ROCs)

Current research indicates ROCs are generally more successful in their advocacy capacityfootnote{225} than delivering shared services (particularly regulatory services). However, there are several examples of ROCs undertaking regulatory services or activities. For instance, the SSROC’s Regulatory Management Group meets quarterly to review issues around parking, ranger activity, health and building issues.footnote{226} Hunter Councils Inc. is a more formal arrangement (see the Box below). Notably, the effectiveness of Hunter Councils Inc. as a collaborative body used for better regulatory performance appears to be the exception rather than the rule under the current legislative structure.footnote{227}

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footnote{222} Ibid, pp 59-60. See also Division of Local Government, Collaborative Arrangements between Councils – Survey Report, June 2011, p 263.

footnote{223} Local Government Act 1993 (NSW), section 355.

footnote{224} Gooding Davies Consultancy, Options to Enhance Regional Collaboration Amongst Councils in NSW: the Role of Regional Organizations of Councils, November 2012, p 10.

footnote{225} Ibid.

footnote{226} Sutherland Shire Council, submission to IPART, November 2012.

Enhancing regulatory collaboration amongst councils

Box 4.3 Hunter Councils Inc., an example of collaboration via ROCs

Councils in the Hunter region have established Hunter Councils Inc. (with 11 member councils) to provide resource sharing. Its environmental division, the Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS), shares environmental enforcement and works to standardise processes and procedures across boundaries. Annual savings from HCCREMS are estimated at $3.35 million, or $893,000 per council.a

Hunter Councils has also developed a legal services entity which any council (not just member councils) can use - Local Government Legal (LGL).b LGL provides legal services only to NSW local councils on a cost-recovery (low cost) basis. Harmonisation of processes across councils also results from the provision of similar legal advice and services across councils.

Hunter Councils also provides learning and development opportunities for staff through a registered training organisation. In 2005/06, local government focused programs were delivered to 3,000 participants, with DLG estimating cost savings of over $1 million. Further, staff traineeships were provided at cost neutrality, with a final value of $230,000.


4.2.2 Stakeholder views

Stakeholder views on current methods of council collaboration and cooperation are presented in the Box below. In general:

- businesses supported increased collaboration amongst councils to enhance regulatory consistency, capacity and capability
- councils recognised the benefits of collaborative arrangements, and provided some examples of such arrangements.
Box 4.4 Stakeholder views on current council collaboration

Business

- Business stakeholders generally supported increased collaboration to increase consistency, improve staff skills and create economies of scale (for example, Small Business Commissioner, NSW Business Chamber, Business Council of Australia, Property Council of Australia, Urban Taskforce, Housing Industry Association).

Councils

- Campbelltown City Council stated that ROCs, as well as industry-wide networks (such as AELERT), provide the opportunity for councils to provide guidance to one another and swap best practice ideas, as well as a means of addressing staff shortages through up-skilling.
- City of Sydney argued ROCs are best used as a basis for better networking, and coordinating meetings between local and State Government at a regional level – particularly to discuss roles, training, and consistent policy approaches.
- Lake Macquarie City Council noted the HCCREMS network is a best practice example of regulatory collaboration, which allows for regionalisation of approaches.

Source: Various submissions to IPART’s review of Local Government Compliance and Enforcement.

4.3 Council amalgamations and other models to increase strategic capacity

The ILGRP has been considering the issue of further council amalgamations. It has made it clear that different levels and types of local government reform will be appropriate for different regions of the State.228

The ILGRP’s Future Directions consultation paper outlined its preferred solutions for enhancing council capacity and collaboration, as follows:229

- Around 20 ‘new look’ multi-purpose County Councils to undertake regional functions outside the Sydney metropolitan area.
- The option of Local Boards to service small communities and to ensure local identity and representation in very large urban councils.
- Encouraging voluntary amalgamations of smaller rural councils, some councils in the Lower Hunter and Central Coast regions, and in the Sydney basin.
- Incentives for voluntary mergers and ‘early movers’.

229 ILGRP Future Directions Paper, p 5.
Enhancing regulatory collaboration amongst councils

- A Western Region Authority to provide a new governance and service delivery system for the far west of NSW.
- Building on the recent State-Local Government intergovernmental agreement to increase collaboration and joint planning between councils and State agencies.

The ILGRP considered that a more robust statutory framework was required at the regional level and that this could be better achieved through Local Boards and County Councils (using the existing County Council provisions of the LG Act) than through Regional Organisations of Councils (ROCs). It argued:

ROCs have played a valuable role in regional advocacy and shared service delivery, but they are rarely strong in both. Moreover, not all councils are members of ROCs, their performance is patchy and they tend to wax and wane.230

These new models of collaboration are designed to improve the strategic capacity of councils through economies of scale and scope. They include structures that are flexible in design to balance improved strategic capacity with the need to retain a local focus and identity.231

We note that the Panel’s County Council model has been the subject of significant comment from stakeholders and await its final proposals.232

We note that the ILGRP has recommended voluntary, not forced, amalgamations, consistent with its Terms of Reference and the State government’s policy of ‘no forced amalgamations’.233 Collaborative models are therefore likely to remain relevant as either complementary or alternative models to amalgamations. This will depend on which amalgamations and/or boundary changes are implemented. The economies of scale offered by better collaboration and sharing may be reduced where amalgamations or boundary changes are adopted.

4.4 How can collaborative arrangements be improved?

There is general agreement amongst stakeholders that enhanced collaboration amongst councils can improve consistency and regulatory outcomes and reduce costs to councils, businesses and the broader community.

However, there still appears to be relatively limited council collaboration in relation to regulatory activities and services.

230 Ibid, p 34.
Notably, we have identified several factors that may impede development of council collaborative arrangements. These include:

- legislative impediments
- lack of guidance on governance frameworks (eg, in relation to options for incorporation and how to incorporate a shared services body)
- lack of incentive for councils, including large start-up costs.

These factors, along with stakeholder proposals or views, are discussed below.

### 4.4.1 Stakeholder views

Stakeholders argued for increased incentives or assistance for council collaborative arrangements (eg, via funding). Some also suggested that legislative change was required to better facilitate collaboration. Stakeholder views are presented in the Box below.
Box 4.5  Stakeholder views on better models and systems for collaboration

Business stakeholders

▼ The NSW Business Chamber:
- supported the expansion of the scope and role of ROCs to achieve better regulatory outcomes for business, and noted this may require amendment of the LG Act to allow ROCs to be corporate entities in their own right
- argued for funding and promotion of shared services, and for the Government to identify specific regulatory activities that councils must deliver as a shared service.

▼ The Urban Taskforce argues for regionalised shared service centres to increase council capacity and consistency.

▼ Caltex suggested councils should be allowed to pool their resources and easily share staff across boundaries in order to improve the consistency of environmental regulation, particularly in rural and regional areas where shortages are most acute.

▼ The Housing Industry Association argued that councils should be able to share planners and certifiers (council or private) to address shortages.

Councils

▼ Pittwater Council suggested reform of complex legislative processes for ROCs to improve the ability to set them up, increased mutual recognition of other councils’ permits, and common registration IT systems to standardise processes.

▼ Liverpool Plains Shire Council argued for increased incentives for ROCs.

▼ Newcastle City Council supported increased incentives, particularly when combined with an ability to allow ROCs to facilitate staff sharing across boundaries.

▼ Wollongong City Council advocated online or ‘e-sharing’ through centrally-hosted portals or registers run by the DLG. This would enable councils to share information and best practices amongst each other.

▼ Ashfield City Council was highly supportive of mutual recognition schemes – whereby councils recognise the approvals and licences of other councils, in return for recognition of their approvals in the same area (eg, in mobile food vending).

Source: Various submissions to IPART’s Local Government Compliance and Enforcement Review.
4.4.2 Legislative impediments

There appears to be a lack of legislative facilitation and guidance for shared services arrangements. This includes:

- impediments to the ability to engage in regional tendering and procurement practices to reduce cost overheads (section 377 LG Act)
- limits on the ability of councils to form companies (section 358 LG Act)\(^{234}\)
- restrictions on the ability of councils to delegate Chapter 7 LG Act regulatory functions, including to shared services bodies (section 379 LG Act)
- a lack of prescription in the LG Act about acceptable processes for set-up and management of shared service bodies and ROCs.\(^{235}\)

The ILGRP’s consultant’s report on ROCs notes many of these issues and supports amendment of the LG Act to facilitate council collaboration.\(^{236}\)

Stakeholders have identified that without prescription of acceptable processes, governance structures formed in the past have not been strong enough to withstand internal pressures that arise from collaborative units. These pressures have included prioritising goals, employment concerns and different levels of political commitment.\(^{237}\) Stakeholders generally favour a higher level of guidance around acceptable governance and structural arrangements.\(^{238}\) They also highlight the need to retain flexibility to adjust the model as necessary.\(^{239}\)

The Local Government Acts Taskforce, that has been reviewing the LG Act in line with wider local government reforms,\(^{240}\) has noted that amendments to the LG Act will be required to support the new governance models and structural arrangements being considered by the ILGRP.\(^{241}\)

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\(^{234}\) NSW Business Chamber’s submission to IPART, 29 October 2012.

\(^{235}\) Although the ILGRP’s research found many stakeholders recognise the need for the legislation to be flexible enough to change governance structures to suit each situation, some stakeholders argued for further legislative prescription. This was not a uniform position.


\(^{236}\) Gooding Davies Consultancy, *Options to Enhance Regional Collaboration Amongst Councils in NSW: the Role of Regional Organizations of Councils*, November 2012, p 19.


\(^{238}\) For example, Wollongong City Council submission to IPART, November 2012.

\(^{239}\) Ibid. See also Gooding Davies Consultancy, *Options to Enhance Regional Collaboration Amongst Councils in NSW: the Role of Regional Organizations of Councils*, November 2012, p 19.

\(^{240}\) See section 1.4.

\(^{241}\) Ibid.
Section 377 – constraints on engaging in regional tendering and procurement practices

The delegation provisions in section 377 of the LG Act constrain the ability of councils to engage in regionally-based procurement.

As noted by the Taskforce, the Act provides for councils acting as individual entities rather than in collaboration with a broader local government system.\(^{242}\) The Taskforce recommends that the delegations section of the LG Act should be reviewed to facilitate councils entering into collaborative procurement arrangements such as via ROCs and allowing councils to delegate procurement to general managers with a ‘report back’ mechanism.

We support this recommendation to facilitate sharing of services.

Section 379 – delegation of regulatory functions

Section 379 of the LG Act constrains councils’ delegation of regulatory functions. As a result, individual council approval is required of each decision made by a shared services body that is related to a regulatory function while other council functions are not similarly constrained.

Submissions to the Local Government Acts Taskforce suggest that the matters precluded from delegation should be reviewed to ensure they are not hampering the efficient operation of council.\(^{243}\)

We support the removal or amendment of section 379 to enable councils to delegate regulatory functions to shared services bodies.

Section 358 – formation and involvement in corporations and other entities

Section 358 of the LG Act provides that councils may not form or participate in the formation of a corporation or other entity except with the consent of the Minister and subject to conditions that the Minister may specify. In granting approval, the Minister must be satisfied that the formation of a company or other entity is in the public interest.


\(^{243}\) Ibid, p 42.
The Taskforce has noted stakeholder concerns about section 358 of the LG Act and questioned the extent to which it is an impediment to greater sharing of services by councils.\textsuperscript{244} It notes that:

\begin{itemize}
\item only a small number of requests (2-4) are made each year for Ministerial consent to council formation or participation in companies under section 358
\item Ministerial consent has been granted for approximately 85\% of these requests.
\end{itemize}

We agree with the Taskforce that it is reasonable for councils to be subject to a degree of scrutiny when deciding to form a company, given that:

\begin{itemize}
\item a corporation or other entity formed by council is not subject to the legislative checks and public scrutiny and accountability as the council itself
\item employees of a council corporation will not be covered by the same employment conditions as employees of councils.\textsuperscript{245}
\end{itemize}

Stakeholder feedback on this issue to our review and the Taskforce also suggests that there may be considerable ‘latent demand’ for council ability to corporatise. That is, a number of councils may be interested in forming corporations to improve shared services and regional efficiencies in regulatory services, but may be dissuaded from doing so by the \textit{perceived} difficulty of gaining Ministerial consent.

We note that the Taskforce has deferred final recommendations on this aspect of the LG Act until the ILGRP review is complete. We consider that this provision should be retained to ensure there is some scrutiny of council decisions to form a company or other entity.

Stakeholder concerns suggest, however, that there is a need for more detailed guidance from the Division of Local Government as to the process for obtaining Ministerial approval and the matters that will be considered by the Minister. The Taskforce notes that the DLG has issued a circular providing guidance about the ‘public interest’ considerations.\textsuperscript{246}

\textsuperscript{244} Ibid, pp 39-40.
\textsuperscript{245} Ibid, p 40.
\textsuperscript{246} Ibid, p 39.
4.4.3 Lack of guidance on governance frameworks

Council collaboration involves a range of further barriers and challenges that could be addressed through improved planning and guidance. For example:

- Current set-up models do not provide sufficient scope to deliver large-scale shared service capabilities adequately. Limits include, for example, financial caps on revenue, the need for Ministerial approval of a body and onerous ongoing reporting requirements.\(^{247}\)

- More detailed guidance material is needed from DLG on what constitutes acceptable governance and financial management frameworks. Whilst DLG currently provides a *Supplementary Checklist*\(^{248}\) online, there is no guidance material for what constitutes appropriate benchmarks or advice on set-up, incorporation, and maintenance of an appropriate governance framework.

- There is often “optimism bias” from proponents of shared services – ie, strong recognition of potential benefits; with little planning around how to avoid failure and ensure successful implementation and maintenance.\(^{249}\)

- Research on past collaboration failures consistently demonstrates that fear of “loss of control”\(^{250}\) by individual members of such bodies can lead to “parochialism”\(^{251}\) and in-fighting. For example, industrial relations concerns have undermined effective implementation and maintenance of inter-council collaborative models.\(^{252}\)

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250 Ibid.


4.4.4 Lack of incentives

The Productivity Commission points out that incentives are particularly important to facilitate the cooperation of councils to enter into collaborative regulatory arrangements. It notes weak incentives exist for councils to voluntarily coordinate on regulatory efficiency. According to the Productivity Commission:

- The proportion of resources councils direct to regulatory activities as a whole is small compared to resources spent on service delivery and other functions. Whilst regulatory reform delivers highly tangible benefits for regulated entities (business and the community) councils may notice only a small net financial improvement from inter-council collaboration.
- High overhead costs are associated with the set-up and maintenance of collaborative arrangements, due to the requirement to meet ongoing compliance and reporting requirements.
- There is a medium to long-term timeframe for economies of scale to be demonstrated, which means the upfront start-up costs and staff discontent can often override long-term considerations.253

4.5 Our recommendations

Our recommendations below are aimed at removing impediments to, and providing incentives for, council regulatory collaboration. As discussed above, these steps are important in achieving greater collaboration amongst councils.

4.5.1 Legislative Reform

We recommend the LG Act be amended to remove any impediments to, or facilitate the easier use of, shared regulatory services. As noted by the Taskforce, the legislative amendments that are required will depend on the ILGRP’s final recommendations on council amalgamations and other structures to share services and increase councils’ strategic capacity. Consideration should be given to:

- removing or amending section 379 – which currently restricts the delegation of a council’s regulatory functions under Chapter 7 of the LG Act (but not under other Acts),254 including to shared services bodies
- amending section 377, which prohibits any delegation by a council of the acceptance of tenders.

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254 See section 381 of the Local Government Act 1993 (NSW).
If ROCs continue as the preferred form of council collaboration, consideration should also be given to whether the LG Act should specify how and in what form ROCs should be established (including whether management frameworks should be prescribed).

4.5.2 Incentives and guidance

We also recommend the NSW Government encourage and develop incentives to form collaborative arrangements in relation to regulatory functions.

Financial incentives

Funding can be particularly important to overcome concerns about start-up costs. We recommend the establishment of a small repayable fund to assist in setting up shared regulatory services. Councils could obtain a loan with a concessional rate of interest that is repayable within a specified period. Ideally, such funding would be allocated on a competitive basis — ie, funding allocated to those proposals that would achieve the greatest net benefit or reduction in regulatory costs. The DLG’s *Supplementary Checklist*\(^{255}\) could be used as a template for applying for and assessing funding.

Such funding would be budget neutral over time, if councils repay it from cost savings they realise from better regulatory collaboration.

Non-financial guidance and assistance

There may also be scope for DLG to provide more substantial guidance material to councils on collaborative arrangements. DLG’s *Supplementary Checklist* template\(^ {256}\) provides a basic outline of documents and evidence that councils can use to assess actual or proposed collaborative arrangements. However, DLG should consider whether this document could be expanded to give more detailed advice on what constitutes acceptable benchmarks for some of the criteria it sets. For example, this could include more detailed advice to councils on how to set-up and maintain strategic priorities.

DLG should also consider providing guidance on governance options for collaboration between councils (including a list of different models of incorporation).


In reviewing its guidance material and providing assistance to councils, DLG should review and consider current leading practice collaborative arrangements – such as Hunter Councils Inc.

Draft Recommendations

10 The Local Government Act 1993 (NSW) should be amended to remove any impediments to, or facilitate the easier use of, shared regulatory services. In particular, consideration should be given to:

– removing or amending section 379 – which currently restricts the delegation of a council’s regulatory functions under Chapter 7 of the Local Government Act, including to shared services bodies

– amending section 377, which prohibits any delegation by a council of the acceptance of tenders.

If Regional Organisations of Councils (ROCs) continue as the preferred form of council collaboration, consideration should also be given to whether the Act should specify how and in what form ROCs should be established (including whether management frameworks should be prescribed).

11 The NSW Government should encourage and develop incentives to form collaborative arrangements in relation to regulatory functions. This should include training, guidance and promotion of leading practice collaborative arrangements, and the establishment of a small repayable fund to assist in setting up shared regulatory services. Councils could obtain a loan with a concessional rate of interest that is repayable within a specified period. This should tend to be cost neutral over time, as cost savings to councils would be achieved from the collaborative arrangements.
Box 4.6  CIE’s analysis of the impact of recommendations

Under a model where councils shifted to service provision using regional organisations of councils (ROCs), such as is being promoted by Hunter Councils, the number of organisations providing regulatory services would reduce from 152 to around 17. This would increase the average population being serviced by each organisation by 22 times. CIE’s analysis of the potential cost savings from greater economies of scale suggests councils could save in the order of $150 million per year.

### Cost reduction from realisation of economies of scale

<table>
<thead>
<tr>
<th>Area</th>
<th>Current cost ($m/yr)</th>
<th>Cost under full economies of scale ($m/yr)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building control</td>
<td>134</td>
<td>94</td>
</tr>
<tr>
<td>Enforcement of local regulations</td>
<td>258</td>
<td>181</td>
</tr>
<tr>
<td>Town planning</td>
<td>104</td>
<td>73</td>
</tr>
<tr>
<td>Total</td>
<td>496</td>
<td>348</td>
</tr>
<tr>
<td>Change in cost</td>
<td>n/a</td>
<td>-148</td>
</tr>
</tbody>
</table>

CIE also presents estimates of cost savings achieved from specific shared services arrangements amongst groups of councils within NSW, and then scales these up to calculate NSW-wide savings from these schemes. This cost saving to councils in NSW totals between $30 million and $200 million per year, depending on the shared services approach adopted.

However, given that relatively few councils currently use ROCs or other collaborative arrangements extensively in undertaking their regulatory functions, CIE notes the extent to which large scale collaboration can be achieved at low cost is difficult to determine.

Therefore, CIE believes potential savings from sharing regulatory services are likely to be closer to the lower bound of the estimate, around $30 million per year. There would be no net impact on the NSW Government over time under IPART’s recommendation, although there would be outlays now for revenue later.

CIE attributes the $30 million per year in cost savings to councils, rather than general red tape savings. However, CIE notes that the benefits of the cost savings may be passed onto those using council services (eg, through reduced charges or rates, or improved regulatory or other services).

**Source:** The CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations*, June 2013, pp 47-53.
Improving the regulatory framework at the local level

The previous chapter made recommendations to facilitate greater council collaboration in relation to regulatory functions. In this chapter, we consider how the local government regulatory framework - primarily the *Local Government Act 1993* (NSW) (LG Act) - can be improved to reduce unnecessary costs to business and the community. Specifically, we consider:

- the scope to streamline section 68 approvals under the LG Act
- whether council compliance and enforcement ‘tools’ could be improved.

There appears to be scope to streamline section 68 approvals, through providing more exemptions from the need to obtain approval. We also consider the creation of a single, consolidated Act for all local government enforcement powers and sanctions could enhance the efficiency and effectiveness of councils’ regulatory activities. Lastly, we consider the use of alternative mechanisms for resolving regulatory disputes between councils and other parties has the potential to reduce costs to councils, businesses and individuals.

5.1 Streamlining section 68 approvals under the Local Government Act

The following sections provide further background on section 68 approvals and local approvals policies (LAPs), stakeholder concerns and suggestions in this area.

5.1.1 Background on Section 68 approvals

Currently, there are a number of activities that require approval from councils under section 68 of the LG Act. These approvals relate to:

- water supply, sewerage and stormwater drainage works, including connection to council sewers or drains
- management of waste, including into council sewers, onsite sewage management systems and skip bins
- activities on community land, including busking, community events and business activities (eg, fitness trainers and ‘boot camps’)
Improving the regulatory framework at the local level

- sale of goods or display of articles outside a shop window or doorway next to a road (eg, display stands)
- other activities, such as mobile vendors, installing solid fuel heaters or amusement devices, and operating public car parks, caravan parks, camping grounds or manufactured home estates.\textsuperscript{257}

Analysis indicates there are currently 320,400 section 68 approvals in force in NSW.\textsuperscript{258} The largest numbers by type relate to water supply, sewerage and stormwater drainage works. There are also a large number of approvals for the placing of waste in a public place (ie, skip bin approvals). The table below sets out the number of approvals for each type of activity.

CIE has estimated that the regulatory costs of section 68 approvals (comprising time, administration, and financial costs) totals about $15 million per annum.\textsuperscript{259}

\textsuperscript{257} For a full listing of activities, see section 68 of the \textit{Local Government Act 1993} (NSW).
\textsuperscript{258} IPART, \textit{Regulation Review – Licence Rationale and Design}, October 2013.
\textsuperscript{259} The CIE, \textit{Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations}, June 2013, p 43.
### Table 5.1 Section 68 approvals issued by NSW councils

<table>
<thead>
<tr>
<th>Approval to:</th>
<th>New</th>
<th>Renewed</th>
<th>In force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Install Disconnect or Remove a Meter Connected to a Service Pipe</td>
<td>6,922</td>
<td>1,616</td>
<td>110,188</td>
</tr>
<tr>
<td>Operate a System of Sewage Management</td>
<td>25,580</td>
<td>24,645</td>
<td>93,275</td>
</tr>
<tr>
<td>Connect a Private Drain or Sewer with a Public Drain or Sewer</td>
<td>4,313</td>
<td>-</td>
<td>91,511</td>
</tr>
<tr>
<td>Install Construct or Alter a Waste Treatment Device or a Human Waste Storage Facility or a Drain Connected to any such Device or Facility</td>
<td>3,482</td>
<td>1,092</td>
<td>9,758</td>
</tr>
<tr>
<td>Dispose of Waste into a Sewer of Council</td>
<td>2,827</td>
<td>1,344</td>
<td>5,970</td>
</tr>
<tr>
<td>Carry Out Sewerage Work</td>
<td>3,997</td>
<td>-</td>
<td>1,605</td>
</tr>
<tr>
<td>Carry Out Stormwater Drainage Work</td>
<td>3,972</td>
<td>-</td>
<td>1,543</td>
</tr>
<tr>
<td>Engage in a Trade or Business</td>
<td>750</td>
<td>101</td>
<td>1,527</td>
</tr>
<tr>
<td>Use a Vehicle Stall or Stand to Sell any Article in a Public Place</td>
<td>4,807</td>
<td>781</td>
<td>1194</td>
</tr>
<tr>
<td>Carry Out Water Supply Work</td>
<td>1,429</td>
<td>-</td>
<td>940</td>
</tr>
<tr>
<td>Operate a Caravan Park or Camping Ground</td>
<td>292</td>
<td>285</td>
<td>422</td>
</tr>
<tr>
<td>Swing or Hoist Goods Across or Over any Part of a Public Road by Means of a Lift Hoist or Tackle Projecting over the Footway</td>
<td>3,203</td>
<td>-</td>
<td>400</td>
</tr>
<tr>
<td>Install a Manufactured Home Moveable Dwelling or Associated Structure on Land</td>
<td>516</td>
<td>13</td>
<td>317</td>
</tr>
<tr>
<td>Install a Domestic Oil or Solid Fuel Heating Appliance other than a Portable Appliance</td>
<td>622</td>
<td>-</td>
<td>263</td>
</tr>
<tr>
<td>Set Up Operate or Use a Loudspeaker or Sound Amplifying Device</td>
<td>1,369</td>
<td>196</td>
<td>261</td>
</tr>
<tr>
<td>Draw or Sell Water from a Council Water Supply or a Standpipe</td>
<td>219</td>
<td>52</td>
<td>250</td>
</tr>
<tr>
<td>Domestic Greywater Diversion</td>
<td>21</td>
<td>35</td>
<td>233</td>
</tr>
<tr>
<td>Direct or Procure a Theatrical Musical or other Entertainment for the Public</td>
<td>448</td>
<td>2</td>
<td>203</td>
</tr>
<tr>
<td>Place a Waste Storage Container in a Public Place</td>
<td>1,472</td>
<td>43</td>
<td>150</td>
</tr>
<tr>
<td>Play a Musical Instrument or Sing for Fee or Reward</td>
<td>2,150</td>
<td>36</td>
<td>121</td>
</tr>
<tr>
<td>Deliver a Public Address or Hold a Religious Service or Public Meeting</td>
<td>172</td>
<td>3</td>
<td>107</td>
</tr>
<tr>
<td>Install or Operate Amusement Devices</td>
<td>548</td>
<td>46</td>
<td>77</td>
</tr>
<tr>
<td>Transport Waste Over or Under a Public Place</td>
<td>23</td>
<td>26</td>
<td>48</td>
</tr>
<tr>
<td>Operate a Manufactured Home Estate</td>
<td>29</td>
<td>16</td>
<td>24</td>
</tr>
<tr>
<td>Operate Public Car Park</td>
<td>17</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Construct a Temporary Enclosure for the Purpose of Entertainment</td>
<td>182</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Place Waste in a Public Place</td>
<td>44,225</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>113,586</strong></td>
<td><strong>30,338</strong></td>
<td><strong>320,400</strong></td>
</tr>
</tbody>
</table>

**Note:** 'New' approvals were those issued by NSW Councils between 1 July 2011 and 30 June 2012. 'Renewed' approvals were those approvals renewed by NSW Councils in the same period. 'In force' approvals refers to the number of total approvals that Councils had listed in their records as actively in force on 30 June 2012.

**Note 2:** 113 Councils from 152 Councils in NSW responded to this survey. We have used mathematical analysis to extrapolate an estimated total number of approvals in NSW, which includes an estimate of section 68 approvals by type for councils that did not respond.

**Source:** IPART, Licensing Survey, Regulation Review – Licence Rationale and Design, unpublished.
5.1.2 Background on Local Approvals Policies (LAPs)

LAPs can provide exemptions from the need to gain approval under section 68 of the LG Act and outline criteria for those activities where approval is required. LAPs are potentially a means to:

- reduce red tape and enhance flexibility in regulatory requirements by providing exemptions to section 68 approvals in certain instances, and
- provide guidance to regulated entities as to how councils will exercise their discretion in determining section 68 approval applications.

Our research indicates there are few LAPs currently in operation and LAPs are not being used extensively to provide exemptions. As a result, the red-tape reduction currently achieved through LAPs is not significant.

5.1.3 Stakeholder concerns and suggestions

At our public roundtable, the representative from Newcastle City Council noted:

There are a lot of things in section 68 of the Local Government Act that are from the 1919 Act that we no longer need to look at.

Stakeholders also highlighted the following issues with section 68 approvals:

- businesses operating across council boundaries need to obtain multiple approvals
- there is some duplication of section 68 approvals with approvals required under other legislation, such as the Roads Act 1993 (NSW) (Roads Act) and Environmental Planning & Assessment Act 1979 (NSW) (EP&A Act)
- there are inconsistent section 68 conditions imposed by councils.

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260 Local Government Act 1993 (NSW), section 158.
261 Our research indicates there are 33 LAPs available online. Most of these are very old and could have automatically lapsed, as there is no evidence available online to suggest they have been re-adopted by successive councils.
262 Out of the 33 LAPs we reviewed, 16 contained exemptions and specified criteria for exemptions.
264 Australian Institute of Building Surveyors’ submission to IPART, November 2012. See also Small Business Commissioner’s submission to IPART, November 2012.
265 For example, see submissions to IPART from Advanced Building Certifiers; Housing Industry Association; and Great Lakes Council, October/November 2012. Also, personal communication, telephone conversation between Blue Mountains City Council and IPART, January 2013; and personal communication, telephone conversation between Sutherland Shire Council and IPART, January 2013.
266 Fitness Australia’s submission to IPART’s Regulation Review - Licence Rationale and Design, December 2012.
Another issue raised was the inconsistent application of regulation to particular activities. Blue Mountains City Council notes that busking on community land is the only form of busking which requires a section 68 approval. Busking on all other forms of land cannot be restricted or controlled (or charged for) through approvals (although councils may still have reactive powers to respond to issues should they arise).

Reform of section 68 approvals was generally supported by a range of stakeholders, although the proposed method of reform varied. Some stakeholders support removing duplication where section 68 activities are also regulated by other Acts. Others support removing section 68 approvals or providing greater exemptions for low risk or low cost activities.

We also received some support for making exemptions to section 68 approvals more widely available through LAPs. Wollongong City Council, the Small Business Commissioner and the NSW Business Chamber support a simplified LAP framework for such exemptions.

Other stakeholders propose abolishing LAPs and pursuing an alternative means of providing exemptions from approvals under the LG Act. For example, according to City of Sydney Council, using LAPs is at best a localised solution which may lead to inconsistency across local government areas. It instead prefers review of all overarching State legislation that delegates a compliance and enforcement function to councils. The NSW Business Chamber echoed this sentiment.

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267 Personal communication, telephone conversation between Blue Mountains City Council and IPART, 21 November 2012.
268 Ibid.
269 For example, see submissions to IPART from Randwick City Council; Orange City Council; City of Sydney Council; Holroyd City Council; Lismore City Council; Liverpool Plains Shire Council; Strathfield Council; NSW Business Chamber; Small Business Commissioner; and Tamworth Business Chamber, October/November 2012 and January 2013.
270 For example, see submissions to IPART from Housing Industry Association; Great Lakes Council; and Randwick City Council to IPART, October/November 2012. Also, personal communication, telephone conversation between Sutherland Shire Council and IPART, January 2013.
271 For example, see submissions to IPART from Wollongong City Council and Liverpool City Council, October/November 2012; and personal communication, telephone conversation between Blue Mountains City Council and IPART, January 2013.
272 See submissions to IPART from Advanced Building Certifiers; Tamworth Business Chamber; Caltex Australia; and Housing Industry Association, November 2012.
273 See submissions to IPART from Wollongong City Council; NSW Business Chamber; and Small Business Commissioner, November 2012
274 City of Sydney Council’s submission to IPART, December 2012.
275 Ibid.
276 NSW Business Chamber’s submission to IPART, November 2012.
Multiple councils support mutual recognition schemes. For example, Randwick City Council notes that such schemes are a good application of the ‘precautionary principle’, whereby regulators don’t regulate if it is not necessary (i.e., the section 68 activity is low risk).\(^{277}\) It advocates for mutual recognition across councils for new business models (e.g., mobile food vendors).\(^{278}\)

Conversely, Sutherland Shire Council argues that mutual recognition is likely to add further confusion and the use of technology is a more efficient approach.\(^{279}\)

### 5.1.4 Our position on reform options

We consider there is scope to streamline approvals under the LG Act by removing duplication with other approvals, reducing the range of approvals, and reducing the need to apply to multiple councils. These measures can reduce costs to business and the community.

Options for streamlining approvals include:

- amending section 68 to remove approvals or confine approvals to certain cases only
- providing standardised, minimum requirements or exemptions for activities in the regulations\(^ {280}\)
- providing longer duration approvals and automatic renewals
- providing council-specific exemptions through LAPs
- providing for mutual recognition of approvals for businesses operating across councils.

In the sections below we explain what activities we consider are amenable to these streamlining options. These are generally low risk activities. Our findings are based on our review of the exemptions and criteria set out in current LAPs, submissions to our review, discussions with a selection of councils and a sample of various council websites.\(^ {281,282}\)

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\(^{277}\) Randwick City Council’s submission to IPART, November 2012.

\(^{278}\) The Food Authority noted in their submission that they are currently working with local government to establish improved guidelines for mobile food vendors and temporary food events, which may lead to better mutual recognition in this area.

\(^{279}\) Sutherland Shire Council’s submission to IPART, November 2012.

\(^{280}\) These are regulations under the Local Government Act 1993 (NSW).

\(^{281}\) Personal communications, telephone conversation between Sutherland Shire Council and IPART, January 2013; telephone conversation between Blue Mountains City Council and IPART, January 2013; telephone conversation between Port Macquarie Hastings Council and IPART, January 2013.

\(^{282}\) We undertook an analysis of 33 Local Approvals Policies available online. This also included a review of some of these councils’ websites.
Providing longer duration and automatic renewal of approvals will be particularly useful to reduce the red tape burden of high risk, longer term activities. Further red tape reductions could also be achieved in relation to high risk activities through the adoption of best practice regulatory approaches – see Appendix D of this report. Appendix D considers current best practice regulatory approaches to onsite sewage management systems.

We note that the Local Government Acts Taskforce, in its discussion paper released in April 2013, also considers section 68 approvals. The Taskforce notes that the approval processes are highly prescriptive and the cause of complaints of excessive red tape, especially from businesses operating across council boundaries. It proposes a range of options to streamline section 68 approvals and advises that it will have regard to our findings and recommendations in finalising its recommendations.

5.1.5 Removing duplications with other legislative requirements

Submissions highlighted numerous legislative overlaps or duplications between section 68 approvals and approvals required under other legislation. These are in relation to:

- footpath restaurants – Roads Act, EP&A Act and LG Act
- mobile vendors – Roads Act, Food Act (for mobile food vendors) and LG Act
- installation of amusement devices – Work Health and Safety Regulation and LG Act
- installation and operation of manufactured homes – EP&A Act and LG Act
- stormwater drainage approvals – EP&A Regulation and LG Act

In our assessment, each of these areas should not require approval under section 68. Businesses would still be required to obtain approvals under the other legislation.

284 Ibid, p 55.
285 Ibid, p 56.
286 See Roads Act, section 125; EP&A Act, section 76A; LG Act, sections 46 & 68. From our discussions with various councils and review of various council LAPs, we understand that some councils have taken the view that a section 68 approval is needed for a footpath restaurant, while others haven’t and instead have used section 46 of the LG Act to issue a lease or licence. Whether section 68 is to be used for footpath dining permits could be clarified in legislation, if need be.
287 Work Health and Safety Regulation 2011 (NSW), Part 5.2, Division 4.
288 EP&A Act, sections 118A and 121B.
The Local Government Acts Taskforce has also noted the extent of overlap and duplication between section 68 approvals and regulation under other legislation. It has proposed that a similar range of section 68 approvals be repealed or transferred to other legislation.\textsuperscript{290}

\section*{5.1.6 Removing or confining approvals}

In our assessment, there may be a case to remove the need for approvals in relation to:

- Busking (Parts D(2) and D(4) of section 68, LG Act).
- Set up, operation or use of a loudspeaker or sound amplifying device (Part D(5) of section 68, LG Act).

The following factors suggest that an approval may not be necessary for these activities:

- The relatively low number of approvals for these activities (see the Table above for the number of these approvals per annum). This could also indicate many activities are undertaken without approval.
- The generally low risk or low impact of these activities.
- The ability of councils to rely on their general reactive powers to manage these activities, such as public nuisance and noise control powers under various legislation.\textsuperscript{291}

Removal of approvals for these activities could be combined with the publication by each council of areas where specified activities are not allowed, in order to accommodate local preferences.

\section*{5.1.7 Changes to the duration and renewal of approvals to reduce the burden of approvals}

In addition to removing or confining approvals, it may be possible to reduce the current burden of approvals through:

- longer duration, and
- automatic renewal.

\footnotesize{\textsuperscript{290} LG Acts Taskforce Discussion Paper, pp 55-56. In particular, the Taskforce states that the following approvals could be repealed or transferred to other legislation – installation of manufactured homes, operation of caravan parks and camping grounds, installation of domestic oil and solid fuel heaters, approvals for filming activities, approvals for amusement devices and approvals for activities on public roads.}

\footnotesize{\textsuperscript{291} See Protection of the Environment Operations Act 1997 (NSW) (POEO Act), sections 95-100; Companion Animals Act 1998 (NSW), section 21; and LG Act, sections 124-125.
Under the LG Act, approvals lapse every 5 years, with scope for councils to lengthen or shorten this period. However, many councils currently require annual approvals for activities. This may be to allow them to recover the costs of enforcement activities (although these costs could still be recovered with a longer approval duration), or for other reasons.

**Longer duration**

To reduce regulatory burden, councils should consider whether there is scope to require approvals to be renewed less frequently (eg, once every 5 years). This is likely to be particularly applicable to longer-term activities, such as car parks, caravan parks, camping grounds, manufactured home estates and operation of a system of sewage management.

**Automatic renewal**

Section 107A of the LG Act currently enables approvals to operate a sewage management system to be renewed by sending an account or invoice to the approval holder, instead of requiring the person to re-apply for the approval. The renewal is taken to be on the same terms as the original application.

There is scope to extend this provision to other approvals to operate – eg, in relation to car parks, caravan parks, camping grounds and manufactured home estates.

**5.1.8 Standardised minimum requirements or exemptions in regulations**

There are a number of approvals that may be suited to standardised minimum requirements or exemptions provided in the regulations. The Local Government Acts Taskforce agrees that, subject to risk assessment, where possible it would be desirable to place certain section 68 approvals into the regulations and allow the LG Act to focus on high priority areas. Activities being carried out in accordance with these standard requirements or exemptions would not require individual approvals. In our assessment, these could include:

- **footpath restaurants**

- **A-frames or sandwich boards**

- **stormwater drainage works**

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293 *Local Government Act 1993* (NSW), sections 103(1)(b) and 103(2).

294 For example, for certain approvals to operate a system of sewage management. Personal communications, telephone conversation between Blue Mountain City Council and IPART, January 2013; and telephone conversation between Port Macquarie Hastings Council and IPART, January 2013.

295 *Local Government Act 1993* (NSW), section 107A(3).

Improving the regulatory framework at the local level

- skip bins
- domestic oil or solid fuel heaters.

Each of these is detailed further below.

**Footpath restaurants**

Even if the requirement for section 68 approval for footpath dining is removed from the LG Act, footpath restaurants will still require approval from the council under section 125 of the Roads Act.\(^\text{297}\)

A review of a number of council LAPs illustrates that councils generally have similar concerns in relation to footpath restaurants (ie, safety, insurance, barriers between diners and the road, clear passageway for footpath users, access for utilities), although councils respond differently.\(^\text{298}\)

Instead of requiring individual section 68 approvals, consideration should be given to introducing standard minimum requirements in the regulations for footpath restaurants.

**Domestic oil or solid fuel heaters**

Instead of requiring individual section 68 approvals, consideration should be given to introducing a standard exemption in the regulations to install domestic oil or solid fuel heaters where an accredited contractor is used. The accredited contractor should be required to undertake this work in accordance with *The Building Code of Australia, AS2918: Domestic Solid Fuel Burning Appliances and Installation*, and *NSW Department of Environment and Conservation’s publication ‘Environmental Guidelines for Selecting, Installing and Operating Domestic Solid Fuel Heaters’*. Blue Mountains City Council currently provides this exemption in its LAP.

**A-frames or sandwich boards**

A number of existing council LAPs provide exemptions in this area.\(^\text{299}\)

Instead of requiring individual section 68 approvals, consideration should be given to introducing a standard exemption in the regulations for the use of A-frames or sandwich boards where they meet certain specifications (eg, size, number, performance standards regarding anchoring).

\(^{297}\) We note that there is currently additional overlap with the EP&A Act that may be removed. Under a proposed amendment to the State Environmental Planning Policy (Exempt and Complying Codes) 2008, footpath restaurants will be exempt from requiring a development approval if required for less than 20 seats. If this amendment is made, approval for footpath dining will only be required from council under the *Roads Act 1993* (NSW).

\(^{298}\) For example, see Ballina Shire Council’s LAP (2009) and Hurstville City Council’s LAP (2012).

\(^{299}\) For example, Blue Mountains City Council’s LAP (2012).
Stormwater drainage works

Instead of requiring individual section 68 approvals, the regulations could provide a standard exemption for stormwater drainage works where the works:

- relate to single lot residential dwellings and associated structures or to repair or replace existing drains
- are carried out in accordance with the Plumbing Code of Australia and comply with AS/NZS 3500.3: Stormwater drainage.

Skip bins

In most cases, councils have relatively standard requirements for skip bins (ie, not placed in a road, insurance requirements, etc).300

Instead of requiring individual approvals for skip bins, the regulations could prescribe minimum requirements to deal with the majority of cases. The regulations could require a skip bin operator or user to notify the local council where it is unable to comply with these requirements. Where individual inspections or non-standard arrangements are needed, a council could issue written directions that the operator must comply with. Councils should be able to recover costs for any such inspections or directions.

This would address concerns that skip bin permits are generally issued for timeframes that are too short,301 as well as improve consistency and reduce application processes for businesses.

Fitness trainers

Stakeholders from the fitness industry expressed concern that fees charged for section 68 approvals to operate a business on community land are too high. Further, they are concerned these approvals come with overly onerous conditions attached (such as numbers of classes allowed per week and numbers of attendees per class).302

Conversely, councils have noted the need to retain such permits to charge for the use of community land, as well as to control amenity impacts for the benefit of other community land users.303

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300 Ibid.
301 Personal communication, telephone conversation between Housing Industry Association and IPART, January 2013.
302 Fitness Australia’s submission to IPART, December 2012.
303 Personal communications, telephone conversation between Blue Mountains City Council and IPART, January 2013; and telephone conversation between City of Sydney Council and IPART, January 2013.
We consider there is scope for the Division of Local Government (DLG) to consult with representatives from the fitness industry (such as Fitness Australia) and Local Government NSW to develop ‘model’ section 68 approval conditions for fitness trainers using community land. This should include standard conditions of approval (eg, regarding insurance requirements), which could then be augmented or amended, if necessary, to reflect the local preferences or conditions of each council.

There may also be scope for a process analogous to the consultation between DLG, councils and the film industry, which resulted in an agreement on the granting of approvals and charging of fees in relation to the use of public land (including community land) for filming purposes.304

5.1.9 Mutual Recognition of section 68 approvals

Section 68 approvals under the LG Act are not recognised across council boundaries. Therefore, a business that wishes to operate across council boundaries must get approvals from each relevant council that could also be subject to different conditions.305

Mutual recognition between councils allows a business operating across several council areas to apply for approval once, with the initial approval subsequently recognised by other councils.

A number of councils recognised and supported the use of mutual recognition for various section 68 approvals.306 Pittwater Council noted that these schemes would be encouraged by the provision of State-wide forms, templates and guidelines on conditions for section 68 approvals.307

Businesses operating across council boundaries, which may require multiple section 68 approvals, include:

- skip bin operators – placing waste in a public place
- mobile vendors (including mobile food vendors and mobile dog groomers) – operating on community land, in public places or on footpaths or roads.

305 Local Government Act 1993 (NSW), section 107(3).
306 Submissions to IPART from Newcastle City Council, November 2012; Port Stephens Council, October 2012.
307 Pittwater Council’s submission to IPART, October 2012.
There are a number of issues that currently prevent the application of mutual recognition to section 68 approvals:

- section 68 approvals are generally place-specific
- there are no express mechanisms in the LG Act to enable mutual recognition
- the need to accommodate local preferences or conditions in approvals.

Mobile vendors

The Food Authority has established mutual recognition of inspections of mobile food vendors. This is discussed further in Chapter 9. Under this system, the council where the person running the mobile van business lives or where the van is housed is the ‘home jurisdiction’ council and is responsible for food inspections. Other councils can only inspect if a complaint arises while the van is in their local government area. However, this does not obviate the need to obtain a separate section 68 approval from each council that the van operates in.

A similar approach may be possible in the administration of section 68 approvals for mobile food vendors. The council where the person running the mobile van business lives or where the van is housed could consider and grant the section 68 approval and attach general requirements (eg, in relation to insurance coverage, etc). However, the approval could also be issued subject to ‘local operational requirements’, published centrally or on each council’s website. For example, these local requirements could include published maps for each local government area of where such vans are allowed to operate and any special requirements reflecting local preferences.

A further alternative for skip bin operators

If the approach outlined above of removing approvals for skip bins is not workable, a system of mutual recognition of approvals for skip bins (similar to the approach discussed above for mobile food vendors) could also be considered. Namely, there could be a ‘home jurisdiction’ council that provides the initial approval. The skip bin operator could then operate in other councils, subject to the published ‘operational requirements’ of each council.
5.1.10 Local Exemptions - Local Approvals Policies (LAPs)

Little more than 20% of councils currently utilise LAPs. There are a number of potential reasons for the low use of LAPs:

- There are cumbersome and time-consuming legislative requirements to create a LAP - eg, a community consultation period of up to 42 days, and the need to gain approval by the Director-General for any section 68 exemptions.

- The redundant nature of providing an exemption to an approval under section 68 where an activity may also be regulated under other Acts (eg, footpath restaurants may require approval under section 68, the Roads Act and/or the EP&A Act).

- The automatic lapsing (‘sunsetting’) of LAPs from council election to council election (at least every 4 years). To renew a LAP, which has ‘sunsetted’ in this way, the full consultation period must again be completed, and the Director-General’s approval again sought for any exemptions.

- A lack of guidance by the State on the use of LAPs.

- The lack of a real need for formalised policies. For example, Sutherland Shire Council notes it takes a ‘hands off, common sense’ approach to regulation of section 68 activities as they are generally low-impact.

Even where LAPs are used, they can be used incorrectly. Our analysis indicates that, instead of being used to grant further exemptions or guidance about criteria council will have regard to in determining section 68 approval applications, they have been used to add regulatory requirements. This has occurred in relation to waste and water management, companion animals and mobile food vendors.

For example, some councils have used LAPs to set blanket conditions on the keeping of animals, ranging from the number of allowable pets in a category, to the size specifications of kennels. This is despite direct guidance from DLG that such conditions are generally invalid.

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308 We found 33 LAPs available online, the majority of which appear to be out of date due to automatic expiry provisions under the legislation.
309 Personal communication, telephone conversation between Blue Mountains City Council and IPART, 21 November 2012.
310 Local Government Act 1993 (NSW), section 165(4).
311 Ibid.
312 Strathfield Council’s submission to IPART, October 2012.
313 Sutherland Shire Council’s submission to IPART, November 2012.
314 DLG notes that Local Orders Policies (LOPs) can outline what councils generally consider an appropriate number or type of animal that may be kept, to inform how they issue orders to protect community amenity, safety and health. For example, Sutherland Shire does this in its Companion Animals LOP. However, DLG explicitly note that councils do not have powers under either the LG Act, or the Companion Animals Act, to generally enforce a limit on the number of animals kept as pets by residents, nor to require a person to apply for approval to keep more than the number of animals specified in a LOP: Division of Local Government, Companion Animals – Frequently Asked Questions, 29 October 2007, p 16.
In light of the low use and apparent low value of LAPs, we consider there is a strong case to remove them from the LG Act. The piecemeal operation of LAPs from council to council – ie, different exemptions, relevant factors, and possible conditions to be attached to the approval – can also be highly confusing for businesses operating across council boundaries. If the potential approaches to streamlining section 68 approvals discussed above can be applied, there will also be considerably reduced scope for LAPs to operate.

Facilitating greater use of LAPs

If the potential approaches to streamlining section 68 approvals discussed above are not workable (eg, because of difficulties in standardising exemptions), there may be some value in retaining LAPs. However, if LAPs are retained, changes to the LG Act, administrative processes and the development of a model LAP would all be necessary to facilitate more effective use of LAPs.

The following legislative and administrative changes would be necessary:

- a shorter consultation period (28 days, the equivalent consultation period for development control plans)
- removal of sunsetting clauses, so that a LAP remains valid once adopted
- the need to consult and formally re-adopt or obtain Minister’s approval for an exemption would only be necessary for amendments of substance (eg, not to update references to legislation or processes)
- centralisation of LAPs in alphabetical order in one location on DLG’s website, in order to make them easier to find (currently, many are difficult to find on council websites)
- consolidation of activities within one LAP per council, to make LAPs more accessible, instead of separate LAPs for each activity
- the provision of a model LAP developed by DLG, in consultation with councils, which incorporates the elements set out in the following Box.

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315 Wollongong City Council’s submission to IPART, November 2012.
316 As supported by the NSW Small Business Commissioner, submission to IPART, November 2012.
317 As supported by various submissions to IPART, including Wollongong City Council, Upper Hunter Shire Council, Strathfield Council, Newcastle City Council and Campbelltown City Council.
Box 5.1 What to include in a model LAP

Basic elements for a model LAP:

Provided and promoted by DLG, with standard conditions for granting exemptions from approval for low-risk activities.

Standard factors to be taken into account when granting approvals.a

Designed so standard conditions can be amended, if necessary, to suit local conditions.

Should contain a summary table (e.g., as per Bathurst City Council’s LAP) setting out:

- whether council approval is required for section 68 activities (i.e., any exemptions)
- the page numbers on which the council’s criteria for consideration can be found
- legislative instruments relevant to the activity
- what section 68 approvals they are exempting, and refer to all other legislation which a regulated entity may still need approval under regardless of the section 68 exemption.b

Include legislative criteria

Set out any relevant legislative criteria to be considered for granting an approval, e.g:

Part B - water supply, sewerage and stormwater drainage, the model LAP could set out the considerations for approval under reg.15 of the Local Government (General) Regulation 2005 (NSW)

Part C - sewage management activities, the model LAP could set out the considerations for approval under reg.29 of the Local Government (General) Regulation 2005 (NSW)

Part F – car park operation activities, the model LAP could set out the considerations for approval under reg.53 of the Local Government (General) Regulation 2005 (NSW).

Other matters

Under section 158(5) of the LG Act, Part 3 of each LAP is to specify “other matters relating to approvals”, such as lodgement and assessment of application, determinations and their review, records of approvals, refunds, enforcement actions and notifications. A section setting out these matters and the legislative application process could be drafted in a model LAP, with an attached Appendix for councils to expand to suit their local preferences.

a Our examination of LAPs currently online for NSW councils indicated that generally, where councils specify criteria for ‘approval’ (rather than exemption) for section 68 activities, the same or similar criteria was specified by each council.

b Although this may lead to complications when relevant NSW and Commonwealth legislation is amended. One option could be for DLG to circulate a memorandum to councils advising them when updates are made to the model LAP.
5.1.11 Our recommendations

There appears to be considerable potential to streamline existing section 68 approvals. Each of the options discussed above has different cost savings for businesses and the community. For example, removing duplication may have small cost savings if an approval is still required under other legislation, but will reduce confusion. Completely removing the need for an approval will have greater cost savings. The size of the savings will depend on how this outcome is achieved (eg, mutual recognition, standard state-wide exemptions). It will also depend on the volume of approvals granted per annum, and the relative burden of the requirements generally imposed via the particular approval.

In our view, streamlining section 68 approvals will likely involve a combination of these options, and consideration of each approval type on a case by case basis. Further consideration is required to determine the best approach. This should occur as part of the finalisation of the review of the LG Act being undertaken by the Local Government Acts Taskforce.

CIE has assessed the potential red tape savings from providing exemptions to or removing the need for some section 68 approvals. These estimates are listed in the table below. They show that savings range from $2.2 million per year (if approvals were not required for A-frames and sandwich boards) to $3,000 per annum (if approvals were not required to deliver a public address). Reductions in red tape from providing exemptions to these particular approvals are around $4 million per annum. Notably, exemptions for some activities would produce no or negligible cost savings, as they still require approval under other legislation. CIE notes that removal of approval duplication (between section 68 of the LG Act and other legislation) is still warranted in these instances to avoid confusion. In addition to the red tape savings, there will be a reduction in costs to councils of between $200,000 and $400,000 per annum. There are also likely to be net benefits, but CIE was unable to quantify these.318

Draft Recommendation

12 The Local Government Act 1993 (NSW) should be amended to:

- remove duplication between approvals under the Local Government Act 1993 (NSW) and other Acts, including the Environmental Planning & Assessment Act 1979 (NSW) and Roads Act 1993 (NSW) in terms of: footpath restaurants; mobile vendors; installation of amusement devices; installation and operation of manufactured homes; stormwater drainage approvals

- remove low-risk activities from the list of activities currently requiring approval under section 68 of the Local Government Act, including: Busking; Set up, operation or use of a loudspeaker or sound amplifying device; and Deliver a public address or hold a religious service or public meeting

318 The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 39-46.
allow for longer duration and automatic renewal of approvals

provide more standard exemptions or minimum requirements from section 68 approvals, where possible, initially in the areas of: footpath restaurants; A-frames or sandwich boards; skip bins; domestic oil or solid fuel heaters

abolish Local Approvals Policies (LAPs) or, alternatively: reduce the consultation period to 28 days in line with Development Control Plans; remove sunsetting clauses; require Ministerial approval only for amendments of substance; centralise LAPs in alphabetical order in one location on DLG’s website; consolidate activities within 1 LAP per council; and DLG to provide a model LAP in consultation with councils

enable councils to recognise section 68 approvals issued by another council (ie, mutual recognition of section 68 approvals), for example with mobile vendors and skip bins.

Table 5.2  CIE’s analysis of the potential impact of our recommendations

<table>
<thead>
<tr>
<th>Particular exemption</th>
<th>Avoided approvals</th>
<th>Avoided costs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No./year</td>
<td>$000/year</td>
</tr>
<tr>
<td>No approval for A-frames and sandwich boards</td>
<td>1,232</td>
<td>21</td>
</tr>
<tr>
<td>No approval if domestic oil/solid fuel heaters are installed by accredited operator</td>
<td>622</td>
<td>43</td>
</tr>
<tr>
<td>All busking activities exempt</td>
<td>2,150</td>
<td>6</td>
</tr>
<tr>
<td>Skip bins exempt</td>
<td>34,273</td>
<td>297</td>
</tr>
<tr>
<td>Stormwater works exempted for single lot residential dwellings or if repairs to existing works</td>
<td>1,986</td>
<td>34</td>
</tr>
<tr>
<td>Remove requirement for approval to operate a loudspeaker or sound amplifying device</td>
<td>1,369</td>
<td>18</td>
</tr>
<tr>
<td>Remove or exempt approval to deliver a public address</td>
<td>172</td>
<td>2</td>
</tr>
<tr>
<td>Remove or exempt approval for amusement devices</td>
<td>548</td>
<td>10</td>
</tr>
<tr>
<td>Remove or exempt approval for manufactured homes where DA required</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Remove or exempt s68 footpath dining approval</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Remove or exempt s68 mobile vendors approval</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Note: We have allowed for no change in council net costs on the basis that councils cost recover section 68 approvals.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, p 44.
5.2 Improving local government enforcement of regulations

As outlined below, we consider there is scope to amend the LG Act to provide a modern, consolidated suite of enforcement powers. This will ensure councils have the full range of enforcement tools at their disposal, which can ultimately reduce costs to council, business and the community.

5.2.1 Stakeholder concerns and suggestions

Numerous business stakeholders noted that council compliance staff need greater training or guidance in the proper exercise of discretion, to avoid imposing unnecessary costs on businesses when undertaking their enforcement activities. Council submissions also noted the importance of developing these skills, and many recommended council officers undertake the training offered in this area by the NSW Ombudsman.

Councils raised the issue that enforcement and compliance is often “reactive” or “blinkered”, rather than proactive, due to issues with resources. Some community and business stakeholders also asserted that councils do not enforce regulatory breaches due to cost considerations (eg, building regulation) or only enforce laws that maximise revenue (eg, enforcement of parking fines).

A number of councils also called for the creation of a single consolidated Act for all local government compliance and enforcement powers, sanctions and cost recovery mechanisms, to assist councils to undertake this role more efficiently.

The Sydney Catchment Authority supports clarification and simplification of legislative powers around the section 68 approval to operate a system of sewage management, which is an area of inconsistent application across the drinking water catchments.

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319 For example, see submissions to IPART from Small Business Commissioner; CENTROC; Urban Taskforce Australia; and Caltex Australia, November 2012.
320 For example, see submissions to IPART from Lismore City Council; Wollongong City Council; and NSW Ombudsman, November 2012.
321 City of Sydney Council’s submission to IPART, January 2013.
322 For example, see submissions to IPART from City of Sydney Council; Leichhardt Council; and Wollongong City Council, November 2012/January 2013.
323 Warringah Council’s submission to IPART, December 2012. Anonymous stakeholder, submission to IPART, October 2012.
324 Personal communication, Department of Premier & Cabinet, Email to IPART, 24 September 2013.
5.2.2 Current suite of councils’ enforcement powers

Regulatory roles are highly complex. Council enforcement officers potentially operate under 67 different Acts and deal with a total of 31 different State agencies. Each of these Acts has its own suite of enforcement powers, sanctions and cost recovery mechanisms. The breadth of enforcement powers that they need to understand and properly utilise is far greater than their counterparts in State agencies. This adds considerably to the complexity of their role and the associated training required. The correct exercise of such powers can be highly technical and if exercised incorrectly can invalidate their enforcement actions.

Under the LG Act, council officers have a range of enforcement powers or ‘tools’. Some of the tools under this Act are relatively onerous and unwieldy to use compared to similar tools under other Acts. This is generally as a result of the LG Act hardwiring ‘natural justice’ or ‘procedural fairness’ requirements into the Act. However, in the absence of express requirements in legislation, natural justice requirements still operate (ie, must be complied with) under common law.

Clean-up and prevention notice powers under the Protection of the Environment Operations Act 1997 (NSW) (POEO Act) do not prescribe natural justice requirements to the same extent as the LG Act. As a result, the POEO Act powers can be exercised with a more flexible level of procedural fairness, commensurate with the urgency or otherwise of the circumstances of the case. Consequently, some councils have reported to us that they find these powers more efficient and effective to use, and use them in preference to powers under the LG Act where possible.

326 Personal communication, telephone conversation between Blue Mountains City Council and IPART, 21 November 2012.
327 For example, to exercise orders powers under Chapter 7, Part 2, Div. 2, Local Government Act 1993 (NSW) requires issuing a notice of intention to issue an order before issuing the order; giving a formal opportunity for offenders to make representations; taking any criteria set out in a Local Orders Policy into consideration, where one is adopted.
328 Environment Protection Notices under Chapter 4 of the POEO Act do not prescribe requirements to enable offenders to make representations, and rely on general common law procedural fairness requirements to operate to provide appropriate protections to people receiving notices or directions under these provisions.
329 Personal communication, telephone conversation between Blue Mountains City Council and IPART, 21 November 2012.
Other jurisdictions

In the United Kingdom (UK), as part of the reforms creating the Local Better Regulation Office (LBRO),\(^{330}\) the *Regulatory Enforcement and Sanctions Act 2008* (RES Act) was passed.\(^{331}\) This attempted to give local authorities a broader range of effective enforcement tools that could be used across regulatory areas.

In particular, the enactment of these ‘broad brush’ tools aimed to increase the flexibility, consistency, appropriateness and proportionality of regulatory action.\(^{332}\) This was to address what had been identified as a “compliance deficit”\(^{333}\) in some regulatory areas; whereby regulators could not respond to breaches with *appropriate and proportionate* responses, and therefore did not respond at all.\(^{334}\) These ‘broad brush’ tools include civil sanctions, stop notices, and enforcement undertakings. All enforcement tools can be applied by all regulators within the jurisdiction of the Act – including all ‘local authorities’ (which includes councils).\(^{335}\)

Research indicates that the anticipated savings from implementation of the UK RES Act may range between $2.05m and $59.75m - made up of savings to Courts; reduced operating costs for regulators; and savings that businesses enjoy from not needing to go through Court.\(^{336}\) Leading UK lawyers have also highlighted the benefits of flexibility, proportionality, the ability of regulated entities to negotiate with regulators, and (in particular) the creation of a level playing field through penalising offenders for economic gain made as a result of a breach.\(^{337}\)

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330 As noted in Chapter 2, the former LBRO is now incorporated into the Better Regulation Delivery Office (BRDO) within the Department for Business, Innovation & Skills (BIS).


334 Ibid.


5.2.3 Cost recovery

The Food Authority and some councils have referred to an emerging problem of councils accruing significant debts from businesses not paying their annual administration fees, which cover costs of inspections.\(^{338}\) This has the potential to undermine a council’s resources and willingness to exercise its enforcement powers.

Some legislation has stronger cost recovery and debt recovery mechanisms than others. For example, under the POEO Act, the administrative costs of preparing a clean-up or prevention notice can be recovered.\(^{339}\) If the costs are not paid, it is an offence.\(^{340}\) Also under the POEO Act, the costs of monitoring compliance with a clean-up or prevention notice is recoverable from the offender.\(^{341}\) Where the notice is not complied with, there is also ability to recover these costs.\(^{342}\) These are referred to as ‘compliance cost notices’. If these remain unpaid the regulatory authority can apply to have the notice registered in relation to any land owned by the person the notice was served on, creating a charge on the land.\(^ {343}\)

Where a section 68 exemption exists, councils will not be able to charge for the granting of a section 68 approval (as there is no application process). It is currently unclear whether councils are allowed to charge or recover costs where they are enforcing issues with section 68 exemptions.

Consideration should be given to whether new or improved cost recovery powers are needed in the new Act to address these issues.

5.2.4 Our recommendations

The current reform of the LG Act presents an opportunity to review existing enforcement tools and ensure they are modern and effective, and support a risk based approach. Effective tools will enhance the capacity of councils to undertake their enforcement activities.

\(^{338}\) For example, see submissions to IPART from NSW Food Authority, November 2012; and City of Sydney Council, January 2013.

\(^{339}\) Protection of the Environment Operations Act 1997 (NSW), section 94.

\(^{340}\) Ibid.

\(^{341}\) Ibid, section 104(1), (2) and (3).

\(^{342}\) Ibid, section 104(4).

\(^{343}\) Ibid, sections 105-107.
There is also an opportunity to consolidate enforcement tools, sanctions and cost recovery mechanisms, so they can potentially be used across the spectrum of council enforcement activities under various Acts. Amending and new legislation imposing regulatory roles on councils could then use (or add to, only when necessary) the powers under the LG Act. This would reduce complexity in this area, making the job of training officers and using these powers a lot easier. This, in turn, will enhance the capacity and capability of councils, leading to more efficient enforcement action and better use of resources to the benefit of business and the community.

In NSW, existing legislation provides a range of alternative civil sanctions and useful enforcement tools (e.g., clean up notices) to a greater extent than in the UK prior to the RES Act. However, NSW legislation does not do so consistently and, as noted above, the LG Act does not apply best practice. The cost savings from our recommendations are likely to arise from the simplification and consolidation of tools in the LG Act and, to a lesser extent, from an improvement in the range of tools available to council officers. An improved range of tools will enhance flexibility, proportionality and the implementation of graduated, risk based enforcement approaches, so costly court proceedings are used as a last resort only.

Draft Recommendation

13 The NSW Government, as part of its reforms of the Local Government Act 1993 (NSW), should amend the Act to provide a modern, consolidated, effective suite of compliance and enforcement powers and sanctions for councils and council enforcement officers.

The powers would be applicable to all new State Acts or regulations. This suite should be based on the best of existing provisions in other legislation and developed in consultation with the NSW Ombudsman, Department of Premier and Cabinet, State and local government regulators. This should include effective cost recovery mechanisms to fund enforcement activities.
Box 5.2  CIE’s analysis of this recommendation

CIE estimates this recommendation would:

- produce a net benefit of $39 million per year (ie, benefits to society greater than costs)
- reduce red tape costs for businesses and individuals by $23.4 million per year
- reduce costs to council by $8.6 million per year
- reduce costs to NSW Government by $7 million per year.

CIE estimates that the total cost of enforcement of local government regulations for all NSW councils is $104 million in 2011-12.

CIE examined the results of the UK Macrory Review which included measures to allow for flexible and proportionate enforcement responses. As a result of these changes, UK local governments saw a 30% reduction in total enforcement costs.

CIE notes however that the range of alternative civil sanctions and useful enforcement tools is greater in NSW than was available in the UK. Accounting for this difference, CIE has estimated that our recommendation will reduce enforcement costs by between 10% and 20% or between $10.4 million and $20.8 million per year, with a midpoint estimate of $15.6 million per year. This includes a reduction to local council costs of about $8.6 million and to NSW Government costs of about $7 million, as noted above.

In addition, CIE estimates that the use of a modern, consolidated set of enforcement tools will reduce red tape to businesses by approximately $23.4 million a year. This is based on the distribution of savings flowing from the UK reform process.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 30-31, 34.

5.3  Improving dispute resolution

The sections below consider ways in which mechanisms for resolving regulatory disputes between councils and other parties can be improved or amended to reduce costs.

5.3.1  Current issue with discretionary analysis

According to the Small Business Commissioner:

- some businesses are concerned that if they appeal a council decision or make a formal complaint, their future applications may not be treated fairly by that council
- there is currently no effective mechanism through which applicants feel they can receive a fair hearing about the assessment of their application.344

344 Small Business Commissioner’s submission to IPART, November 2012.
These sentiments were echoed in a number of other business and individual submissions.\textsuperscript{345}

Some councils support the use of a local government ‘internal ombudsman’ in larger councils or via a shared services model for smaller, rural or regional councils.\textsuperscript{346}

Further, the NSW Business Chamber was particularly supportive of greater use by local government of informal dispute resolution mechanisms to reduce business costs.\textsuperscript{347}

### 5.3.2 Internal Review Mechanisms

The Productivity Commission highlighted the potential to reduce costs for businesses and individuals by augmenting appeal paths with internal review mechanisms.\textsuperscript{348} The Productivity Commission notes that State Ombudsmen, on investigation of a complaint received about local councils, will generally seek to establish whether the complainant has sought informal or formal internal review in the first instance.\textsuperscript{349} They also note most Ombudsmen will make preliminary investigations with the local council in question, as part of their assessment.\textsuperscript{350}

This reflects the reality that internal settlement of disputes is most often quicker and cheaper for complainants. This is due to the expertise of council staff as to the particular matter at hand, including both the regulatory framework governing the issue and the specific facts of the case. Internal review within the original decision-making body will often only be 1 or 2 steps of authority above the original decision maker, giving the reviewer close proximity to evidence, documents and files that need to be accessed. Internal review allows for review of the merits of a decision, whilst external review by an Ombudsman allows only for review of the fairness of the process undertaken in coming to a decision.

Disputes heard by courts are also more expensive, and not always on merits. Many cases are limited to administrative review only, whereby the processes of the decision-making are checked (rather than re-adjudicating the facts of an entire case).

\textsuperscript{345} For example, see submissions to IPART from Housing Industry Association; Sutherland Shire Council; and Wollongong City Council, November 2012.


\textsuperscript{347} NSW Business Chamber’s submission to IPART, October 2012.


\textsuperscript{349} Ibid.

\textsuperscript{350} Ibid.
Sutherland Shire Council uses an ‘internal ombudsman’. The Sutherland Shire Council scheme has been in place since 1999 and aims to consistently improve corporate governance processes, whilst providing an informal yet proper avenue of complaint for parties who feel they have been subject to poor administration, maladministration or misconduct. One of the stated aims of the program is also to provide guidance and education for staff and councillors within Sutherland Shire Council.

The benefits of ‘internal reviews’ can also be achieved through robust internal complaints handling procedures being implemented by councils.

5.3.3 External Alternative Dispute Resolution options

The use of internal review mechanisms discussed above, whether formal or informal, may not always be appropriate in the circumstances – particularly where a complainant feels there is a lack of independence in the assessment of their case due to personality or political reasons.

The use of external investigators or Alternative Dispute Resolution (ADR) experts (such as the Small Business Commissioner) to assist parties with the resolution of a dispute may also be very valuable. Importantly, the perception of independence in this process is an additional benefit.

The use of the Small Business Commissioner (SBC) can also draw on the significant industry expertise and knowledge of the Commissioner in order to formulate mutually satisfactory solutions, which are also ‘business friendly’.

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351 Sutherland Shire Council’s submission to IPART, November 2012. Although we note that the title ‘internal ombudsman’ may be a misuse of terminology as ‘ombudsman’ means an independent third party.
352 Ibid.
353 Ibid.
354 Small Business Commissioner submission to IPART, November 2012.
356 Ibid.
357 Ibid.
NSW Parliament recently passed the *Small Business Commissioner Act 2013* (NSW) in May 2013. This Act expands the informal and formal roles of the SBC.358

The SBC has advised it is working closely with local councils to help them understand the needs of the small business sector, including through access to the SBC’s alternative dispute resolution services. The SBC proposes to establish Memoranda of Understanding (MOUs) with local councils to establish linkages and enhance communications with businesses. It will also work with small businesses to improve their understanding of council processes and priorities and to provide clear guidance on fulfilling their regulatory requirements.359

The major benefits of these MOUs include:

- increased access to the small business expertise of the NSW SBC, allowing for better understanding of small business by council regulators
- minimisation of lengthy disputes, benefitting both councils and small businesses, through reduction of litigation and associated staff costs
- streamlined access for small businesses to council guidance, through a single point of reference for small businesses
- increased compliance with settlement terms resulting from mediated, ‘win-win’ outcomes.

Examples of low-cost dispute resolution, such as that facilitated through this MOU, provide good case studies of external mediators that may provide a quick, cheap, informal and independent option for resolution of disputes. They also offer a long-term strategic focus on working collaboratively to facilitate small business in a local area.

We believe there is particular merit in councils having dedicated personnel to work with and facilitate development of small business, particularly through small business friendly regulation and regulatory practice. We are aware, for example, that some councils (such as Marrickville Council) have Economic Development Units or Officers to facilitate such work.360

358 The *Small Business Commissioner Act 2013* commenced on 18 September 2013.
360 Personal communication, telephone conversation between Marrickville Council and IPART, April 2013.
5.3.4 Our recommendations

There is considerable benefit in councils reviewing their internal review mechanisms, both formal and informal, to ensure that avenues of redress which offer low cost and independent assessment of the merits of a decision are available for complainants. This is also consistent with the NSW Government’s Quality Regulatory Services initiative to provide transparent appeal mechanisms (this initiative is further discussed in Chapter 6, Box 6.1).

These avenues are also valuable in improving internal processes and providing an educative function. An important part of running these schemes is the ability to consistently update council staff knowledge of policy.

Further, such initiatives improve council discretionary decision-making, such as the weighting of competing factors in a regulatory decision.

Therefore, we support increased use of such mechanisms.

Draft Recommendation

14 Councils should support the use of alternative and internal review mechanisms (for example, the NSW Ombudsman, NSW Small Business Commissioner, and private providers of ADR services) to provide business and the community with a path of redress for complaints (not including complaints concerning penalty notices) that is less time-consuming and costly than more formal appeal options.
Box 5.3 CIE’s analysis of our recommendations

CIE points out that the costs of dealing with a complaint through a formal appeal process can be in the order of thousands of dollars, after paying for a magistrate, legal representation for both parties, and time of the agency staff and complainant. The cost of handling a complaint through Legal Services Commissioners in NSW and Queensland was estimated to range between $1,331 and $2,711. The cost of disputes handled through the resolution services of the NSW Small Business Commissioner is estimated to be between $900 and $1,500.

Conversely, a complaint can be handled for approximately $100 through an internal review process, if all necessary documentation is provided from the outset. The cost of handling a complaint through internal review will depend on the scale of the complaint (e.g., a parking fine as opposed to a development application for a new building). The costs of an internal review mechanism are also dependent on the volume of reviews that are requested by businesses and individuals. This is often driven by the extent to which businesses and individuals have confidence in the original decision-making process.

CIE notes that there can be a 10 to 30 fold reduction in cost to businesses and individuals from an internal review system. However, the reduction in cost is dependent on:

▼ whether the complaint is due to an inconsistency across local councils or an inconsistency within an individual local council

▼ the scale of the complaint, and

▼ whether an internal review process will provide independent and consistent outcomes across local councils and within a local council.

Because internal review is so cheap, having it available can provide net benefits if it can adequately resolve disputes. Evidence on the extent to which internal review is available across different areas of council disputes has not been provided. There is insufficient information to understand these issues and hence the impacts on businesses, councils and the community are not able to be quantified.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 54-56.
6 Improving regulatory outcomes

In this chapter we consider ways to reduce red tape through assessment of local government regulatory performance. Regular assessment is important to ensure that councils’ regulatory activities are targeted, efficient and achieving intended outcomes. The potential for reductions in red tape from continuous improvements in regulatory performance are likely to be substantial.

In the sections below we briefly evaluate some of the existing performance assessment programs. We then make recommendations to enhance assessment of council regulatory performance under the State Government’s Quality Regulatory Services (QRS) initiative.

We note that a key component of the Partnership Model discussed in Chapter 2 includes regular assessment of local government regulatory performance. Therefore, our recommendation in this chapter should be considered in the context of, and in addition to, our recommendation in Chapter 2 that the Partnership Model be applied to key regulatory areas (planning and the environment).

This chapter also sets out a number of suggested ‘best practices’ for consideration and potential wider adoption by councils. These were identified from submissions. These practices also have the potential to improve regulatory outcomes and reduce unnecessary regulatory burdens on business and the community.

6.1 Assessing local government regulatory performance

The sections below discuss stakeholder concerns, current programs, and our recommendation in relation to assessing local government regulatory performance.

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361 For example, see submissions from Newcastle City Council to IPART, November 2012; and Shoalhaven City Council to IPART, October 2012.
6.1.1 Stakeholder concerns

Several submissions supported councils’ requirements to report elements of their regulatory performance to the Department of Planning and Infrastructure (DoPI) and the NSW Food Authority. For example, Sutherland Shire Council noted:

Areas where performance is effectively monitored and useful is the Department of Planning and Infrastructure’s Local Performance Monitoring Report (annual since 2005) and the Food Authority’s Food Surveillance Activities report. Both of these are available online and compare across councils and over time.

However, smaller councils also noted the drain on council resources to prepare such reports. For instance, Coolamon Shire Council states it is required to submit about 50 reports a year to various state agencies. Liverpool Plains Shire Council noted performance benchmarking should not create unrealistic administrative costs or community/government expectations. Albury City Council questioned whether data collected by the council and sent to the State Debt Recovery Office (SDRO) was ever reviewed. Wentworth Shire Council argued that the requirements from State bodies for reporting, development of plans, monitoring and reporting against plans, imposed a significant cost on councils, particularly smaller regional and rural ones.

Some councils also keep their own registers of compliance and enforcement activities to track compliance and monitor their own performance. For example:

- Shoalhaven City Council have a Compliance Policy and use ‘Merit’ software to record and track compliance and enforcement issues

- Sutherland Shire Council established its own Internal Ombudsmen and audit system 12 years ago, as a commitment to best practice regulatory enforcement.

Newcastle City Council (NCC) also recommended the use of 2 best practice tools to assist with the assessment and continual improvement of regulatory performance:

- the self-assessment tool developed by Hunter Councils Inc. (in particular, the Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS) within Hunter Councils Inc.), and

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362 For example, see submissions from City of Sydney to IPART, January 2013; and Holroyd City Council to IPART, November 2012; and Sutherland Shire Council to IPART, November 2012.
363 Sutherland Shire Council’s submission to IPART, November 2012.
364 Coolamon Shire Council’s submission to IPART, October 2012, p 6.
365 Liverpool Plains Shire Council’s submission to IPART, October 2012, p 9.
366 Albury City Council’s submission to IPART, October 2012, p 3.
367 Wentworth Shire Council’s submission to IPART, October 2012, p 6.
368 See submissions from Shoalhaven City Council to IPART, October 2012; and Sutherland Shire Council to IPART, November 2012.
Improving regulatory outcomes

• the Smart Compliance Approach used by NCC and adapted from the US Environmental Protection Agency.369

6.1.2 Current programs for assessing regulatory performance

Current programs for assessing the regulatory performance of councils include reporting requirements under various State laws. State agencies also collect information or have programs in place that are relevant to council’s regulatory performance. Many of these programs have been considered as part of recent or ongoing reviews by the NSW Auditor-General,370 the Local Government Acts Taskforce371 and the Independent Local Government Review Panel.372

Council reporting requirements

Councils have many reporting requirements, statutory and otherwise. Some examples are listed below.

Integrated Planning and Reporting framework under the Local Government Act 1993 (NSW)

The Integrated Planning and Reporting (IPR) framework was introduced to the Local Government Act 1993 (NSW) (LG Act) in 2009373 to improve long-term strategic planning and resource management by local councils.374

Implementation of the IPR framework was staged with all councils working within the framework from 1 July 2012.375 Under the IPR framework, councils are required to prepare, maintain and implement a range of strategies, plans and reports, including:

• a long term community strategic plan (which identifies the main priorities and aspirations of the local government area)

• a resourcing strategy (including long term asset management, financial and workforce plans)

369 Newcastle City Council’s submission to IPART, November 2012.
370 NSW Auditor-General, Monitoring local government – performance audit, September 2012.
373 Local Government Amendment (Planning and Reporting) Act 2009 (NSW).
376 Ibid, pp 5-8.
a delivery program (outlining the activities the council will undertake during its 4-year term to implement the strategies identified in the community strategic plan)

an operational plan (for the upcoming/current year, outlining the activities the council will undertake, including an annual budget)

an annual report (on the achievements in implementing the delivery plan and the effectiveness of activities to meet the objectives of the community strategic plan)

an end of term report (on the council’s achievements in implementing the community strategic plan over its 4-year term).

The Division of Local Government (DLG) has a key role in providing advice and support to councils in their planning, community engagement and reporting processes under the IPR framework. It is also responsible for reviewing community strategic plans and delivery programs to ensure compliance with the legislation.\(^\text{377}\)

The Local Government Acts Taskforce has considered the IPR framework as part of its review of the LG Act. The Taskforce’s April 2013 Discussion Paper noted that the framework is strongly supported by the local government sector. It also observed that the IPR framework is not well integrated through the current Act (that is focused on councils as ‘service/function providers’) and that there is an apparent disconnection between IPR and councils’ other statutory functions.\(^\text{378}\)

The Taskforce proposes that the IPR should be a central theme for the new Act and the primary strategic tool that supports councils delivering infrastructure, services and regulation based on community priorities. It also proposes that the IPR provisions should be simplified to increase flexibility for councils to deliver IPR in a locally-appropriate manner.\(^\text{379}\)

**DLG’s ‘Promoting Better Practice’ (PBP) program**

The DLG has a program for assessing and reviewing local government performance – the ‘Promoting Better Practice’ (PBP) program. This program is designed to:

- improve the viability and sustainability of councils, helping to highlight key priority areas
- improve culture in local government towards continuous improvement and better compliance
- provide a check or ‘early intervention’ for councils with problem areas


\(^{379}\) Ibid, p 29.
Improving regulatory outcomes

• promote better governance and ethical conduct
• identify and share leading practice ideas with other councils
• inform DLG’s legislative and policy work for local government.

PBP reviews are focused on council governance and service delivery, with limited information collected on performance of regulatory functions.

Councils are reviewed periodically, with more frequent reviews occurring at a council’s request or as a result of complaints. At the completion of a PBP review, the DLG publishes a report on the relevant council, highlighting aspects of the council’s operations that are considered best practice and aspects that need improvement.

Section 6.2.8 provides further information on PBP reviews as part of our findings on best practice regulatory approaches.

**Protection of the Environment Operations Act 1997 (NSW)**

The NSW Environment Protection Authority (EPA) has a number of processes in place to assess councils’ regulatory performance, including reporting obligations for councils under the State of the Environment (SoE) Report and under the Protection of the Environment Operations Act 1997 (NSW) (POEO Act). The SoE Report is now included in the IPR framework. Under the POEO Act, councils have to maintain a public register of actions taken, including details of prosecutions, penalty notices, etc.

**Environmental Planning and Assessment Act 1979 (NSW)**

The Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act) has no statutory reporting requirements for councils. DoPI collects annual data through its Local Development Performance Monitor on indicators such as the time taken for a DA, certification, place and type of development, etc. There have been criticism by stakeholders that DoPI does not currently use the data it has to properly assess, assist or incentivise poor performing councils.

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381 NSW EPA’s submission to IPART, October 2012.
The White Paper on the current planning review proposes a streamlined assessment system that requires consent authorities to assess applications quickly and effectively within set timeframes.\(^{384}\) DoPI plans to build onto its existing reporting and require local councils to report on their monitoring of implementation of their new strategic plans (ie, Local Plans).\(^{385}\) A Performance Monitoring Guide will be prepared that will provide the methodology, planning performance indicators and targets for monitoring the implementation of the planning system reforms.\(^{386}\)

**State Agencies**

Other potential sources of data that could be used to assist assessment of councils’ regulatory performance are from the State Debt Recovery Office (SDRO) and the NSW Ombudsman.

The SDRO, under the *Fines Act 1996* (NSW), collects data on all penalty notices issued by all councils (and other regulatory authorities).\(^{387}\) This data is not currently used to assess or compare council performance. It could provide a picture of council enforcement activity in relation to the number and type of fines being issued (eg, parking and other fines).

The NSW Ombudsman handles community complaints about local councils. The types of complaints that the Ombudsman collects that potentially relate to councils’ regulatory roles and could be used to assess regulatory performance include:

- failure to comply with proper procedures or the law
- failure to enforce development consent conditions
- failure to act on complaints about unauthorised work and illegal activities
- failure to notify affected people before certain decisions are made
- providing unreasonable, discriminatory, or inconsistent treatment.\(^{388}\)

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\(^{385}\) White Paper, p 41.

\(^{386}\) Ibid, p 40.

\(^{387}\) *Fines Act 1996* (NSW), sections 114(2)(d) and 118.

DLG collects complaints data. DLG has a Memorandum of Understanding with the NSW Ombudsman to share complaints data, and councils maintain their own complaints data. More effective use of available data could limit the impost of data collection on councils, businesses and the community, and provide sufficient data to identify regulatory problem areas. In addition, the complaints data of DLG and the Ombudsman could routinely be analysed to identify sector-wide trends or issues.

**Quality Regulatory Services (QRS) initiative**

The Quality Regulatory Services (QRS) initiative was announced in the Government’s response to the Industry Action Plans proposed by the Digital Economy, International Education and Research, Manufacturing and Professional Services Industry Taskforces. The QRS aims to make it easier for businesses and individuals to engage with State regulators, remove unnecessary interactions and promote more efficient regulation (see the Box below).

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Box 6.1  Quality Regulatory Services Initiative

**Enable electronic transactions.** The Government will ensure all regulators, by the end of 2013, enable electronic transactions with business including allowing business to lodge or renew applications and update their details electronically; accept electronic payments; and access reporting templates and lodge reports electronically.\(^a\) These actions will result in significant time savings and improved convenience for business.

**Provide clarity in processing times.** The Government will also target processing timeframes in 2013, working with all regulators to ensure they set, communicate and report on maximum timeframes for the processing of all licence, authorisation and permit applications.

**Provide transparent appeal mechanisms.** By the end of 2013, all regulators will need to ensure they have transparent appeal mechanisms, and provide information about them when communicating with business about licensing, compliance and enforcement decisions.

**Promote a risk-based approach to compliance and enforcement.** The Government will also promote a risk-based approach to compliance and enforcement so that businesses will no longer be inconvenienced by unnecessary compliance requirements, saving them time and money that can be redirected into growing their business. The Government will provide guidance to regulators on how to implement risk based compliance and enforcement in order to provide a consistent and transparent approach. All regulators will, by the end of 2014, publish and commence applying a risk based approach to regulation.

**Require a greater focus on regulatory outcomes.** The Government will also require regulators to focus more strongly on regulatory outcomes by requiring regulators, by the end of 2014 to have clearly defined outcomes, commence reviewing their outcome monitoring mechanisms as part of regular legislative reviews and commence reporting regularly on their outcomes. This will promote compliance activity that achieves outcomes, rather than just enforcement outputs (eg, number of inspections), provide greater flexibility for business in complying with regulation, and help with the evaluation of regulatory effort. Guidance will be provided to regulators on measuring the outcomes of regulation in order to help them achieve this goal.

\(^a\) Some regulators are already progressing this work. It should be noted that electronic transactions can include basic implementation which provides business with an electronic means of communicating with the regulator (eg, smart form, email, fax), as well as full online processing.

**Source:** Personal communication, Better Regulation Office to IPART, January 2013.
6.1.3 Our recommendation

The introduction of widespread, ongoing performance monitoring and assessment of regulators is an important part of the NSW Government’s commitment to regulatory reform. If this reporting and assessment regime is well designed and implemented, it can:

- allow the NSW Government regulator to guide and assist councils’ regulatory performance
- assist in ensuring that councils’ regulatory activities are targeted, efficient and effective.

Over time, performance monitoring and assessment of outcomes should reduce costs to councils, businesses and the community.

The reporting and assessment programs outlined above provide a framework for ongoing monitoring and assessment of council performance. The LG Taskforce, the ILGRP and the NSW Auditor-General have all identified improvements that should be made to the current arrangements as part of their respective reviews. For example:

- The Taskforce has observed an apparent disconnection between IPR and councils’ other statutory functions, such as land management and environmental planning, and proposed that IPR provisions should be simplified in the Act to increase flexibility for councils.393
- The NSW Auditor-General found that while councils provide DLG with financial information that is useful and comparable, information about non-financial performance is not standardised. As a result, the information does not enable comparisons across councils, or monitoring of the effectiveness or efficiency of their services. The Auditor-General recommended that DLG establish non-financial performance indicators for councils to assess service delivery.394
- The ILGRP noted the Auditor-General’s findings on major deficiencies in the availability and use of data on local government performance. According to the ILGRP, a continued lack of consistent data collection and benchmarking across local government makes it very difficult for councillors, managers, communities or other stakeholders to gain a clear understanding of how a council is performing relative to its peers. It has endorsed an initiative to develop consistent state-wide data collection and performance indicators as a logical further development of the IPR framework.395

None of these reviews have had a particular focus on the regulatory performance of councils, i.e., how well they undertake their compliance and enforcement functions. In our view, the current performance monitoring framework for councils largely overlooks this area. In addition to the suggested improvements of other reviews, we consider that the evaluation of councils’ regulatory performance can be further assisted under the NSW Government’s QRS initiative. This can be achieved if, when developing their risk-based approaches and regulatory outcomes and monitoring, State agencies specifically consider:

- those aspects of regulation councils are responsible for, and
- councils’ contribution to achieving regulatory outcomes.396

Including local government in this initiative will extend the reach and overall red tape savings identified by the QRS process. In implementing this recommendation, however, it is important that NSW State agencies work with local government to ensure that:

- Reporting requirements of councils are not unnecessary or overly burdensome. They should be the minimum necessary to allow the NSW Government regulator and councils themselves to monitor and assess regulatory performance.

- Reporting requirements of councils focus on outcomes397 rather than inputs.398

- Information provided by councils is used by the regulator to assess councils’ regulatory performance and provide feedback. That is, there should be a:
  - ‘use it or lose it’ principle underpinning councils’ reporting requirements to NSW Government agencies
  - genuine 2-way flow of information from councils to the NSW Government regulator.

We note that such reporting requirements could be implemented by extending the existing reporting and assessment frameworks, such as the IPR framework and the PBP program to more explicitly include councils’ regulatory functions and performance.

396 This will not be necessary where a State agency has sole responsibility for the regulation and there is no council involvement.
397 For example, the number of complaints in a particular area, time taken to assess DAs, incidence of foodborne illness, environmental damage or pollutant discharges, etc.
398 Examples of inputs include the human, physical or financial resources used to perform activities.
Draft Recommendation

15 As part of the State’s Quality Regulatory Services initiative, the NSW Government should require all State agencies that devolve regulatory responsibilities to local government to:

- consider councils’ responsibilities in developing their risk-based approach to compliance and enforcement
- consider councils’ responsibilities in defining the regulatory outcomes and setting monitoring mechanisms to measure the outcomes, and
- identify what information needs to be obtained from councils in relation to their regulatory activities to measure regulatory outcomes and how this data will be used or published to assess and assist council performance.

These requirements should be developed in consultation with local government regulators and commence by the end of 2014.

Box 6.2 CIE’s analysis of our recommendation

CIE found that this recommendation would:

▼ produce a net benefit of $10 million (ie, benefits to society are greater than costs)
▼ reduce red tape by $10 million per year
▼ have negligible costs to the NSW Government in addition to the QRS
▼ have no costs to councils.

CIE estimated the total level of red tape generated by local government at around $375 million (after removing red tape attributable to planning, building and environment). The potential gains from improvement in regulatory performance as a result of ensuring the Quality Regulatory Services process considers local government issues could be between 3.2% and 10% of remaining red tape caused by local government. CIE considers that the lower bound is more likely. This equates to savings in the order of $10 million per year. This would involve minimal cost in addition to the costs of the QRS process.

These gains reflect the savings derived from optimising the allocation of responsibilities between local and state governments and minimising the impact of cost shifting imposing unnecessary regulatory red tape. They are systematic efficiency savings rather than direct cost reductions.

CIE do not include this estimate in totals for IPART’s recommendations. Reductions in red tape should be recognised when tangible changes are made following the finalisation of the QRS process.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 56-59.
6.2 Better practice findings

During our review, stakeholders have provided examples or suggestions of specific ‘best practice’ regulatory approaches. The following sections set out some of these practices. These should be considered for wider adoption by councils, as they have the potential to reduce red tape and benefit councils, business and the community.

6.2.1 Best Practice use of technology

1 The use of portable technology such as iPads by council enforcement officers (eg, in tree assessments by Sutherland Shire Council) has the potential to cut costs to councils and the public.

Sutherland Shire Council trialled the use of iPads in undertaking tree assessments (to determine whether to grant approval to remove or lop a tree). The council found the time saved in undertaking inspections and the ability to email requirements to applicants resulted in savings for the council and applicants. It cut the waiting period for inspections in half from 25 days to 12.399 Effective use of technology has enhanced the council’s ability to undertake these assessments efficiently and reduced the regulatory burden for the community.

Greater use of technology by local government has the potential to cut costs to councils and the public, through streamlining processes and making them more consistent. It can:

- enhance accessibility and transparency of the regulatory process
- remove or reduce time spent visiting council chambers and dealing with paperwork
- reduce processing delays, and
- enhance a council’s capacity.

6.2.2 Best Practice use of existing networks

2 Greater use of existing networks such as AELERT and HCCREMS (Hunter Councils Inc.) provide greater resources, consistency of approach and build expertise or capability in undertaking council environmental compliance activities.

399 Sutherland Shire Council’s submission to IPART, November 2012.
Australasian Environmental Law Enforcement and Regulators neTwork (AELERT)

The Australasian Environmental Law Enforcement and Regulators neTwork (AELERT) is a network of environmental regulatory agencies. Its aim is to build relationships between jurisdictions to facilitate the sharing of information and improve the regulatory compliance capacity of member agencies.

The objective of the network is to:

- achieve inter-agency cooperation
- allow cross-pollination of expertise
- provide a cooperative forum to raise professional standards in the administration of environmental law
- improve operational effectiveness
- enhance regulatory compliance capacity, and
- promote consistency of approach to operational regulatory reform.

AELERT houses a wealth of resources, some of which are publicly accessible and some that only members can access. These include enforcement (eg, prosecution/enforcement manuals and policies) and operational tools and templates (eg, pro forma affidavits, template orders, etc). AELERT holds conferences, provides a range of relevant training (eg, with NSW EPA), provides links to other websites or tools (eg, EPA’s new illegal dumping online resource), and has online discussion forums.

Currently, 55 NSW councils are members of the network, and NSW councils represent the biggest membership group in the network. The network is an excellent source of best practice regulatory resources and capacity building. Whilst it has an environmental regulatory focus, some of these resources and training modules would also assist regulators more generally in other regulatory activities.

AELERT has been highlighted as best practice in stakeholder submissions by Campbelltown Council, Ashfield Council, Wollongong City Council and the Environment Protection Authority.

400 Campbelltown Council’s submission to IPART, October 2012.
401 Ashfield Council’s submission to IPART, November 2012.
402 Wollongong City Council’s submission to IPART, November 2012.
403 Environment Protection Authority’s submission to IPART, October 2012.
Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS)

Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS) is the environmental division of Hunter Councils Inc. HCCREMS shares environmental enforcement, and works to standardise processes and procedures across council boundaries. Annual savings from HCCREMS are estimated at $3.35 million, or $893,000 per council.404

6.2.3 Best Practice use of self-assessment tools for councils

3 Councils would benefit from the use of the following self-assessment tools:

- the Hunter Council Inc. (HCCREMS) Compliance System Self-assessment tool to assess regulatory capacity to enhance regulatory performance
- the Hunter Council Inc. (HCCREMS) Electronic Review of Environmental Factors (REF) Template to assist councils in undertaking Part 5 assessments under the Environmental Planning & Assessment Act 1979 (NSW) of their own activities
- the Smart Compliance Approach, currently used by Newcastle City Council and adapted from the US EPA, to provide a framework for using performance data to achieve better regulatory outcomes
- the NSW EPA’s online “Illegal Dumping: A Resource for NSW Agencies” tool/guide available through AELERT and EPA websites.

Hunter self-assessment tool

The self-assessment tool developed by HCCREMS (within the Hunter ROC) represents leading practice amongst councils.405 The Hunter self-assessment tool includes a set of questions that councils can use to assess their own regulatory capacity. The tool can be used on a number of levels, including:

- at a basic level – to ensure a council has a records system in place, or
- at higher level – to assess how good a council’s records system is.

For example, Newcastle City Council has started using the tool to conduct internal audits every 6 months of a different regulatory area (eg, food regulation). The results of the audit are then used to improve regulatory processes and practices.

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e-REF Templates

HCCREMS’s e-REF template assists councils in making environmental impact assessments under Part 5 of the EP&A Act, where council is the determining authority for its own activities (eg, road construction). Undertaking Review of Environmental Factors (REFs) is a difficult and legally complex undertaking. Prior to the e-REF template’s introduction, councils were being prosecuted by the EPA for undertaking these activities poorly. This online tool assists councils in completing this process correctly, saves time, and secures better environmental outcomes.

We consider the e-REF to be leading practice. It provides a practical example of the benefits to councils and communities through greater use of technology and council collaboration.

Smart Compliance

The Smart Compliance Approach uses performance data to achieve better regulatory outcomes (ie, a feedback loop). The framework is summarised in the following Box.

<table>
<thead>
<tr>
<th>Box 6.3 Smart Compliance Approach:</th>
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<tbody>
<tr>
<td>Find and address significant problems – use data to try to determine the non-compliance areas that really matter to us.</td>
</tr>
<tr>
<td>Use data to make strategic decisions.</td>
</tr>
<tr>
<td>Use the most appropriate tool to achieve the best outcomes to particular non-compliance – compliance assistance; incentives; compliance monitoring (ie, inspections, investigations); enforcement (civil and criminal).</td>
</tr>
<tr>
<td>Assess the effectiveness of our program – analysis of the performance information; recommendations about different ways to operate; adjustments that need to be made to strategies.</td>
</tr>
<tr>
<td>Effectively communicating the outcomes of the activities – communicating with the public in terms they will find more valuable and more understandable (eg, reduction in tonnes of pollution instead of number of enforcement actions).</td>
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</table>

Sources: Mike Stahl – US EPA, Director for the Office of Compliance (26-27 April 2004); Newcastle City Council’s submission to IPART, November 2013.

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Newcastle City Council (NCC) routinely uses this approach to achieve better regulatory outcomes. For example, NCC inspects 800 food premises per year. On first inspections, it initially found 70% compliance. Taking this data and applying the Smart Compliance Approach, NCC was able to work with businesses to identify the sources of non-compliance, educate businesses on the necessity of taking action and ensure a 99% compliance rate on second inspections.\(^407\) (Notably, the data was available as a result of having to report on this to the Food Authority and the use of a case management database by NCC.)

We view the smart compliance approach as an effective management tool for regulators and an example of leading practice in this area.

### 6.2.4 Central publication of local government regulatory instruments

Publication of more significant individual local government regulatory instruments on a central site, such as the ‘NSW Legislation’ website, will allow a stocktake, and facilitate review and assessment, of such instruments. These regulatory instruments would be formal plans or policies developed by councils under State legislation (eg, Local Environmental Plans, Development Control Plans, Local Approvals Policies and Local Orders Policies).

Currently, the only significant local government regulatory instruments published on the central ‘NSW Legislation’ database are Local Environmental Plans (LEPs). All other instruments are published on council websites or available from council premises. They are not always easy to find or compare. In recent times, the Department of Planning & Infrastructure (DoPI) has initiated a roll-out of a standardised LEP, which is well supported by business and the community.\(^408\)

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\(^407\) Presentation by Adam Gilligan, Manager Compliance, Newcastle City Council to AELERT, 24 May 2012.

There were significant complaints by business and the community to the NSW Planning System review (and our review) in relation to the unnecessary regulatory burdens imposed by Development Control Plans (DCPs), which led to recent planning amendments. These amendments have relegated DCPs to guidance documents only. The complaints were that DCPs were inconsistent with higher level plans (eg, LEPs, SEPPs etc) when they shouldn’t be; were overly complex and prescriptive; rigidly imposed; and resulted in process driven rather than outcomes driven regulation. This situation may have been avoided or addressed if DCPs were published in a central location, consistent with the Productivity Commission’s recommended Leading Practice to increase transparency in relation to ‘local laws’ by publishing them on a central or local government websites.

Looking ahead, the NSW Government’s proposed planning reforms will see Local Plans replace existing LEPs, and performance based development guidelines in Local Plans replace current DCPs.

6.2.5 Better use of technology

5 The use of ‘SmartForms’ by councils, through the Federal Government’s ‘GovForms’ or individual council websites, reduces costs to businesses and councils by enabling online submission and payment of applications directly to councils.

‘GovForms’ is a Federal Government online depository under the business.gov.au banner, which also hosts the Australian Business Licence and Information Service (ABLIS). GovForms provides a single entry point for businesses to quickly access, manage and complete forms for Federal, state and local government across Australia.

Some of the benefits of the system are:

- convenience of being able to access forms in one place
- saves time for businesses having most forms available on 1 site across 3 levels of government
- allows businesses to register an account so they can keep records of forms filled for later access or retain information, including record of receipt of forms submitted online
- a secure website.

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409 For example, see submissions from MCF to IPART, November 2012; and Business Council of Australia to IPART, October 2012.
411 White Paper, pp 90-93.
The website currently has forms for over 50% of councils in NSW. The types of forms available for download range from development applications to section 68 approvals. The majority of these forms are documents that need to be printed and submitted by mail or in person to council. However, the site also hosts SmartForms, which can be completed online by businesses, some with the facility to directly submit with payment to councils and to sign with a digital signature.

These SmartForms can be accessed through the GovForms website and also through the council’s webpage. SmartForms have a number of useful features, which are summarised in the Box below.

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**Box 6.4 SmartForms on GovForms**

SmartForms complement the existing advantages of free Adobe PDF software and add value with the following features. Businesses are able to:

- complete a form online or offline using the free Adobe Reader application
- fill out, save and annotate a form
- submit a form online or by email and with attachments if required
- save a form with data to a personal computer as an electronic record
- sign a form with a digital signature.

SmartForms has a systems service centre, which gives agencies the ability to host and manage online forms. The system assists with:

- publishing and versioning
- portal and sign on integration
- form pre-population from agency data or profiles
- submission management
- receipting
- attachment management
- delivery to agencies.


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413 Some councils have a wide range of forms available (eg, Randwick City Council has 33 online forms) and others have only 1 or 2 (eg, Wentworth Shire Council).

414 Randwick City Council noted that not all forms in GovForms are currently up-to-date - Personal communication, Randwick City Council, March 2013.


SmartForms follows from several earlier technological initiatives by Federal and local governments. Work conducted under this initiative estimated that the cost to councils of a SmartForms service are $5,000 per year in subscription costs, but the benefits to larger city councils may be as great as $270,000 per annum.

There are many significant benefits to businesses, the community and councils of using SmartForms including:

- reduced time and costs to complete forms, particularly if submission and payment of forms can be completed online (i.e., avoids the time and cost involved in printing forms, posting forms or visiting council)
- reduced number of forms
- reduced turnaround time and costs
- improved accuracy
- increased security.

From our research, it appears that the GovForms depository does not contain all NSW local government online forms currently available to businesses, nor do councils subscribe to the service or nominate their forms for inclusion. Some councils appear to only make their online forms or SmartForms available directly from their websites. A number of councils, such as City of Sydney Council, are currently planning to expand their use of online forms.

There is scope for councils to use the SmartForms systems service to convert their most commonly used local government approvals forms into SmartForms, with the ability for businesses to complete the form online and submit it with payment electronically either from the GovForms website or the council’s own webpage. An additional benefit of the GovForms depository is that all forms are together on a central website that can be easily accessed by businesses that may operate across council areas.

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417 See: http://www.lgfocus.com.au/editions/index.php?view=editions/2009/march/smartforms.php, accessed on 27 March 2013. A Local SmartForms program was funded by the Australian Government’s Regulation Reduction Incentive Fund and was a consortium of 41 local councils Australia wide, headed by Rockdale City Council and run by Avoka Technologies. This program was sold by Avoka to the Australian Government and is now under the ‘GovForms’ banner.


420 Personal communications, Randwick City Council, email to IPART, 22 March 2013; telephone conversations between Rockdale City Council and IPART, March 2013, and telephone conversation between Cabonne Shire Council and IPART, March 2013.


422 See the online services section of City of Sydney Council’s website available at https://online.cityofsydney.nsw.gov.au/, accessed on 27 March 2013.
We consider the use of SmartForms (or their equivalent), and for such forms to be accessible through a central as well as local website, to be best practice in maximising the cost savings and benefits to businesses and the community.

6 The provision of guidance material to assist businesses in obtaining approvals and complying with regulatory requirements, such as the guidance provided by the Federal Government’s Australian Business Licence and Information Service (ABLIS) or the Queensland Local Government Toolbox (www.lgtoolbox.qld.gov.au), can reduce the regulatory burden on businesses and the community.

Australian Business Licence and Information Service (ABLIS)

The Australian Business Licence and Information Service (ABLIS) is a Federal Government initiative for businesses to reduce the burden of working out what they need to do in a specific locality from a national, state and local perspective when starting, running, growing, operating or closing a business. ABLIS allows businesses to:

- find out which government licences and registrations apply to their business, and create and download a personalised report containing:
  - a summary of state or territory, local and Australian government requirements relevant to their business
  - information about licence fees, how to apply, periods of cover and renewals
  - how to access application and renewal forms
  - where to go for more help and information.

The database allows a business to enter the type of business they are and the business location by state, suburb and postcode. Businesses are then asked to make selections to provide the search with information to assist in putting together the enquiry. Some of these are specifically related to council - eg, for a café:

- Will you use or impact areas of cultural, heritage or environmental significance?
- Will you plan to build, alter or change the use of an existing building, structure or site?
- Will you handle or transport food?
- Will you dispose of waste?
- Will you need to use public spaces for any of your activities?

The questions asked are dependent on the type of business entered. The answers to these questions prompt the input of more detailed information such as, in the use of public space, will you: provide outdoor dining, use street furniture, etc.

Once the information is entered, the business is presented with a list of possibly relevant state and local authority information. See Box below for an example.

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**Box 6.5** An example of information provided by ABLIS – for a café in Sydney

**State level:**
- Notification of a food business: provides a link with a “service summary” and a link to the required forms.

**Council level, eg:**
- Approval for outdoor dining provides a link with a “service summary” and where possible (ie, not for all councils) a link to required forms (which links to the council’s form on the council’s website).
- The service summary contains the following type of information:
  - Eligibility requirements (eg, what you need to get approval and when approval is required).
  - Duration.
  - Fees.
  - Application – with a “please consult the Council for a copy of the document” if the form is not provided.
  - The administering agency (eg, the name of the council).
  - The relevant legislation (eg, the *Roads Act 1993* (NSW)).
  - Contact details of the council.
  - Supporting information (council website link to relevant information).


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There is no provision for any forms to be submitted directly through this site or any payments to be made. It does, however, provide guidance to businesses and allow them to see, in one place, the requirements that are needed at a State and local level.
Queensland Local Government toolbox

The Queensland Local Government (QLG) toolbox website (a council knowledge network) is an initiative of the Council of Mayors (South East Queensland) and the SEQ Councils (CEO Forum). The website is set up to provide core information to the public on key aspects of Queensland councils’ responsibilities, including disaster management and environmental health. Under environmental health, there is a list of key activities that require approvals from councils - eg, footpath dining, roadside vending, advertising signs, waste management, noise pollution, entertainment events, swimming pools, caravans. It does not cover planning or building approvals (see Box below).

Box 6.6 What the QLG toolbox offers

For each area, the site offers the following information for each council:

**Overview** - who needs an approval and who doesn’t

**How to apply** – development approval, related applications, forms, plans, certification, public liability insurance, qualification, how to submit an application, application process

**How to comply** – how council interacts with business, education, regulation (inspections), enforcement, complaint management and renewal

**Tools and resources** – operator self-assessment checklist, guidelines, legislation, other useful websites, training, fact sheets, example plans.


Not all Queensland councils are currently participating, but participants include a range of urban, regional and remote councils. The information available varies from council to council, as does the level of hyperlinks to other information or online forms, with Brisbane City Council being the most sophisticated in this regard. The website content will continually change to reflect new developments in councils and include more online information or forms over time.
Centralised information

The creation of websites such as ABLIS and the QLG toolbox can reduce the regulatory burdens on business and the community by providing accessible advice and enabling people to navigate what can often be complex and time-consuming approval and compliance processes. These sites could further reduce regulatory burdens if they become a source of more standardised, consistent and effective advice and processes. For example, councils can work together to produce one form, one template, a suite of standard fact sheets, example plans, etc for use on such websites. The creation of such websites can enable this process. Firstly, a level of standardisation of information occurs in the process of making the information available through the website. Second, by making information centrally available, this enables comparisons. Third, this can lead to efforts to harmonise or improve the guidance and documentation made available.

Projects like the Electronic Housing Code provide considerable benefits to businesses and the community by providing a single, consistent, time-saving, online process to obtain an approval.

The NSW Electronic Housing Code Project (EHC) provides an example of a successful collaborative initiative between the State and local government.

The EHC is a joint initiative between DoPI and the (former) Local Government and Shires Association (LGSA), with funding provided from the Federal Government’s Housing Affordability Fund.

The project launched an online system in October 2011 for the electronic lodgement of complying development applications under the NSW Housing Code for lots 200m² and above. The system allows online inquiries, lodgement and even determination. For example, it allows the user to determine if they are able to proceed with their development without further approvals, as an exempt development.424

It was built primarily for local industry professionals, such as project home builders, planners, developers and architects, but can be used by the local community as well.425

The LGSA noted how the EHC has been effective in improving the management and streamlining of the development process in this area.426 The benefits include:

- Improved customer service for Housing Code development applicants (they can search their property to identify if complying development may be carried out on the land, and can access a standard application form online).

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426 Local Government and Shires Association of NSW’s submission to IPART, October 2012.
Opportunities to streamline and reduce processing effort for Housing Code development (this reduces council operational costs and leads to faster planning approval times).

More consistent and better quality applications received through the system (the applicable standards are clear and easy to follow).

Improved access to user-friendly information on Housing Code development and local planning instruments (all accessible from the EHC website).

At present, the EHC is currently operational in 12 local government areas: Bankstown, Blacktown, Kogarah, Lake Macquarie, Mid-Western, Port Macquarie-Hastings, Rockdale, Shellharbour, Sutherland, Tamworth, The Hills and Tweed Shire Councils. Another 23 councils are expected to be on the system by June 2013. The NSW Government intends to continue expanding the EHC to other LGAs.

Similar initiatives may be possible for other local government approvals, such as high volume section 68 approvals, and would have considerable benefits to businesses and the community.

The development of central registers (eg, Companion Animals register) by State agencies that devolve regulatory responsibilities to councils can substantially reduce administrative costs for regulated entities and councils, and assist with more efficient implementation of regulation (eg, assist with data collection and risk analysis).

Central registers

In the development of new regulations to be implemented (partially or fully) by local government, some State agencies have developed and maintained centralised registers for recording registrations, notifications and enforcement and compliance reporting requirements. These central registers have been developed for the use of both the agency and councils. An early example of such a register is the one developed under the *Companion Animals Act 1998* (NSW), which several councils have cited as best practice. Whilst there are some issues with the data currently collected in the register (discussed further in Chapter 11), which makes that register not as effective as it could be, the register still receives a high level of support from councils. Examples of where central registers will be used are in the recent amendments to the *Swimming Pools Act 1992* (NSW) and in the *Boarding Houses Act 2012* (NSW) (discussed further in Chapter 9).

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430 See submissions to IPART from Campbelltown City Council, Randwick City Council and Great Lakes Council, October/November 2012.

431 See for example, the central registers to be set up under section 30A of the *Swimming Pools Amendment Act 2012* and section 12 of the *Boarding Houses Act 2012*. 
Centralised registers, if developed and maintained properly, have the potential to reduce administrative costs for regulated entities - e.g., registration details need only be provided to one regulator (for the benefit of all regulators), avoiding any duplication. An example of unnecessary regulatory burden as a result of multiple registers has been raised in relation to the registration of retail food premises (this issue is discussed further in Chapter 9). Centralised registers also eliminate the need and cost of setting up and maintaining 152 separate council registers (in particular, IT costs can be significant). These registers also have the potential to streamline reporting requirements and allow for better performance assessment and risk analysis by the responsible State agency.

6.2.6 Sharing information

Memorandums of Understanding between State agencies and councils in relation to enforcement and compliance activities (e.g., between local police and local council) facilitate information sharing to achieve better communication, coordination and enforcement outcomes.

An issue highlighted by council stakeholders is that it is often difficult enforcing regulation when the information required to prosecute may be held by a State agency rather than the council.432

Councils are often required to submit freedom of information requests (under Government Information (Public Access) Act 2009 (NSW) (GIPA Act)) to get access to information that can assist them in enforcement. This is a lengthy and time-consuming process, which can sometimes prevent a council from taking action. Some more proactive councils have forged Memorandums of Understanding (MoUs) with various State agencies such as the EPA, the police and WorkCover.433

This best practice approach should be considered by all councils with key State regulators, such as police, EPA and WorkCover, particularly where there are overlaps in the enforcement role of councils and the State (e.g., waste, asbestos, noise, etc). This should facilitate greater communication, co-ordination and access to information to assist with the compliance and enforcement functions of councils, to the benefit of the local community.

6.2.7 Better Practices in planning regulation

Councils engaging independent panels or consultants where development applications or DAs relate to land owned by local government improves transparency and probity.

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432 See submissions to IPART from Sutherland Shire Council, November 2012; Wollongong City Council, November 2012; and Strathfield Council, October 2012.

433 See submissions from Sutherland Shire Council to IPART, November 2012; Wollongong City Council to IPART, November 2012.
The practice of engaging independent panels to assess development applications for land owned by a local government was identified as a leading practice by the Productivity Commission.\textsuperscript{434} It noted that this can increase transparency and probity.

Where proponents seek to develop infrastructure on public land owned by the council, providing notice of the relevant leasing or licencing options and conditions likely to be attached to the use of the land (where practical) prior to the requirement for a DA to be submitted could reduce unnecessary costs for proponents.

In its submission to our review, the Mobile Carriers Forum (MCF) expressed concern that proponents of a development (telecommunications infrastructure) on public land can sometimes incur substantial costs in the DA process that could be avoided. This is particularly so if the proponent fails to ultimately reach agreement with the council on the lease terms or the lease is rejected by councils.\textsuperscript{435}

We note that councils have a right to determine the terms and conditions of leasing public land and whether a lease proceeds, particularly when acting in the interests of their community. However, they should also consider ways to reduce unnecessary DA costs for proponents. This should include seeking to provide the proponent with as much notice as possible on the likely terms and conditions of leasing public land. The proponent can then decide whether they would like to continue with the DA.

Councils can use Order powers under the \textit{Environmental Planning & Assessment Act 1979} (NSW) (eg, under s121O) to allow certain modifications to developments. This circumvents the need for the applicant to obtain additional council approvals or development consents when there are concerns with existing structures (eg, safety concerns).

Campbelltown City Council suggested this practice as a practical and low cost way for councils to authorise modifications to developments without the need for the applicant to make a new or modified application request.\textsuperscript{436}


\textsuperscript{435} Mobile Carriers Forum’s submission to IPART, November 2013.

\textsuperscript{436} Campbelltown City Council’s submission to IPART, October 2012.
The council submitted that:

In such situations, the regulatory authority may impose suitable requirements as part of the Order process to ensure relevant heads of consideration are addressed. For example an Order to suitably retain land can require a retaining wall to be erected without the need for separate development consent or Construction Certificate (CC) approval from a council. Council may (still) require an engineer’s certificate to be obtained to certify that the wall has been erected according to relevant standards and that the wall is structurally sound and suitable for its intended use. Many councils may not be aware of this legislative provision and may be unnecessarily imposing regulatory burden as a result.437

Section 121O of the EP&A Act states that “a person who carries out work in compliance with a requirement of an order does not have to make an application under Part 3A or Part 5.1 for approval or Part 4 for consent to carry out the work.”438

The DoPI has advised that these Order powers will be reinstated in the new planning legislation, currently being developed to enact the new planning system reforms.439

We support Campbelltown City Council’s view that the use of these powers by councils may help to reduce compliance costs for developers and councils where consent has already been granted but unforeseen and relatively isolated concerns arise during the development (eg, retaining walls).

13 Council policies that identify, prioritise and if possible, fast-track emergency repair works within existing regulatory processes (eg, urgent tree trimming work following a storm or urgent repair works following a flood) would reduce costs.

Some stakeholders raised concerns regarding the delays associated with gaining planning approvals or permissions from councils when emergency works are required.

They considered that councils should have in place a process whereby they can streamline emergency projects and fast-track the necessary regulatory approvals or permissions. This would apply to areas such as general development (eg, riverbank works following a flood) or urgent tree repair work (eg, following a storm).

437 Ibid, p 3.
438 Environmental Planning and Assessment Act 1979 (NSW), section 121O.
439 Personal communication, Department of Planning and Infrastructure, Email to IPART, 5 February 2013.
Councils generally have emergency procedures detailed in a Local Disaster Plan or equivalent, which outlines how the council will prevent, prepare for, respond to and recover from emergencies within the area. However, these plans do not usually include any policies or procedures on how the council might prioritise recovery work requests in the community following the emergency event.

In order for councils to respond efficiently and effectively to these types of emergency work requests, we consider that they should first develop a clear policy to:

- help them identify what qualifies as an emergency, and
- if it is an emergency, guide how they will prioritise and possibly fast-track the approval or permission process for the emergency repair work.

This policy may form an adjunct to the council’s existing policy on handling emergencies.

### 6.2.8 DLG’s ‘Promoting Better Practice’ (PBP) program

Broadening the scope of DLG’s current Promoting Better Practice program would strengthen its assessment of regulatory performance. Greater promotion of DLG’s better practice findings amongst all councils would improve regulatory outcomes.

The Productivity Commission identified DLG’s ‘Promoting Better Practice’ (PBP) program as leading practice in relation to review and assessment of council performance.

According to the Productivity Commission, the benefits of such reviews are maximised when:

- they extend beyond financial focus to encompass other aspects of local government operations, such as governance, workforce and the use of technology
- they aim to identify leading and/or noteworthy practices in local governments to address identified areas for improvement
- state government works with local government to address identified areas for improvement
- the reviews are made publically available upon completion to enable other local governments to benefit from the relevant findings.

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442 Ibid.

443 Ibid.
In submissions to our review, several councils noted they consider DLG’s PBP program to be useful. However, some also said that the PBP program does not currently assist councils in their regulatory activities – although these councils acknowledged the potential for it to do so.444

In our assessment, the PBP program is a highly worthwhile program, particularly for smaller, rural councils or councils currently lacking systems and resources. In our view, the value of the program could also be further enhanced.

One way DLG could strengthen its focus on regulatory performance in this program would be to expand its current self-assessment tool, which is used to conduct the reviews, to focus more on regulatory performance. In order to do so, DLG could consider the self-assessment tool developed by Hunter Councils Inc. (HCCREMS), which is discussed above.

We also consider the value of the program could be better utilised if DLG publicises leading regulatory practices identified in a PBP review. This could occur via a newsletter or in a DLG Circular to councils. Councils could also be invited to give feedback directly to the unit undertaking PBP reviews on the practice or their efforts to implement the practice. This could encourage the uptake of these practices and allow councils to learn from the experience of others.

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444 For example, see submissions from Lake Macquarie Council to IPART, November 2012; and Lismore City Council to IPART, November 2012.
Many submissions to this review, and other reviews, have identified local government planning functions as a major source of unnecessary regulatory burden. These burdens are often caused by delays, inconsistencies, and complexities in the planning process. This has been recognised by the NSW Government. It has been conducting a review of the planning system (as discussed in Chapter 1), which aims to enhance the efficiency of the system.

This chapter discusses key stakeholder concerns raised in our review in relation to planning, and outlines our response to these concerns. We expect the reforms resulting from the current planning review to address a large proportion of these concerns. However, we also present some recommendations which seek to maximise the outcomes or opportunities of that review, as required by our Terms of Reference.

Our recommendations in this chapter are in addition to the recommended Planning Partnership Model between the Department of Planning and Infrastructure (DoPI) and local government, which we also expect will address many stakeholder concerns and enhance the outcomes of the planning review (Chapter 1).

7.1 Overview of key stakeholder concerns

The main concerns stakeholders raised in this review relate to:

- delays, primarily in the development assessment process
- inconsistencies across and within councils in planning policies and regulatory requirements, including:
  - development consent conditions which can be overly complex, restrictive and unnecessary
  - other onerous requirements imposed by some councils in undertaking their compliance objectives
- Development Control Plans, including the number of plans some councils have and how these can conflict with other higher-order planning policies (eg, Local Environmental Plans (LEPs) and State Environmental Planning Policies (SEPP))
zoning issues, including the complexity of zoning requirements in LEPs and what are considered by some to be inflexible zoning definitions

- costs associated with applications for change of use of commercial premises

- the need for building owners to submit Annual Fire Safety Statements in hard copy to local government and NSW Fire and Rescue each year.

Each of these issues is explained in more detail below.

### 7.2 Delays in the development assessment process

#### 7.2.1 Stakeholder concerns

Delays in the development assessment process are a central concern of business and the community. For instance, the Small Business Commissioner submitted that councils regularly exhibit a culture of ‘obstructionism’ to development requests, which inevitably causes delays, and that councils don’t understand how costly delays in the assessment process can be to small business.\(^{445}\) Ashfield Council recognised the significance of delays, noting that the main regulatory costs for business relate to planning delays, including the costly delays for business start-ups and legal costs.\(^{446}\)

The Housing Industry Association (HIA) stated that councils regularly fail to meet statutory timeframes for processing development applications (DAs).\(^{447}\) This assertion is supported by data published by the NSW Department of Planning and Infrastructure (DoPI).\(^{448}\) For example, under the EP&A Regulation 2000, complying development consents (CDCs) must be processed within 10 days. DoPI’s data shows that on average, CDCs took 14 days across councils in 2010/11.\(^{449}\)

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445 Small Business Commissioner’s submission to IPART, 20 November 2012.
446 Ashfield Council’s submission to IPART, October 2012.
447 HIA’s submission to IPART, November 2012.
448 DoPI, 2010-11 Local Development Performance Monitoring (LDPM). The LDPM report indicated that it took 68 days on average to process a DA across all councils (excluding complying developments), while 8 councils took more than 100 days on average to process a DA (p 41). This exceeds deemed refusal periods of 40 days for local, mainstream DAs and 60 days for other non-State Significant applications (eg, ‘integrated’ development).
449 Ibid.
7.2.2 Our response

Our review suggests the main reasons for delays in processing DAs relate to:

- **the inherent complexity of the current planning system** - including councils’ own development policies (particularly Development Control Plans), referrals and duplication that occur in the process (e.g., concurrence from State agencies), and community consultation requirements.

- **a lack of council capacity and capability** - in terms of assessing the volume of applications, handling more unique or complex development issues, and/or timely enforcement action for breaches of development consents.

Our recommendation for a Planning Partnership Model between DoPI and local government is aimed at addressing the issues of complexity and, in particular, council capacity and capability in planning regulation (see Chapter 2).

The planning reforms proposed in the NSW Government’s White Paper also target both of these concerns (see below).

**Planning reforms proposed by the NSW Government’s White Paper**

The new planning system presented in the White Paper is focused on 5 elements of reform:

- changing the planning culture
- community participation
- a more strategic focus
- more streamlined approval in the development assessment process, and
- the provision of infrastructure.

There are also reforms to strengthen building certification and regulation (see the Box below).

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450 Randwick City and Holroyd City Councils noted that significant delays are experienced when developments also require approval or ‘concurrence’ from the State.


452 White Paper, p 17.
Box 7.1  5 elements of NSW planning system reform

**Delivery culture**
Promote cooperation and community participation, the delivery of positive and pragmatic outcomes and a commitment to ongoing education and innovation.
Regular and mandatory performance reporting for strategic planning at all levels.

**Community participation – effective community participation in the plans and vision for their local areas**
Community Participation Charter and Plans to prioritise effective and early community participation in plan making and development assessment.
Information technology and ePlanning to simplify and improve community convenience and access to planning information and processes.

**Strategic planning – a shift to evidence based, whole of government strategic planning**
NSW Planning Policies to set the State’s planning objectives and priorities.
Regional Growth Plans to establish a vision and growth strategy for each region.
Subregional Delivery Plans to provide the delivery framework for Regional Growth Plans. The emphasis will be on providing infrastructure and a framework for rezoning areas of subregional significance.
Local Plans to provide a statutory framework for the development and use of land in a local government area through zoning, development guides and infrastructure.
Whole of government requirements in strategic plans to reduce the number of development applications that require multi-agency concurrence, referral or other planning related approvals.
Stronger performance monitoring and reporting to ensure plans deliver on agreed objectives.

**Development assessment - faster and more transparent assessment**
Five assessment tracks with development streamed into the tracks depending on the level of impact of a proposed development.
Increasing the number of complying and code assessments to reduce transaction costs, speed up approvals and encourage investment in a range of development types.
Promoting independent expert decision making.
Simplified and practical appeal rights to provide greater access to applicants, fairer assessments and reduced costs.

**Provision of infrastructure - linking infrastructure planning with wider strategic planning**
Growth infrastructure plans with contestability assessments to involve the private sector early in the planning process.
Simplified and consistent local and regional infrastructure contributions.
Government is to identify strategies to enable early public sector contributions to the design and planning of infrastructure.

Strategic focus

The White Paper proposes a new approach to strategic planning. Emphasis will be placed on agreeing upfront on how an area will be developed over time, through preparing Regional, Subregional and Local Plans. These plans provide guidance and certainty for government, industry and the community.\(^{453}\)

Streamlined approval

Approval processes for development that conforms to standards and requirements set out in the strategic plan (i.e., the Local Plans in the local context) will be streamlined through complying or code assessment. This means that there will be an increase in the level of complying or code assessable development in the system. Fully compliant proposals are to be approved within prescribed timeframes,\(^{454}\) with no further referral or concurrence required. Non-compliant proposals will be subject to full merit assessment.\(^{455}\)

These reforms should simplify the planning system and reduce delays.

The proposed reforms also incorporate greater use of independent panels, with the Government encouraging (but not requiring) more councils to use independent expert panels to determine locally significant development proposals.\(^{456}\) This should further address some of the concerns about council decision-making and, in particular, the further delays and costs required to contest council decisions in court.

Cultural reform

The White Paper notes that cultural change is crucial to effectively deliver these reforms. The aim is to encourage a more positive and outcomes focused approach to planning and development that reduces costs and delays.\(^{457}\)

The cultural change program will be led by DoPI, in collaboration with the Planning Institute of Australia and local councils.\(^{458}\) DoPI will establish a Culture Change Action Group to design and oversee the implementation of culture change actions and the new planning system. This group will include members of the planning profession, local and state government, academia, the development industry, peak industry groups and community representatives.\(^{459}\)

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\(^{454}\) Straightforward complying development approvals will have a 10-day approval timeframe. Complying development with minor variations and code assessable development will have a 25-day approval timeframe: White Paper, p 119.

\(^{455}\) White Paper, pp 129-133.

\(^{456}\) White Paper, p 137. These panels are in addition to the Regional Planning Panels who make decisions on regionally significant developments.

\(^{457}\) White Paper, pp 29, 36.


The cultural reform will also be important in providing support to councils to improve their capacity and capability. The adoption of our proposed Partnership model in planning (Chapter 2) will help facilitate this support to councils and enhance performance assessment.

**New planning legislation**

We note the new planning legislation has recently been introduced into Parliament (on 22 October 2013). This chapter discusses the planning reforms as set out in the White Paper. Where necessary, we will update our analysis in light of the new legislation as passed by Parliament for our Final Report.

### 7.3 Inconsistencies in how councils administer planning regulation

#### 7.3.1 Stakeholder concerns

Stakeholders also expressed concern with the inconsistent manner by which planning regulation is administered across local government in NSW. For example:

...there is great frustration at the variety of council processes, forms, attitudes and rules for housing development.

Inconsistencies in councils’ approaches to implementing planning regulations are evident in the:

- information and regulatory requirements across councils (eg, inconsistent requirements in the development application process, including different development consent conditions applied to the same type of development)

- implementation of state policies or guidance across councils (eg, different council requirements placed on building owners in response to DoPI’s guidance on how councils should mitigate the risks of awnings over public land)

- council plans and policies (eg, inconsistencies between DCPs and LEPs)

- nature of the advice provided from a council to applicants when applications are processed by separate council departments.

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460 Planning Bill 2013 and Planning Administration Bill 2013.
461 HIA’s submission to IPART, November 2012.
462 HIA, Mobile Carriers Forum (MCF), NSW Business Chamber and Scarlet Alliance (Australian Sex Workers Association) submissions to IPART, October/November 2012.
463 NSW Business Chamber’s submission to IPART, October 2012.
464 Hutcheson J’s submission to IPART, September 2012.
Variations across councils will often reflect the specific planning policies and objectives of each council. However, the types of inconsistencies identified can be unnecessary and costly for the community. In particular, inconsistencies can increase costs for those businesses, developers or builders working across different local government areas (LGAs). They can also be costly for councils. This is especially so when councils develop specific information and regulatory requirements, where a more standardised or coordinated approach across all councils would meet policy objectives.

7.3.2 Our response

As with the issue of delays, the new planning reforms have a strategic focus, a streamlined development assessment process and an emphasis on cultural change that will also address inconsistencies in planning regulation. For example:

- The current DCPs, that can be inflexible and inconsistent with higher-order policies, will be replaced by Local Plans with fully integrated development guidelines. This will provide a context for development assessment against performance-based outcomes. (We discuss DCPs more in Section 7.5 below.)

- As part of the streamlined development assessment process, DoPI plans to develop a standard code assessable DA form, which can be accessed online. This will eliminate the need for councils to individually develop application forms for this purpose.

In addition, adoption of our recommended planning Partnership Model (Chapter 2) will provide the necessary state-level coordination and support to facilitate and encourage greater standardisation and consistency across council planning regulation in NSW.

Finally, stakeholders have identified 2 examples of inconsistencies in planning regulation which we consider warrant specific recommendations in our review. These relate to the conditions applied to development consents by councils (discussed below), and the different requirements for Waste Management Plans in the DA process (discussed in Chapter 9).

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465 Business Council of Australia’s submission to IPART, October 2012; Randwick City Council’s submission to IPART, November 2012.
7.4 Onerous and unnecessary development consent conditions

When a council completes its development assessment process, it places development consent conditions on the approval. Conditions of consent can be used to:

- control, manage and safeguard the impacts of the development
- modify the design of the development to address an issue, or
- stipulate processes to be carried out at the construction stage and/or at occupation.466

7.4.1 Types of development consent conditions

Some of the conditions applied by councils are standard policy requirements. For example, the Environmental Planning and Assessment Regulation 2000 (NSW) (EP&A Regulation, Part 6, clauses 98-98E) prescribes conditions for all development consents, such as compliance with the Building Code of Australia (BCA) and insurance requirements of the Home Building Act 1989 (NSW). Other common ‘best practice’ conditions have also emerged to address different aspects of the development and construction process.

More specific types of conditions include:

- Performance based conditions – these identify an outcome to be achieved without articulating how the outcome is to be achieved, thus allowing for some flexibility and innovation in design and other solutions. For example, vegetation on the site must be protected from damage.
- Deferred commencement conditions – the consent is deferred until the applicant satisfies any matter specified in the condition. For example, prior to the issue of a subdivision certificate, detail must be submitted showing the location, depth and type of fill located on the site.
- Conditions to meet government agency requirements – these conditions apply to DAs which require an integrated development approval or concurrence from State agencies. For example, a traffic control plan complying with the requirements of RMS’s Traffic Control at Work Sites Manual.
- Conditions concerning financing security – these conditions require security to repair damage or complete certain works. For instance, a defects liability bond to be lodged with the council.

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466 NSW Department of Planning, Development Assessment Guidelines Part A - Development Applications under Part 4 of the Environmental Planning and Assessment Act, Consultation Draft - not yet Government policy, June 2009, pp 16-17.
Reviewable conditions - these conditions specify how the consent authority may review the conditions at any time or at any interval, such that the conditions may change. They generally apply to entertainment venues, function centres, food and drink premises, and registered clubs. For example, conditions imposed for a review of extended hours of operation or the maximum number of persons permitted in a building.467

These conditions depend on the individual development assessment and are generally up to each council’s discretion. As a result, the nature and extent of consent conditions can differ markedly from one council to another.

7.4.2 Stakeholder concerns

Stakeholders expressed concern that council-imposed conditions are often:

- large in number and repetitious
- unnecessary
- poorly drafted and difficult to interpret, and
- costly to comply with.

These types of conditions can have flow on effects. Unclear, poorly drafted conditions are difficult to comply with, difficult to certify, create complaints and delay and, ultimately, undermine building regulation objectives.468

A summary of the types of comments we received from stakeholders relating to development consent conditions are presented in the box below.

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468 DoPI and Building Professionals Board (BPB) joint submission to IPART, November 2012.
Box 7.2 Summary of stakeholder concerns on development consent conditions

Business stakeholders, in particular, have identified the following concerns about development consent conditions:

- They can be onerous, unpredictable, anti-competitive, uncommercial, and outside the planning concerns of council.
- They can lead to time consuming and costly negotiations and sometimes legal challenges with councils.
- They can seek to make businesses responsible for the provision of community infrastructure – eg, garden beds, pothole repairs, and community toilets – to shift the cost of providing such services from council to the business.
- They can encompass a higher level of compliance or more restrictions than required by other pieces of legislation - eg, trading conditions under the Retail Trading Act 2008.
- They can require expensive private consultants to certify simple issues (eg, whether a bike rack is bolted to the ground) or expensive, detailed building reports by experts (eg, on hydraulic, engineering and building compliance).

DoPI, in its submission, reported that the Department and the Building Professionals Board both receive complaints from business and other members of the community about development consent conditions. The complaints relate to conditions being unnecessary, unclear or imposed in error, and the significant delays that result from the need to modify (inappropriate) conditions of consent.

Source: Various submissions to IPART including Scarlet Alliance, November 2012; Urban Taskforce Australia, 1 November 2012; Mobile Carriers Forum, November 2012; and DoPI and Building Professionals Board (BPB), November 2012.

Our review suggests that the main reasons for these types of complaints are that:

- there are very limited sets of standard development conditions available to councils to adopt or adapt for different types of development
- councils can maintain their discretion about the conditions they choose to impose, regardless of other guidance or legislation available to them (so long as minimum compliance under other legislation is met)
- individual planning staff are often relied upon within councils to make judgments about appropriate consent conditions, which can lead to significant variation in conditions.
7.4.3 Our recommendation

The White Paper outlines that development of a standard state-wide toolbox of development conditions is part of the Government’s reform package.\(^{469}\) It notes that consistent development consent conditions across the State will enable better compliance with conditions, faster determination of development proposals and certainty in the matters that need to be satisfied.\(^{470}\) DoPI has also advised that the introduction of more standardised conditions of consent will be reviewed further, once the new planning system is implemented.\(^{471}\)

The new planning system will also be designed to increase the use of complying and code assessable development approvals in NSW.\(^{472}\) These will be based on predetermined conditions for applications that meet set criteria.\(^{473}\)

Given the extent of concern in this area and the potentially significant costs imposed as a result of onerous, unnecessary or unclear conditions, we agree with the White Paper’s proposal to develop more standardised development consent conditions. Our recommendation in this area supports the White Paper proposal and provides further detail on how a standardised set of development conditions could be developed and implemented to maximise the opportunities arising from the planning review. In Chapter 8, we also recommend that councils seeking to impose conditions of consent above requirements of the Building Code of Australia should conduct a cost benefit analysis justifying the net benefits of these additional requirements and seek approval from an independent body, such as IPART, under a ‘gateway’ model.

More standardised conditions of consent will reduce costs to the community in complying with or contesting inappropriate conditions. They will also reduce the need for councils to expend resources individually drafting specific conditions in some areas.

\(^{469}\) White Paper, p 120.
\(^{470}\) White Paper, p 187.
\(^{471}\) Personal communication, DoPI, Email to IPART, 5 February 2013.
\(^{472}\) White Paper, p 8.
\(^{473}\) Personal communication, DoPI Letter to IPART, 5 June 2013.
The standard set(s) of conditions should:

- form one of the planks of work undertaken by the dedicated team of staff within DoPI, in accordance with the application of the Partnership Model to planning (see Chapter 2)
- be based on a clear set of guiding principles - eg, conditions must be reasonable, imposed for a planning purpose and be related to the development\(^{474}\)
- accommodate sufficient flexibility to allow each council to set conditions in accordance with its local strategic plan
- be tailored to different development types, scales and scenarios, as necessary.

In developing the standard sets of conditions, DoPI should consider carefully the claims that councils are requiring expensive consultants to certify certain aspects of construction as part of development consent conditions.

**DoPI’s draft set of conditions for residential development**

DoPI has already developed a draft set of consent conditions for single dwelling and dual occupancy residential development, in consultation with key stakeholders (see box below). The conditions identify the requirements, terms and limitations of the development and other considerations in the development process up until the Occupation Certificate is issued.\(^{475}\)

In light of the broader review of the planning system, these conditions have not yet been finalised by DoPI, but it seems reasonable to expect that any further work to develop standardised conditions should utilise this draft set of conditions as a starting point.

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\(^{474}\) In *Newbury District Council v Secretary of State for the Environment*, it was held that for a condition to come within the relevant statutory power it must fulfil these 3 conditions: DoPI, Development Assessment Guidelines – consultation draft, p 17.

Box 7.3 Draft Standard Conditions of Approval for Single Dwellings and Dual Occupancies – developed by DoPI for consultation

Part A - Conditions to identify the requirements, terms and limitations on development

Condition subheadings include: Development undertaken in accordance with approved plans and documents; BASIX requirements; Course of action if there is inconsistency between documentation; Any design amendments required; Building height; Hours of work; Public infrastructure and services; Construction within boundary; and No obstruction of public way.

Part B – Conditions prior to the issue of a construction certificate

Condition subheadings include: Compliance with Building Code of Australia and relevant Australian standards; Structural certification; BASIX certificate; Construction and environmental management plan; Protection of utilities and services; Sydney Water requirements (include where applicable); Security deposit for council infrastructure; Section 94 and 94A contributions; Long service levy; Levels certificate; Road opening permit; Reflectivity of materials; Rail and Road Noise; and Remediation.

Part C – Conditions prior to the Commencement of Work – any demolition, excavation or building work to be satisfied

Condition subheadings include: Demolition; Excavation; Site filling; Excavation adjacent to adjoining land; Pre-commencement dilapidation report; Construction certificate and appointment of Principal Certifying Authority; Site sign; Notification of Home Building Act requirements; and Safety fencing.

Part D Conditions during Construction

Condition subheadings include: Critical stage inspections; Building Code of Australia; Site facilities; Site maintenance; Safety fencing; Noise and vibration; Surveying – footings and walls; Survey report; and Protection of trees.

Part E – Conditions prior to issue of Occupation Certificate

Condition subheadings include: Certification of engineering works; Stormwater drainage system; Completion of works in road reserve; Post-construction dilapidation report; Covenant and restrictions to user for stormwater controlled systems; and Letterboxes.

The need for standard condition sets for other forms of development

If implemented, the standard conditions would apply to single dwelling and dual occupancy residential development only. We also recommend that DoPI consults with relevant stakeholders to develop standardised conditions applicable to other forms of development - eg, larger-scale development, and retail or commercial development.

In particular, DoPI should consider developing standardised conditions relevant to the ongoing use of these sites. A key focus of these types of conditions is the environmental and amenity impacts of the sites (eg, associated with parking concerns, trading hours and the number of workers on the site.) We acknowledge that a ‘one size fits all’ approach may not be feasible in all cases, given the need for councils to have some autonomy to protect the local environment and amenity from a particular development. There needs to be a balance between allowing the council some discretion to apply conditions relevant to the development assessment, and ensuring that there is some level of standardisation and certainty in the process.

For this reason, it is appropriate for DoPI to first identify which conditions may be standardised and which may be varied, in consultation with local government and other stakeholders. DoPI should consider whether or not it is beneficial to limit the standard types of development consent conditions eg, to those which are consistent with other legislative standards or provisions eg, Home Building Act or National Construction Code, or to those that seek to limit material impacts on third parties (eg, neighbours). It may also be useful for DoPI to develop appropriate criteria to apply in assessing the need for certain condition restrictions (eg, on trading hours or how conditions may be reviewed).

Existing standardised condition approaches

Some regional groupings of councils have already been proactive in trying to better standardise the conditions of consent applied by their member councils. The NSW Environment Protection Authority (EPA) has also developed standard licence conditions for its licences under the Protection of the Environment Operations Act 1997 (POEO Act) (see box below).
Box 7.4   Examples of other standardised regulatory conditions

The Mid North Coast Group of Councils (MIDGOC) standardised development consent conditions

In 2009, MIDGOC undertook a comprehensive review of conditions used by its member councils with a view to compiling a standardised list. MIDGOC commissioned a planning consultant and a legal consultant to assist in developing and refining the wording of the completed list of conditions. The final list covers an extensive range of condition types and is available for use by individual councils at their discretion.\(^a\)

The Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS) regional model environmental conditions

HCCREMS within Hunter Councils Inc. has developed a set of regional model environmental conditions for councils to adopt. HCCREMS also provides training to council officers to review and draft clear and legally enforceable environmental conditions.\(^b\)

EPA standard conditions for POEO Act licences

Although not directly related to the development assessment process, the EPA has also developed standard licence conditions for its licences under the POEO Act to achieve consistency and efficiencies in its licence regulation.\(^c\)

\(^a\) Division of Local Government, NSW Department of Premier and Cabinet, *Collaborative Arrangements between Councils – Survey Report*, June 2001, p 239.

\(^b\) Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS) website (www.hccrems.com.au), Programs – Environmental Compliance – Current Activities.

\(^c\) NSW Department of Environment and Heritage website (www.environment.nsw.gov.au), Environmental issues – POEO Public Register - About the Public Register.

In leading the development of standard sets of consent conditions, we recommend that DoPI also seeks to utilise the standard condition sets developed and experience gained through these initiatives. It may also be useful for DoPI to consider whether there is a need for training to be provided to councils, to accompany the roll out of standard or model conditions.
Alternative standardisation approach

It has been suggested, as an alternative to standardised development consent conditions, standardising the terminology and form of the Notice of Determination for a DA. There may also be value in the development of a suite of “do’s” and “don’ts” as to what may or may not be included as consent conditions, particularly in respect to what can reasonably be required in the form of post approval third party sign-offs or requirements. For example, consent conditions can include requirements for various certificates, acoustic, structural, flooding, land contamination reports, surveys, etc.\(^{476}\)

Draft Recommendation

16 DoPI, in consultation with key stakeholders and on consideration of existing approaches, should:

- identify which development consent conditions may be applied across council areas, including regional groupings of councils, and which conditions will vary across council areas

- then develop (where appropriate) a standardised and consolidated set of development consent conditions for councils to utilise for different forms of development.

\(^{476}\) Personal communication, Randwick City Council, Email to IPART, 1 March 2013.
Box 7.5  CIE’s analysis of our recommendation

CIE notes that its estimated cost savings from the recommended Partnership model in planning (see Chapter 2) includes the effects of increased standardisation and consistency. Therefore, it is unable to separately identify the effects of the above recommendation.

As noted in Chapter 2, CIE estimated that excessive or unnecessary costs of the NSW planning system are between $260 million and $305 million per annum, and that improvements (eg, consistency) via the Partnership model would:

- reduce red tape costs for businesses and individuals by between $8.3 million and $30.5 million per annum (mid-point of $19.4 million per annum)
- achieve net benefits of between $6.2 million and $29.5 million per annum (mid-point of $17.9 million per annum).

CIE did estimate, however, that the drafting of a standard set of development consent conditions would cost about $20,000 for a council or $3 million across 152 councils. If undertaken across NSW this exercise would involve fewer resources and could save over $2 million.

There are likely to be greater benefits from restricting what councils can and cannot put into development consent conditions.

- For example, a set of “do’s” and “don’ts” for what information councils can include as consent conditions and what information councils can expect for documentation and 3rd party sign-off (such as acoustics, flooding, land contamination, etc). Documentation costs have been estimated at between $187 million to $374 million per year. Hence reducing unnecessary documentation could provide substantial benefits.

- Or there may be scope to reduce council ability to apply overly prescriptive trading hours, given that the NSW Government also regulates trading and operating hours. (According to CIE, the Productivity Commission has persuasively argued that deregulation of trading hours more generally would benefit consumers, increase competition and increase retail employment.)

The magnitude of benefits that would arise from limiting council discretion in applying development consent conditions will reflect the set of conditions over which discretion is limited. Until this is considered by DoPI and specific areas identified, it is not possible to quantify these impacts.

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**Source:** The CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations*, June 2013, pp 13, 17-18.
7.5 Compliance difficulties associated with Development Control Plans

DCPs (Development Control Plans) are developed by councils. They provide specific, comprehensive guidelines for certain types of development, or area specific requirements for localities, in addition to the information provided in the local environmental plan (ie, LEP). A DCP provides the means of identifying additional development controls and standards for addressing development issues at a local level.477

7.5.1 Stakeholder concerns

A number of submissions raised concerns about the difficulties in complying with multiple, often conflicting DCPs of a council. These plans are not subject to oversight by DoPI and can often conflict with higher-order planning policies (eg, LEPs and SEPPs). For example, the Business Council of Australia noted how individual council planning controls in DCPs was one example of regulatory ‘creep’ – where local councils essentially interfere with and obscure higher-level State law.478 In some cases, councils use DCPs to impose overly onerous development consent conditions. These problems can often create delays and result in expensive court cases during the planning process.479

7.5.2 Our response

We have not made any recommendations regarding DCPs because this issue has been partly addressed by recent changes to legislation, and will be further addressed by the planning reform package.

Recent changes to legislation have relegated DCPs to the status of a guideline document.480,481 The changes disallow DCPs from making "more detailed provision with respect to development" than contained in other plans, to merely providing "guidance" on certain matters. This includes giving effect to the aims of SEPPs and LEPs, facilitating permissible development, and achieving zoning objectives.482 The changes also give less weight to the DCP provisions than provisions in the SEPPs and LEPs, and require councils to allow flexibility in compliance with DCP provisions.483

478 Business Council of Australia’s submission to IPART, October 2012.
479 Mobile Carriers Forum’s submission to IPART, November 2012.
480 Environmental Planning and Assessment Amendment Bill 2012.
481 Environmental Planning and Assessment Act 1979 (NSW), sections 74BA and 74C.
482 This excludes DCPs which provide for complying development.
Looking ahead, the NSW Government’s proposed planning reforms will see Local Plans replace existing LEPs, and performance based development guides in Local Plans replace current DCPs. This will directly address concerns about multiple, onerous and conflicting planning controls being difficult to comply with and should ensure that the community is consulted regarding Local Plan development guides.\(^{484}\)

### 7.6 Restrictions in current zoning policies

Zones are currently set by local councils through Local Environmental Plans (LEPs) and are fundamental in determining what type of development can occur on particular land.

#### 7.6.1 Stakeholder concerns

Business stakeholders have raised issues concerning:

- the restrictive nature of some council zoning definitions (e.g., heritage areas which disallow Code Compliant or Exempt Development)
- the lack of suitably zoned land for large commercial or retail developments
- the complexity of the zoning system and the need for simplification, and
- the difficulty in getting areas re-zoned for new uses (e.g., industrial to commercial to provide for new businesses in gentrified areas).\(^{485}\)

#### 7.6.2 Our response

These stakeholder concerns about restrictive and complex zoning policies have been carefully considered as part of the NSW Government’s review of the planning system. Numerous submissions were received and considered by the NSW Government on the White Paper proposals in this area. For this reason, we have not further considered the issue as part of our review.

### 7.7 Change of use for commercial premises

Currently councils use development consent conditions to define the permissible uses of commercial premises.

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\(^{484}\) White Paper, pp 90-93.

\(^{485}\) Various submissions to IPART, including MCF and NSW Business Chamber, October/November 2012.
7.7.1 Stakeholder concerns

Business groups have raised concerns with:

- excessive requirements for simple change of use applications (eg, provision of multiple plans and forms)\(^{486}\)
- long delays in council approvals for change of use from one type of retail business to another (eg, butcher to hairdresser).\(^{487}\)

These process issues impose costs on business. For example, a business that has applied for a change of use for its premises may not operate until approval is obtained but must continue to pay rent in the meantime. Delays in obtaining change of use approvals may also have a larger impact on small businesses where fixed rent overheads can be proportionately greater than other businesses.

7.7.2 Our response

These stakeholder concerns about costs associated with change of use applications have been considered by the NSW Government’s review of the planning system. The White Paper proposed an expanded range of exempt development types allowing the removal of existing approvals that are currently required for some minor development (including a change of one retail use to another). Other changes of use for commercial premises with low impacts on neighbouring properties may be included as complying development types, with a faster, more straightforward assessment.\(^{488}\)

7.8 Annual Fire Safety Statement requirements

Under cl.177 of the EP&A Regulation, the owner of a building to which essential fire safety measures are applicable must submit an Annual Fire Safety Statement (AFSS) to the council every year. After it is verified by the council, the owner must also provide a copy to NSW Fire and Rescue.\(^{489}\) The AFSS is a certificate that attests that each measure installed in the building or on the land has been assessed by a properly qualified person and was found to be capable of performing to the standard required by the most recent Fire Safety Schedule. We understand that some councils charge an administration fee for the submission of the AFSS.\(^{490}\)

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\(^{486}\) HIA submission to IPART, November 2012.

\(^{487}\) Personal communication, meeting between Small Business Commissioner and IPART, 31 August 2012.

\(^{488}\) White Paper, pp 126-127.

\(^{489}\) For the Commissioner of Fire and Rescue Service in accordance with the EP&A Regulation.

\(^{490}\) Personal communication, DoPI, Email to IPART, 6 February 2013.
The fire safety measures are applied to various building types, including multi-unit residential blocks, office buildings, shops, and commercial and industrial development blocks, but not to single, private dwellings.

### 7.8.1 Stakeholder concerns

Certain stakeholders have questioned the need for hard copy Annual Fire Safety Statements (AFSS) to be provided by building owners to councils and NSW Fire and Rescue. For example, Coolamon Shire Council has submitted that this is a duplication of record keeping.

The stakeholders do not dispute the requirement for building owners to ensure that essential fire safety measures are in place, nor that they should be required to prepare a statement that each measure has been installed and assessed properly. However, they have suggested that the annual reporting requirements to 2 government bodies are onerous and unnecessary. NSW is the only jurisdiction to require such regular reporting of statements.

### 7.8.2 Our recommendation

DoPI has advised that the reporting of the AFSS by building owners is necessary to ensure that building owners do not let their fire safety maintenance obligations slip. In DoPI’s view, an easing of this requirement (eg, by requiring stakeholders to keep their statements onsite for inspection if needed) could reduce compliance. Nonetheless, DoPI has acknowledged that streamlining of the AFSS submission process to the relevant authorities would be worthwhile. This has been recognised in the White Paper planning reforms.

The White Paper proposes a range of reforms relating to building fire safety, including the electronic submission and management of fire safety statements for remote viewing by “authorised persons”. We support this reform to enable building owners to submit their AFSS online for access by their local council and NSW Fire and Rescue. We also consider that the Commissioner of Fire and Rescue NSW should be authorised to remotely access this fire safety certification information.

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491 This includes Class 1b-9 buildings (ie, buildings other than single dwellings and associated buildings such as sheds, garages and carports: White Paper, pp 198-199).

492 Ibid.

493 For example, Sutherland Shire, Coolamon Shire and Lismore City Council submissions to IPART, October/November 2012.

494 Coolamon Shire Council’s submission to IPART, October 2012.

495 Ibid.

496 Personal communication, DoPI, Email to IPART, 6 February 2013.


One option for implementing this reform is for the online submission facility to be a central register, whereby the building owner can submit a declaration online that the required essential fire safety measures for the building have been certified by a suitably qualified person. Councils could then go online to access the information on the register, with information also readily available to other agencies as required. This is also consistent with the NSW Government’s Quality Regulatory Services initiative which includes enabling electronic transactions (as discussed in Chapter 6, Box 6.1).

As the fire safety measures and AFSS requirements are stipulated in the EP&A Act, we consider that DoPI would be best placed to lead a project to develop this type of online submission facility, in consultation with NSW Fire and Rescue and the local government sector.

Draft Recommendation

17 The NSW Government (eg, DoPI) should enable building owners to submit Annual Fire Safety Statements online to councils and the Commissioner of the Fire and Rescue Service.

Box 7.6 CIE’s analysis of our recommendation

CIE estimates that our recommendation to provide an online AFSS submission facility would likely result in a moderate reduction in red tape.

The total net benefits from online processing are estimated to be in the order of $1.0 million per year. This would comprise a $0.7 million red tape reduction in costs for those submitting forms, a $0.4 million reduction for councils in ongoing costs, a $0.4 million reduction for the state government through the Commissioner of Fire & Rescue NSW in ongoing costs and a $0.5 million (annualised) increase from implementation costs.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 18-20.
Building and construction

Building and construction regulation forms a major part of local government’s functions. According to stakeholder submissions, it is also a major source of unnecessary regulatory burdens. This chapter explores the main issues raised in submissions, namely:

- the lack of clarity concerning regulatory roles and responsibilities between councils, certifiers, builders and the Building Professionals Board (BPB)
- the perceived duplication of regulation or ‘interference’ in the building certification system by councils
- council imposed conditions of consent above those of the National Construction Code (NCC) standards, which add additional cost to developments without commensurate benefits.

In response to these concerns, and to reduce unnecessary costs to business and the community, we recommend:

- improving accountabilities, interactions and co-ordination between councils and the State Government by clarifying roles and centralising the regulation of both builders and certifiers under a single regulatory authority for the building industry
- several specific measures to improve the current regulatory framework and its implementation, to help minimise council involvement to where it is strictly necessary.

Poor enforcement of fire safety certification or building quality can have immense costs to the community. Building and fire safety defects negatively impact on the quality and liveability of buildings and affect property values. They can also represent unnecessary risks to life. Building certification and the enforcement of building requirements play an important role in ensuring that these standards are met. The quality of this regulation is therefore of concern to the whole community.

499 Department of Planning and Infrastructure, A New Planning System for NSW: White Paper, April 2013, p 183.
8 Building and construction

8.1 Current Regulatory Environment

Building and construction regulation is focused on achieving safe, habitable building outcomes. It involves ensuring a building’s compliance with minimum technical standards and planning requirements.500

Building certification is the process of ensuring that buildings are compliant with the Building Code of Australian (BCA) and safe for occupation. The BCA is now part of the National Construction Code (NCC), which also covers plumbing standards.

In NSW, certification is conducted by council and private certifiers, both of whom are regulated by the BPB. The BPB currently accredits over 528 private and 934 council certifiers.501 It is charged with:

- investigating complaints and reviewing the work of these certifiers
- informing the public about how projects are certified
- providing practical advice and education programs to assist certifying authorities, with a view to improving the standards of building certification in NSW.

Before construction can begin a Principal Certifying Authority (PCA) must be appointed. This certifier, who may be either a council employee or a privately accredited certifier will conduct the critical stage inspections during construction, determine whether the building meets the BCA’s requirements, indicate when the BCA requires changes and will issue the final occupation certificate, which permits the occupation or use of a building.

Separately, councils are also the approving authority for the Development Applications (DAs) to which buildings must conform. As the approval body, councils retain responsibility for the enforcement of non-compliances with the NCC and DAs, even where private certifiers have been appointed.

Private certifiers conduct approximately half of all certification work, including issuing 48% of Construction Certificates, 48% of Occupation Certificates and 69% of all Complying Development Certificates.502 However, private certifiers must rely on councils to enforce any breaches of building codes or conditions of development consent they uncover.

500 Department of Planning and Infrastructure, A New Planning System for NSW: White Paper, April 2013, p 185.
501 Department of Planning and Infrastructure submission to IPART, June 2013, p 7.
These multiple responsibilities in approval, certification and enforcement of building and construction are the cause of significant confusion over the exact delineation of regulatory responsibility between councils, certifiers, builders and the BPB. NSW Fair Trading also has a significant regulatory role in this area through its Home Building Division in relation to builders. The Table below outlines the current breakdown of regulatory responsibilities in the building and construction system.
### Table 8.1 Outline of Regulatory Responsibilities in the Current Building and Construction System

<table>
<thead>
<tr>
<th>Regulator</th>
<th>Responsibilities</th>
</tr>
</thead>
</table>
| **Councils (excluding their direct certifying role)** | • Act as the consent authority for developments  
                                                 • Enforce the conditions of development consent, including through onsite inspections or audits  
                                                 • Issue orders to builders and owners in breach under the EP&A Act, LG Act or the POEO Act  
                                                 • Impose on-the-spot fines for failure to comply with orders  
                                                 • Handle complaints from the community regarding urgent matters – e.g., dangers to the public  
                                                 • Handle complaints from the community that aren’t related to the occupation certificate – e.g., traffic management, sediment control or noise issues  
                                                 • Respond to s109L notices of intention to issue an order in relation to breaches by builders or owners identified by private certifiers |
| **Certifiers**                           | • Can be either the Council or a Private certifier  
                                                 • Ensure that the development is complying with the deemed to comply provisions of the BCA  
                                                 • Ensure that the development is being conducted in accordance with the council’s conditions of consent  
                                                 • Make determinations as to whether a building is suitable for occupation.  
                                                 • Conduct critical stage inspections to ensure building compliance with the BCA  
                                                 • Acknowledge, investigate and respond to complaints raised by the community  
                                                 • Issue a s109L notice of intention to issue an order where breaches are identified  
                                                 • If private certifier, refer these notices to council for enforcement if the matter isn’t rectified |
| **Building Professionals Board**         | • Ensure that all certifiers are properly accredited and have professional indemnity insurance  
                                                 • Conduct investigations into certifier performance and conduct  
                                                 • Take disciplinary action against certifiers who have been found guilty of unsatisfactory professional conduct  
                                                 • Undertake audits of certifiers to ensure that records of certificates issued, actions taken, projects worked on are being kept and are in order |
| **NSW Fair Trading**                    | • Ensure that Builders and Specialised Tradesperson (electricians plumbers etc) are licensed  
                                                 • Conduct spot checks on building quality  
                                                 • Handle contract disputes between owners and builders over contracts and building quality issues |

**Source:** Building Professionals Board, Managing complaints about development info sheet, October 2011.
8.2 **Key stakeholder concerns**

Stakeholder submissions raised concerns about a number of aspects of councils’ building and construction regulatory role. These concerns focused on:

- poor relationships and lack of clarity of roles and responsibilities between councils, certifiers, builders and the BPB
- ineffectual regulation by the BPB, certifiers and councils, and
- regulatory creep by councils.

Each of these concerns is interrelated to some extent, and explained further below.

**8.2.1 Business concerns**

Business stakeholders would like councils to refrain from regulating certifier conduct and leave certifiers to concentrate on regulating building compliance issues. The Housing Industry Association (HIA) argued that many local councils:

…have taken on a ‘policeman’ role focused on both the building work ‘on and off site’ and of the work of the accredited certifier.503

HIA was also critical of some councils who charge an ‘Environmental Enforcement Levy’ to cover the costs of investigations of complaints or audits of development, irrespective of whether the site is already being overseen by a private certifier. HIA argued that these levies assume building activity is non-compliant with the development consent.504

Supporting this view of tension between councils and certifiers, the Master Builders Association, in a submission to the Planning Systems Review Panel, argued that:

The current animosity between Councils and the private certification sector needs to be extinguished.505

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503 Housing Industry Association’s submission to IPART, November 2012, p 10.
504 Ibid.
The need for regulators to work together in licensing and accrediting building professionals was supported at the roundtable of our concurrent review of Licence Rationale and Design, particularly by the Australian Institute of Building, who argued:

…we should have one regulatory authority for the industry. We have too many clusters and, as my colleague pointed out, unrealised expectations by the public that some industries and some occupations are licensed when they are not.506

8.2.2 Council concerns

The above-mentioned concerns of business partially misunderstand the legitimate regulatory role of councils in this area, and demonstrates the current lack of clarity of roles.

However, councils are also concerned that they are dragged into building compliance issues in response to complaints, due to reported ineffectual regulation of certifiers by the BPB.507

The poor working relationship between the BPB and councils was the most frequently cited example of poor interactions between local government and State Government given by councils. According to Wollongong City Council:

NSW Building Professionals Board processes do little to facilitate a positive working relationship with Local Government or the community. The department’s onerous complaint system combined with ineffective punitive measures leaves its customers debating whether the time and effort to submit a complaint is worthwhile.508

Similarly, Sutherland Shire Council argued:

When council then takes a complaint to the BPB the complaint handling process is so onerous and the disciplinary proceeding so lightweight that council’s do not feel that the effort to submit a complaint is worth the outcome, particularly in the face of what seems to be an obstructive approach to complaint handling by the BPB. This is clearly to the detriment of the broader community.509

506 See comments from Whitaker R, Public Roundtable for IPART’s Review of Licence Rationale and Design (Public Roundtable), Transcript, p 80.
507 See submissions to IPART from Holroyd City Council, November 2012; and Shoalhaven City Council, October 2012.
508 Wollongong City Council’s submission to IPART, November 2012, p 3.
509 Sutherland Shire Council’s submission to IPART, November 2012, pp 7-8.
The lack of clarity over regulatory responsibility, both between regulators and for members of the public, was another concern raised by councils. Many members of the community do not understand the current regulatory regime of private certifiers, councils and the BPB and default to complaining to council. This means that councils are forced to get involved even when they are not the appropriate authority. This, in turn, imposes cost on the council, which they are unable to recoup.

According to some councils, the BPB’s insistence that councils act as the lead agency for investigating complaints about certifier conduct imposes burdens on councils (as they are required to compile evidence) and creates unnecessary red tape. Holroyd City Council argued that the BPB needs to take the lead role in investigating complaints regarding the performance of Principal Certifying Authorities.

To date, the BPB has taken disciplinary action on 1% of all accredited certifiers, with only 0.1% having been given more than a fine and a reprimand.

8.2.3 Certifier’s concerns

A number of concerns were also raised concerning the certifier’s role and relationship with councils. These included:

- examples of councils ‘washing their hands’ of a building by refusing to cooperate with the private Principal Certifying Authority
- micro analysing certifier’s forms to find mistakes in order to complain to the BPB
- not taking timely enforcement action where a certifier has notified council of a breach of consent conditions.

510 Newcastle City Council’s submission to IPART, November 2012, p 3.
511 Sutherland Shire Council’s submission to IPART, November 2012, p 7.
512 Holroyd City Council’s submission to IPART, November 2012, p 3.
514 Association of Accredited Certifiers’ submission to IPART, November 2012, p 2.
515 Department of Planning & Infrastructure/ Building Professionals Board joint submission to IPART, November 2012.
8.2.4 BPB’s concerns

The BPB, on the other hand, believes a lot of complaints arise as a result of council’s poorly drafted, unclear or onerous development consent conditions. In 2011/12, 72% of the complaints reviewed by the BPB were either dismissed or no action was considered necessary. This is due to either a lack of evidence, the complaint not being in an area of certifier accountability, or a mistake by the council (eg, loopholes in poorly drafted conditions of consent).

The BPB also argued that councils do not have a strong understanding of their regulatory responsibilities. Furthermore, the BPB was critical of efforts by individual councils to impose additional requirements beyond the relevant standards of the BCA.

8.2.5 Other reviews

The building and construction industry is currently the subject of reform efforts as part of the NSW Planning System review (as also discussed in Chapter 7). There has also been a recent inquiry into construction industry insolvency – the Independent Inquiry into Construction Industry Insolvency in NSW (the Collins review). Some of the reforms recommended by these reviews seek to address the issues and concerns raised in our review.

8.2.6 NSW planning system review

The White Paper, which was released in April 2013, included additional reforms for the building industry, which were not covered in the Green Paper released last year. These included:

- Better delineation and clarity of regulatory responsibilities of councils, certifiers, builders, owners and the BPB. There will be a duty on councils and certifiers to cooperate to resolve issues on building sites.
- Requiring the installation and commissioning of critical building systems (eg, fire safety systems) to be certified by an accredited person.

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516 Department of Planning and Infrastructure submission to IPART, June 2013, p 7.
517 Meeting between Building Professionals Board and IPART, 25 October 2012.
518 Ibid.
519 Department of Planning & Infrastructure/Building Professionals Board joint submission to IPART, November 2012.
521 Department of Planning and Infrastructure, A New Planning System for NSW: White Paper, April 2013.
522 Ibid, p 192.
Accreditation of additional occupations involved in building design, fire safety and access design (eg, registered architects).\textsuperscript{524}

Increasing the ability of certifiers to rely on other professionals and specialists for critical sub system (eg, fire safety) certification.

Refocussing planning consents on planning issues and leaving building issues to the construction certification stage, enabling construction certification to be issued subject to prescribed conditions, and seeking to limit the ability of consent authorities to require compliance with more stringent standards than those set by the BCA, or any applicable NSW Technical Code (eg, BASIX).\textsuperscript{525}

Introducing revised mandatory ‘critical stage’ building inspections, particularly for Class 2-9 buildings (eg, high-rise residential buildings).\textsuperscript{526}

Removing the need for a separate principal certifying authority (PCA).\textsuperscript{527}

Improved levels of documentation through all stages of the building life cycle, including developing a building manual.\textsuperscript{528}

Requiring certifiers to sign off compliance with the development consent and the BCA as building work progresses and at the end of the work.\textsuperscript{529}

Peer review and enhanced decision support on complex building matters for certifiers.\textsuperscript{530}

Stronger disciplinary guidelines, increased auditing and improved reporting obligations/data collection.\textsuperscript{531}

The White Paper also proposed increases in the use of complying or code assessable developments, and reforms to build a more effective compliance and enforcement regime.\textsuperscript{532}

The key implications of the White Paper reforms to building regulation are:

Greater reliance on the certification system as a result of increasing complying or code assessable development, removing building and construction conditions from development consents and the expansion of the professionals and specialists to be accredited.

Increased importance of the enforcement role of councils to ensure the integrity and effectiveness of the certification system, and the compliance and enforcement regime in general.

\textsuperscript{524} Ibid, pp 185-186.
\textsuperscript{525} Ibid, p 186.
\textsuperscript{526} Ibid, p 194.
\textsuperscript{527} Ibid, p 187.
\textsuperscript{528} Ibid, pp 198-199.
\textsuperscript{529} Ibid, p 190.
\textsuperscript{530} Ibid, p 189.
\textsuperscript{531} Ibid, p 202.
\textsuperscript{532} Ibid, p 119.
As part of the planning reform review, recent amendments were made to the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act), Environmental Planning and Assessment Regulation 2000 (NSW) (EP&A Regulation) and Building Professionals Act 2005 (NSW), which included:

- Improving the ability of councils to recover enforcement costs relating to the issuing of an order on a builder. The amendments clarify that these costs include the costs incurred in conducting an investigation, which leads up to the issuing of the order.533
- Empowering the BPB to conduct investigations of certifier’s performance, without requiring a specific complaint.534
- Requiring a standardised, mandatory written contract outlining a certifier’s statutory roles and responsibilities to be used when appointing a private certifier as the Principal Certifying Authority on a project.535
- Requiring certifiers to apply the “not inconsistent” test to both BCA and planning consent compliance at the Occupation Certificate stage.536

These changes came into force in early March 2013.537

We note the new Planning Bill 2013 and Planning Administration Bill 2013 were recently introduced into Parliament (on 22 October 2013). This chapter discusses the planning and building reforms as set out in the White Paper. Where necessary, we will update our analysis in light of the new legislation as passed by Parliament for our Final Report.

8.2.7 The Collins review

The NSW Government established an inquiry led by Mr Bruce Collins QC in August 2012 to assess the cause and extent of insolvency in the building and construction industry and to recommend measures to better protect subcontractors from the effects of insolvency.538

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533 Environmental Planning and Assessment Act 1979 (NSW), section 121CA.
534 Building Professionals Act 2005 (NSW), section 9A.
536 Environmental Planning and Assessment Regulation 2000 (NSW), clause 154.
537 Brad Hazzard, MP, Minister for Planning & Infrastructure, Media Release: Housing supply and certifier changes begin, 5 March 2013.
The Collins Report recommended the creation of a new separate autonomous statutory authority, the NSW Building and Construction Commission. The Report recommended that this Commission should act as an umbrella organisation with sole responsibility for control and regulation of all aspects of the building and construction industry. The proposed Commission’s role would be very broad, as it would include 10 separate bodies in NSW that have responsibility for this sector.

Some stakeholders to our review have also called for NSW to adopt the Victorian model of a Building Commission, and consolidate the BPB and Fair Trading’s building functions. This idea has also been supported in our concurrent review of Licence Rationale and Design, with the additional suggestion of including the Architects Board in the single regulator as well.

The NSW Government has responded to the Collins Report’s recommendation. It will consider establishing a Building Commission, subject to a cost benefit analysis and the outcomes of the Planning Review.

### 8.3 Our recommendations

Our recommendations below seek to maximise the opportunities arising from the planning review.

Through stakeholder submissions and meetings, we consider there is significant scope to improve compliance and enforcement of building and construction regulation. The level of ‘finger pointing’ in opposite directions is evidence that the current system lacks clarity in regulatory roles and accountability, and is poorly coordinated and implemented. Informal discussions with stakeholders indicate there are insufficient consultation mechanisms or referral systems in place between the key regulatory bodies - councils, the BPB and NSW Fair Trading - to achieve coordinated, effective regulation.

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539 Inquiry into construction industry insolvency in NSW, Final Report, November 2012.
540 Submissions to IPART from Randwick City Council, November 2012, pp 7-8; and Australian Institute of Building Surveyors, November 2012.
541 Australian Institute of Building, submission to IPART’s Regulation Review: Licence Rationale and Design, December 2012.
543 Meeting between Building Professionals Board and IPART, 25 October 2012; Meeting between Fair Trading and IPART, 19 December 2012; Meeting between Development and Environmental Professionals’ Association and IPART, 16 November 2012.
Stakeholder concerns also indicate that councils are sometimes seen as ‘over-reaching’ (ie, imposing excessive development consent conditions in relation to building standards) or ‘under-reaching’ (eg, not responding to issues identified by private certifiers) in carrying out their building regulatory responsibilities. Both situations impose unnecessary costs on business and the community. We also consider that both situations are largely a consequence of the fragmented nature of the regulatory system. Therefore, a coordinated regulatory framework would help to reduce these incidences of ‘under’ or ‘over’ reach, enhance councils’ regulatory performance, and ultimately reduce costs to business, the community and councils themselves.

Costs to the community could be significantly reduced if the State regulator:

- clarified regulatory roles and responsibilities of councils, certifiers, builders, owners and the State Government
- created a unified team of specialists in this sector at a state level
- ensured complaints were appropriately directed and efficiently dealt with
- worked closely with councils on removing the causes of complaints (eg, poorly draft development conditions)
- implemented a robust, risk-based approach to enforcement of building regulation in relation to builders and certifiers in partnership with councils
- coordinated audits of building sites with councils to ensure compliance with building and DA requirements
- was accountable for achieving the regulatory goals in this area (ie, safe, habitable buildings), so there can be minimal “buck-passing”.

Improvements to the regulatory framework are also needed to achieve more efficient regulation, including:

- greater transparency in relation to certifier misconduct
- better use of information currently collected to enable more effective auditing and implementation of a risk-based approach to enforcement
- preventing regulatory creep through council consent conditions in relation to building standards.

Our specific recommendations are discussed in greater detail below.
8.3.1 Establishment of a single State building regulator

Given the issues with the current regulatory framework discussed above, it is clear that changes to the management of building and construction in NSW is needed if council compliance and enforcement of building is to improve. We consider the best means to improve the governance and performance of local government in building compliance and enforcement is through the creation of a single State regulator. A single State building regulator will be better placed and more accountable for achieving greater coordination and improved interactions with councils, and effective regulation of the industry.

Submissions to our review, the BPB and the NSW Building Regulations Advisory Council have also called for the introduction of a Building Commission, similar to the Victorian and Queensland models.

Issues with the Victorian and Queensland Building Commissions

The high profile failures of both the Victorian and Queensland Building Commissions to ensure strong and effective regulation of the building industry demonstrate that establishing a Building Commission will not necessarily be sufficient to rectify the problem.

Queensland

The Queensland Parliament’s Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012 stated as its first recommendation that “the QBSA be disbanded as soon as alternative mechanisms for delivering its functions can be established.” The Inquiry commented that:

…there is a fundamental weakness in the ‘one stop shop’ structure of the QBSA which perpetuates the strong perception that the QBSA has an essential conflict of interest in carrying out its functions and responsibilities.

The Inquiry also argued for:

…a clear and transparent divide between the roles of licensing; dispute management over directions to rectify and complete; and management of the insurance scheme.

The Queensland experience questions the wisdom of giving a regulator too broad a scope, particularly when it combines significantly different aspects of the industry in question.

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544 Submissions to IPART from Randwick City Council, November 2012, pp 7-8; Australian Institute of Building Surveyors, November 2012.
545 Inquiry into construction industry insolvency in NSW, Final Report, November 2012.
547 Ibid, p 18.
548 Ibid.
Victoria

In Victoria, 2 separate reports have cast doubt over the effectiveness of the Victorian Building Commission (VBC) as a regulator. A 2011 Auditor General’s report conducted a survey of building certificates issued and found that 96% of permits issued by certifiers did not comply with the minimum statutory building and safety standards.549

This was due in part to ineffective oversight of building surveyors by the VBC. The report found that:

The commission’s monitoring and public reporting is limited to such activities as the number of complaints received against building practitioners, the number of audits undertaken and consumer perceptions... these measures offer little insight into the impact of the commission’s regulatory efforts, or the extent to which building surveyors adequately discharge their statutory responsibilities.550

It also found:

There is little evidence audits effectively target major risks, as the commission’s staff report risk informally and do not adequately document their assessments.551

The report noted the need for councils and the Commission to work more closely together in monitoring the performance of the building permit system.552

The Victorian Ombudsman released an investigation into the governance and administration of the VBC in December 2012.553 It found serious flaws and faults in the registration of building practitioners, conflicts of interest by employees of the commission, corporate governance concerns about staff expenses and inadequate vetting of employee backgrounds.554

In response to the failings of the VBC, its functions were absorbed into a new regulator, the Victorian Building Authority, on 1 July 2013.555 This authority has a particular focus on risk based auditing programs and proactive intervention to address issues before they become significant.

The Victorian experience highlights the importance of a strong and effective audit regime and close engagement with both councils and builders/certifiers.

549 Victorian Auditor-General, Compliance with Building Permits, December 2011, p 21.
550 Ibid, p ix.
551 Ibid, p 35.
552 Ibid, p xi.
553 Victorian Ombudsman, Own motion Investigation into the governance and administration of the Victorian Building Commission, December 2012.
554 Ibid.
555 Victorian Department of Planning and Community Development, A fresh start for building industry regulation: Reforming Victoria’s building system, November 2012.
Design of a NSW Building Authority

The examples of Victoria and Queensland demonstrate that a single building regulator by itself is not a panacea for regulation of the building industry. In order to be effective, a building regulator:

- must not have too broad a focus – ie, there are risks of being a one stop shop for every aspect of the building industry
- should be given a focused and clearly defined scope of complementary aspects of regulation
- needs to have a strong and effective audit regime to ensure compliance on the ground.

Drawing on the lessons learnt in Victoria and Queensland, we recommend that a NSW Building Authority be established, which draws together all regulation of the National Construction Code (NCC) in NSW into a single body. This would include:

- the licensing and regulation of builders
- the accreditation and regulation of private and council certifiers
- the licensing and on site regulation of plumbing and drainage work.

These areas are currently regulated separately by Fair Trading and the BPB. Merging the BPB with the building and plumbing aspects of Fair Trading would create a single regulatory authority responsible for all ‘onsite’ aspects of the NSW building and construction industry’s adherence to the NCC. This would mean there would be a single point of reference for all NCC related issues for consumers. In turn, this should minimise the cost and difficulty of dealing with multiple government agencies on construction and compliance issues.

A Building Authority which solely regulates NCC issues will also avoid the pitfalls experienced by both the Victorian and Queensland Building regulators. By focusing only on regulation of NCC issues and not, like the QBSA, areas such as legislative policy or home insurance, it would avoid the diffusion of focus and conflict of interest between functions, which hindered the QBSA. By utilising Fair Trading’s extensive, proactive audit and inspection program, a NSW Building Authority would have a strong base upon which to build an effective audit regime and avoid the experience of the VBC.

In keeping with the lessons learnt from the experience of the QBSA, it is intended that the Home Warranty Insurance Scheme, currently overseen by the Home Building Division of NSW Fair Trading, remain with Fair Trading and not be incorporated into this new regulator.

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556 This was noted by the Collins Report, which argued for a Building Commission not on the basis of improved regulation of the building sector, but as a method of implementing the other recommendations made by the report to do with managing insolvency in the building industry.
The BPB currently conducts advisory reviews and investigates complaints in relation to certifier misconduct (in 2010/11, it conducted 48 reviews of private certifiers).\textsuperscript{557} Fair Trading currently investigates and audits residential construction work across both building and plumbing (and in 2010/11, it undertook 1,320 field inspections).\textsuperscript{558} As a consumer protection agency NSW Fair Trading has a mission to maximise traders’ compliance with regulatory requirements, and a much greater focus on active compliance and enforcement activities than the BPB.

Combining these 2 organisations and using Fair Trading’s culture of regulatory enforcement will result in more efficient and effective enforcement of both certifiers and builders. This is because a single site inspection could potentially assess both builder and certifier adherence to the NCC. Having this single authority also avoids any problems of miscommunication between regulators (eg, issues identified by one regulator not being addressed by the other) and makes it easier to determine responsibility for building defects.

It should be noted that Fair Trading’s regulation of the building industry is limited to residential properties. Currently there are no licensing requirements for builders working on commercial developments, although this has been the subject of review\textsuperscript{559} and depending on the outcomes of a regulatory impact statement, may change.\textsuperscript{560} Building certification on the other hand, is required for all building types.

As the single regulator for the NCC in NSW, a Building Authority would be better placed to oversee the ongoing professional development required by both builders and certifiers as a condition of their accreditation, leveraging economies of scale. This is particularly pertinent given the proposed expansion of accredited professions flagged in the Planning White Paper.\textsuperscript{561}


\textsuperscript{558} NSW Fair Trading, \textit{Year in review 2010-2011}, 2011, p 10.


\textsuperscript{561} Department of Planning and Infrastructure, \textit{A New Planning System for NSW: White Paper}, April 2013, p 180.
We also recommend the new Authority implement the Partnership Model with councils (as discussed in Chapter 2) to achieve greater clarity of regulatory roles and coordinated enforcement. Once there is a robust audit system in place for the building industry, the need for councils to conduct their own audits of building sites could be coordinated with the Authority. These may provide the new Authority with the scope and scale to achieve greater compliance with building standards, in much the same way the Food Authority uses council inspectors to achieve food safety outcomes. Councils provide the equivalent of 150 FTE inspectors in food inspections, a capacity that could never be achieved by the State alone.562

A stronger more effective regulatory regime, particularly of building certifiers, will in turn generate greater confidence from councils in the rigour of the regulatory regime. This will remove the incentive for some councils to over-regulate the parts of the building process they can control (eg, conditions of consent) and remove a major impediment to effective local/state interaction. This will reduce the cost of unnecessary regulation to businesses, such as the council imposed enforcement levies raised by HIA, which was discussed above.

**Alternatives to setting up a NSW Building Authority**

A potential alternative to creating a separate Building Authority is to transfer the responsibility for building regulation and oversight to an existing organisation, either Fair Trading or DoPI. This has the benefit of reducing the set up costs of implementing the recommendation. It would minimise the disruption while still achieving the goal of a single body in charge of regulating all aspects of the NCC in NSW.

There are some risks with this alternative. These include the risk of an insufficient focus on building issues and the risk of inadequate resourcing given competing priorities. Nevertheless, alternative structures should be considered when undertaking the cost-benefit analysis.

**Draft Recommendation**

18 The NSW Government should:

- subject to a cost benefit analysis, create a stronger, single State regulator, the Building Authority, containing, at a minimum, the roles of the Building Professionals Board and the building trades regulation aspects of NSW Fair Trading, and

- create a more robust, coordinated framework for interacting with councils through instituting a ‘Partnership Model’ (as discussed in Chapter 2).

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562 Meeting with Food Authority and IPART, 25 October 2012.
Box 8.1 CIE’s analysis of our recommendation

CIE estimated that the cost of merging Fair Trading’s building regulation function with the BPB is in the region of $1 million. This estimate was based on the cost of departmental mergers in the past. CIE found that creating a NSW Building Authority could provide more effective regulation of the building industry. While this would not have a significant reduction in red tape, CIE noted that creating a single regulator could lead to improved building outcomes. Since building defects appear to be a significant problem, this recommendation could potentially deliver significant benefits to the community. Based on studies of the prevalence of defects in new buildings, the cost of building defects could be in the order of $100 to $200 million a year. However, it noted that it is not possible to quantify the extent to which our recommendation will address the problem.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 61-68.

8.3.2 Improving the visibility of Certifier Conduct

As discussed above, a number of improvements to the regulatory framework are also recommended to achieve more efficient building regulation. A system that works better at the State level will assist to reduce overall complaints and the unnecessary involvement of councils.

The Principal Certifying Authority’s (PCA) role is to conduct mandatory inspections during construction, ensure that the development meets the requirements of the BCA and complies with any conditions of consent. As noted above, under the proposed planning reforms the separate role of the PCA will be abolished, and the role of the PCA will be undertaken by the appointed certifier or certifiers. A certifier may be either a council certifier or a private certifier. If property owners are not making informed choices when appointing a certifier, then there is a risk of choosing a certifier that has a poor performance record. This is important because the functions and responsibilities of certifiers are not well understood, often leading to the owner appointing a certifier based on a builder’s recommendation rather than independent research.

564 Under proposals contained in the White Paper, the term PCA will be dropped, and a single certifier will issue both the construction and occupation certificates. See Department of Planning and Infrastructure, A New Planning System for NSW: White Paper, April 2013, p 187.
565 While all PCAs will be certifiers, not all certifiers will be PCAs. For larger, more complex building sites, it is common for different certifiers to certify different aspects of a development. However, the PCA is still responsible for the overall certification of the building and is the only person who can issue the Occupation Certificate at the end of construction.
If consumers are not aware, or do not fully understand the role of certification in the building process, then there is an increased risk of poor performing certifiers staying in the industry. One option to remedy this is to use NSW Fair Trading’s Consumer building guide\(^\text{566}\) to raise the profile of certification for consumers. Consumers must be provided with the guide before entering a home building contract for residential building work worth more than $5,000.\(^\text{567}\) The contract checklist provides for consumer acknowledgement that they have read and understood the Consumer building guide.\(^\text{568}\) Including information on how to check a certifier’s accreditation and disciplinary record in this document will help raise the visibility of certifier records and support our recommendation.

We recommend increasing the visibility of certifier disciplinary records by linking the BPB or Building Authority’s (if adopted) registers to enable a consumer to check a certifiers accreditation and whether they have had any disciplinary action.

These measures will:

- reduce the ability of builders to recommend a certifier with a poor disciplinary record, who won’t provide the necessary oversight
- act as a disincentive for other certifiers to cut corners when certifying construction work and risk having a visible disciplinary record
- act as an incentive for poor performers to undertake retraining or other measures to demonstrate their willingness to improve their conduct
- raise the visibility of the certifier’s role for consumers.

Our recommendation supports reforms outlined in the White Paper to improve the auditing of certifiers and place greater reliance on a certifier’s disciplinary record.\(^\text{569}\) It will work in concert with the planning reforms by increasing the ‘penalty’ of being subject to disciplinary action. By combining a greater chance of being audited with greater visibility when found at fault, this recommendation will serve as an incentive for certifiers to improve their conduct.


\(^{567}\) Home Building Act 1989 (NSW), section 7AA.

\(^{568}\) Home Building Regulation 2004 (NSW), Schedule 3.

\(^{569}\) Department of Planning and Infrastructure, A New Planning System for NSW: White Paper, April 2013, pp 201-202.
Draft Recommendation

19 The Building Professionals Board or Building Authority (if adopted) should:

– initially, modify its register of accredited certifiers to link directly with its register of disciplinary action

– in the longer term, create a single register that enables consumers to check a certifier’s accreditation and whether the certifier has had any disciplinary action taken against them at the same time.

Box 8.2 CIE’s analysis of our recommendation

According to CIE, this recommendation offers both red tape savings and net benefits.

Based on the increased visibility of a certifier’s record resulting in fewer complaints about certifier practices (as poorer performing certifiers would stop winning work), CIE estimates this recommendation would reduce the number of complaints by about 19 per year based on current instances of certifiers with multiple disciplinary actions against them. Assuming a cost of $15,000 in staff time to investigate each complaint, this would result in savings of investigation costs of around $285,000 a year.

CIE estimated that the cost of implementing these recommendations would be minimal.

For consumers, CIE found that the only explicit red tape savings of this recommendation would be that fewer complaints would need to be made to the BPB. The potential savings from this are negligible.

However, as with our recommendation for a single building regulator, the net benefit to consumers in improving the outcome of building projects can potentially be very large. While the cost of certifier breaches can vary greatly and the overall benefits are difficult to quantify, the cost of implementing these recommendations are minimal. It is clear then that the overall improvement in building projects need only be very small to result in an overall net benefit to NSW.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 68-70.
8.3.3 Addressing regulatory creep in building and construction

The BCA outlines the minimum standards that buildings must meet in order to be considered fit for occupation. However, the Productivity Commission and various stakeholders have noted that councils often impose additional requirements over and above the BCA in their conditions of consent for development approval. These changes include design matters such as increased ceiling height requirements, reduction in external noise or improved disability access. According to the Australian Building Codes Board, “such interventions significantly impact on housing affordability.”

Chapter 7 on Planning recommends that DoPI develop a standard set of conditions of consent, to minimise costs to business and the community of inconsistent, onerous, or poorly drafted conditions. It also discusses changes in the planning system. This includes seeking to limit the ability of consent authorities to require compliance with more stringent standards than those set by the BCA, or any applicable NSW specific Technical Code (eg, BASIX). It proposes to do so by refocussing planning consents on planning issues and leaving building issues to the construction certification stage, enabling construction certification to be issued subject to prescribed conditions.

A number of states place limitations on council’s ability to impose requirements above those contained in the BCA. In both Queensland and Western Australia, for example, variations that are inconsistent with the BCA or the state’s development code have no effect. However, it is also recognised that there may be a need for some flexibility for councils where local requirements differ from the state-wide norm (eg, areas especially prone to bush fires or excessive soil salinity). In Victoria, councils wishing to impose building conditions over and above the BCA are required to seek Ministerial approval through a gateway process.

570 Productivity Commission, Performance Benchmarking of Australian Business Regulation: The role of Local Government as Regulator, July 2012, Vol 1, p 266.
571 Department of Planning and Infrastructure/Building Professionals Board joint submission to IPART, November 2012; Housing Industry Association’s submission to IPART, November 2012.
572 Productivity Commission, Performance Benchmarking of Australian Business Regulation: The role of Local Government as Regulator, July 2012, Vol 1, p 266.
573 Department of Planning and Infrastructure, A New Planning System for NSW: White Paper, April 013, pp 188, 204.
574 Ibid, p 204.
576 Ibid.
This gateway process has received high level endorsement from all states, with the Intergovernmental Agreement for the Australian Building Codes Board committing all states to implement a:

... gateway model, which prevents local government from setting prescriptive standards for buildings that override performance requirements in the NCC.577

The gateway model was identified by the Productivity Commission as leading practice. It endorsed this approach to limiting council imposed conditions above that of the NCC, as a method of controlling excessive requirements.578

We recommend that variations that are inconsistent with the BCA or a NSW specific technical code (eg, BASIX) should have no effect unless approved under a gateway model. Councils who seek to impose building requirements above those stipulated in the BCA or a NSW specific technical code should be required to seek approval from an independent body, such as IPART. This forces councils to demonstrate the net benefits of these requirements by conducting a cost benefit analysis, with a level of detail commensurate with the additional cost being imposed, justifying the value of these additional requirements.

Our recommendation complements the White Paper’s proposal to standardise building conditions of consent across the State to limit the ability of consent authorities to require compliance with more stringent standards than those set by the BCA.579 Under this recommendation, councils will be limited in their ability to impose excessive, untested requirements which add red tape. However, councils would still have the flexibility to request approval to impose limitations on construction where there is a legitimate justification or net benefit. It also allows for oversight of potential gaps in the BCA. Where multiple councils are demonstrating the value of a particular change, there is potential to make amendments on a state-wide basis, or recommend that the Australian Building Codes Board address the issue in their next review of the BCA and the NCC more generally.

This will reduce costs to business and the community by:

- reducing the variation in building requirements across the State
- reducing the cost to builders of conforming to non-standard technical requirements differing from council to council
- limiting the introduction of costly requirements that offer no community benefit.

577 Australian Building Codes Board, An Agreement between the Governments of the Commonwealth of Australia, the States and the Territories to continue in existence and provide for the operation of the Australian Building Codes Board, April 2012, p 2.


Draft Recommendation

20 Councils seeking to impose conditions of consent above that of the Building Code of Australia (BCA) (now part of the National Construction Code (NCC)) must conduct a cost benefit analysis (CBA) justifying the benefits of these additional requirements and seek approval from an independent body, such as IPART, under a 'gateway' model.
Box 8.3 CIE’s analysis of our recommendation

CIE has found that limiting councils’ ability to impose conditions of consent above that of the BCA offers red tape savings of at least $36 million annually.

This estimate has been calculated using the findings of an unpublished study by CIE, which found that the nationally consistent building code (BCA) had delivered annual benefits to the community of between $152 million and $607 million, with around $304 million the most likely estimate. Nevertheless, only around half of the potential benefits of the nationally consistent BCA had been realised due mainly to persistent variations between states and local government areas.

This suggests that state and local government variations from the national code could be costing the community around $304 million. Given that the value of building work done in NSW represents approximately 24% of the national total, this means that variations from the building code in NSW cost approximately $72 million.

CIE conservatively estimated that half the cost of these variations could be attributed to local government specific variations, equating to at least a $36 million a year red tape cost.

These red tape reductions would be found from the following areas:

- Better compliance with standardised building regulations.
- Transferability of building designs across council jurisdictions.
- Transferability of skills.
- Savings in costs involved in developing different building requirements across council jurisdictions.
- Reduced costs to builders in learning multiple building requirements.
- Larger markets for building products.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 69-72.

8.3.4 Improving Council regulatory performance

Currently, where the certifier identifies a breach or non-compliance on a building site, they may issue a notice of an intention to issue an order which outlines the details of the breach. Having done so, the certifier (if private) is obliged to inform council of their actions.

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580 Environmental Planning and Assessment Act 1979, section 109L.
The proposed planning reforms include new provisions requiring certifiers, where they become aware of a breach, to issue a notice to the person responsible to remedy the breach. If the notice is not complied with, then the certifier must send a copy of the notice to the council. This is a change from the current legislation in that it removes the discretion of certifiers on whether to issue a notice when they identify a breach and when to notify the council. The planning regulations may also make provisions in relation to council follow-up action and for this action to be notified to specified persons.

Councils currently have wide discretion in how they choose to respond to these requests, and the courts have found that they have no legal obligation to act if they choose not to. This discretion can cause uncertainty and unnecessary delays where councils choose not to act and don’t inform the certifier of this. When this occurs, the certifier cannot issue an occupation certificate - which, in turn, may delay payments to builders, subcontractors, the sale of properties or the occupation of the dwelling by the owners.

We recommend that the new regulations under the new planning legislation require that where councils have been notified of a breach of building conditions of consent, the council should be required to respond to the certifier’s complaint in writing within a set period of time. If the council decides to take no action then the certifier can sign off that the building has met the conditions of consent. The certifier can do so knowing that the council has considered the identified breach, and has used its statutory discretion not to act. If the council does not respond within the specified period, then the certifier should be able to proceed to issue the occupation certificate.

This will result in a smoother building certification process, with fewer avoidable delays, reducing costs of construction.

We do not intend this recommendation to cover breaches of the NCC, which outline minimum standards for building safety, but rather council imposed conditions on building design or other non-safety related issues.

Draft Recommendation

21 Certifiers should be required to inform council of builders’ breaches if they are not addressed to the certifier’s satisfaction by the builder within a fixed time period. Where councils have been notified, they should be required to respond to the certifier in writing within a set period of time. If council does not respond within the specified period, then the certifier can issue an occupation certificate.

581 Planning Bill 2013 Exposure Draft, Part 8 Building, Division 8.24, p 76.
582 Ibid.
Box 8.4  CIE’s analysis of our recommendation

CIE has not found any publically available data to determine the extent of this problem across the State. However, it notes that with 23,000 Occupation Certificates issued by private certifiers in 2010/11 and the value of DA’s approved exceeding $18 billion, the cost of delays could be large even if the problem is relatively rare.

CIE assessed that this recommendation would reduce delays in the building process. The benefits could be very large, while the costs imposed on councils by this recommendation are minimal.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, p 72.

8.3.5 Improved clarity of roles for the community

As discussed above, there appears to be general uncertainty or confusion in the community about which regulators are responsible for what in building regulation. This means members of the community often default to councils to make complaints because of the historical role councils have played in regulating building sites and their role as the consent authority.

This results in councils fielding complaints about issues that should go to the Principal Certifying Authority584 or the BPB. In turn, this can lead to community frustration at councils’ apparent unwillingness to fix the issue or council becoming involved in an issue when it shouldn’t.

This issue was identified as a problem in the White Paper, which proposes clarification of the roles and regulatory responsibilities of councils, certifiers, builders, owners and the BPB.585 Advice from DoPI indicates that the planned delineation of planning issues being dealt with through the development consent by the consent authority, and building issues being dealt with through the construction certificate issued by the certifier, will go some way to addressing this concern.586

Building on the proposals in the White Paper, we recommend that, in addition to the sign currently outlining a Principal Certifying Authority’s or certifier’s contact details, a second sign should be placed at building sites, which specifies the person or agency who should be called for specific complaints.

584 As noted earlier this term will be abolished as a result of White Paper reforms; however a single certifier will still be responsible for certification issues for a development.
585 Department of Planning and Infrastructure, A New Planning System for NSW: White Paper, April 2013, p 192.
586 Personal Communication, Department of Planning and Infrastructure, 24 May 2013.
This sign is a potentially simple and cheap way of directing community complaints about construction sites to the correct authority. By prominently displaying who should be called for a series of common complaints, the sign can cut down on the number of misdirected complaints that councils, certifiers and the BPB deal with each year, reducing delays in handling complaints for builders, owners or neighbours, with flow-on effects to building timeframes. It will also reduce staff time taken to redirect these issues.

While it is not expected that this recommendation will totally eliminate the problem, the low cost of providing a sign, means that only a small percentage of complaints need be redirected in order to achieve a net saving. For community members, this means that they will spend less time attempting to reach the right person about a complaint. The net effect of this should be improved handling of complaints within the current system, leading to quicker response times, and a reduction in wasted effort.

Draft Recommendation

22 The Building Professionals Board (BPB) or Building Authority (if adopted) should incorporate into the current Principal Certifying Authority signage information setting out contact details for specific complaints (eg, off-site impacts like building refuse or run-off and onsite issues). The BPB or Building Authority should trial the use of such a sign in a specific local government area to see if time is reduced in redirecting complaints for councils, the BPB/Authority and certifiers.

Box 8.5 CIE’s analysis of our recommendation

CIE notes that trials provide an opportunity to comprehensively assess the benefits and costs of a new system. They also assess the cost implications of this trial are likely to be minimal.

Further analysis should wait until the outcome of any potential trial is known.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, p 72.
This chapter examines councils’ regulatory roles in the areas of public health, safety and the environment. This includes stakeholder submissions relating to food safety arrangements, private swimming pool fencing, boarding houses and waste management plans.

The chapter looks at reducing red tape in this area by:
- reducing or improving inspections requirements for food businesses
- assisting and supporting new regulatory roles delegated to local government, and
- simplifying and standardising some waste management plan requirements.

9.1 Food safety

Food safety is a significant area of council regulatory activity. Councils’ regulatory activity in this area directly affects a large number of food businesses, as well as the broader community.

We consider the Food Regulation Partnership between councils and the NSW Food Authority a leading practice regulatory model (see Chapter 2). However, stakeholder submissions indicate there is scope to improve aspects of regulation within this model.
9.1.1 The regulatory framework

Councils role in regulating food safety

Under the Food Regulation Partnership (FRP) between councils and the NSW Food Authority (the Food Authority), councils are responsible for regulating the retail food sector. Councils are required to:

- Maintain a register of all retail food businesses in their area.
- Inspect high and medium risk food retail businesses at least once per year. Businesses may be inspected more frequently, depending on their performance history and the council’s inspection policy. Low risk food businesses are not inspected routinely.\(^587\)
- Report their inspections to the Food Authority.

Mutual recognition of inspections of mobile food vendors

The Food Authority has produced *Guidelines for mobile food vending vehicles*, to assist councils in regulating mobile food vendors.\(^588\) These guidelines suggest a ‘home jurisdiction rule’ for inspections and the imposition of fees and charges. This means that the council in which the vehicle is ordinarily garaged is the primary enforcement agency and:

- conducts the primary inspection during operating hours (provided the vehicle trades in the area)
- follows up any non-compliance issues
- levies ordinary fees and charges associated with inspections.

The inspection certificate for a vendor can then be shown on request in any other council area and there should be no extra inspections unless there is risk to food safety and public health.

Mobile food vendors must also obtain approval from a council to engage in trade or business on community land and/or public roads under section 68 of the Local Government Act. Section 68 approvals are discussed further in Chapter 5.

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However, the implementation of the ‘home jurisdiction’ rule in NSW does allow a food safety inspection to be mutually recognised across council areas. This would ensure food safety inspections of these vendors are conducted only by the ‘home’ council, rather than each council in which they operate. This would ensure inspections of mobile food vendors are kept to a minimum, and hence reduce costs.

The ‘Scores on Doors’ and the ‘Name and Shame’ System of food retail business performance

There are currently 2 systems, ‘Name and Shame’ and ‘Scores on Doors’, which assess the performance of retail food businesses.

‘Name and Shame’ is a publicly available online register, which records food safety prosecutions against businesses. ‘Scores on Doors’ is a program that is used internationally and has been trialled on a voluntary basis in NSW by the Food Authority. It scores food businesses on how they comply with food safety requirements, following an annual inspection. ‘Scores on Doors’ are visible signs displayed prominently at the premises. The scoring system is available on the Food Authority’s website.589

The Restaurant and Catering Association believes ‘Scores on Doors’ is the better program, as it places the onus of proof on the food business and has a positive element for business and consumers.590

The Food Authority acknowledges that a further advantage of ‘Scores on Doors’ is that it works in conjunction with the Food Authority’s standard inspection template. However, until the Food Authority’s standard inspection checklist is adopted by all councils, the ‘Scores on Doors’ system cannot be implemented state-wide.591

590 See submission to IPART from Restaurant and Catering Association, November 2012.
591 NSW Food Authority’s submission to IPART, October 2012.
9.1.2 Stakeholder submissions

Many stakeholders consider the Food Authority’s Partnership Model with councils to be best practice (See Chapter 2). However, submissions have raised the following concerns in relation to council regulation of food safety within this model:

- There is sometimes regulatory overlap between councils and the Food Authority in specific areas. For instance, when a manufacturer has a retail outlet attached, the manufacturer is inspected by the Food Authority and the retail outlet is inspected by the council, even though they are one business on a single premises.\(^592\)

- There is need for a single food business notification register maintained by the Food Authority.\(^593\) Currently, there is a central notification register maintained by the Food Authority and each council also has its own register of retail food businesses. Food businesses may have to notify both the Food Authority and their local council.

- There should be a review of the frequency of inspections for complying food businesses. The Food Regulation Partnership (FRP) requires all retail food businesses to be inspected by councils at least once per year. However, the NSW Business Chamber suggests this is excessive for businesses with a strong compliance history.\(^594\) The NSW Business Chamber estimates the cost saving to businesses would be in the order of $4 million per year.\(^595\)

- Inspection processes can be inconsistent.\(^596\) For instance, some councils will inspect premises more than the FRP’s required minimum of once per year. This may be warranted if the council believes there is a food safety risk. Councils also inspect premises using different criteria - ie, the Food Authority’s standardised inspection checklist that is used by some but not all councils.

- There is a need for a single, mandated system for assessing food business compliance.\(^597\) There are 2 systems in place at the moment (‘Name and Shame’ and ‘Scores on Doors’).

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\(^{592}\) See submissions to IPART from Holroyd City Council, Orange City Council and Newcastle City Council.

\(^{593}\) See submissions to IPART from Holroyd City Council, Sutherland Shire Council, Wentworth Shire Council and Lismore City Council.

\(^{594}\) NSW Business Chamber, submission to IPART’s Regulation Review - Licence Rationale and Design, December 2012.

\(^{595}\) Ibid.

\(^{596}\) See Local Government & Shires Association’s (LGSA) submission to IPART, October 2012.

\(^{597}\) See Restaurants and Catering Association’s submission to IPART, November 2012.
There are concerns that mobile food vendors who operate across several council areas are subject to multiple council food safety inspections. Consequently, some stakeholders have called for mutual recognition amongst councils of food safety inspections.598

9.1.3 The NSW Food Authority’s internal review of its regulatory arrangements

The Food Authority has advised that it is aware of the stakeholder concerns raised in submissions to our review, as these are similar to issues identified in the Productivity Commission’s report on local government.599 In response to these concerns, the Food Authority has been conducting a series of internal reviews of its regulatory arrangements throughout 2012 and into 2013.

One review, an evaluation of the FRP model, was completed at the end of 2012. This review was designed to identify and remove overlaps in the regulatory roles and responsibilities of the Food Authority and councils under the FRP.

The other reviews, underway and planned, seek to:

• Investigate whether development of a single food business notification register is necessary and appropriate (however, the Food Authority’s submission notes that it currently facilitates centralised electronic notification through its ‘Food Notify’ website, which is accessible to councils). The Food Authority is also exploring other alternative forms of notification, for example, use of an existing central business register.600

• Review the notification system, with input from the food industry and councils, to determine whether other improvements can be made (eg, it is considering whether negligible risk food businesses should be exempt from the requirement to notify).601

• Identify ways to encourage all councils to use a standardised inspection checklist template developed by the Food Authority (currently about 60% of councils use this template) and graduated enforcement policy, which will provide:
  - greater consistency in council inspections of food businesses, and
  - a strong base for better uptake of a ‘Scores on Doors’ system across NSW.

598 See submissions to IPART from NSW Small Business Commissioner; NSW Business Chamber; and Wollongong City Council; October/November 2012.
600 Personal communication, NSW Food Authority, Email to IPART, 20 February 2013.
601 In NSW low risk includes negligible risk businesses (eg, vending machines). The Productivity Commission’s leading practice 9.1 notes that it is leading practice for negligible risk businesses to be exempt from notification or registration and inspections, as happens in Victoria, Tasmania and WA – see Productivity Commission, Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator, July 2012, Vol 1, p 330.
9.1.4 Our recommendations

Mutual recognition of inspections of mobile food vendors

We recommend all councils adopt the Food Authority’s guidelines on mobile food vendors (discussed above). This would ensure food safety inspections of these vendors are conducted only by the ‘home’ council, rather than each council in which they operate. This would ensure inspections of mobile food vendors are kept to a minimum, and hence reduce costs.

Draft Recommendation

23 All councils should adopt the NSW Food Authority’s guidelines on mobile food vendors. This will allow for food safety inspections to be conducted in a mobile food vendor’s ‘home jurisdiction’, which will be recognised by other councils.

Box 9.1 CIE’s analysis of this recommendation

CIE found that this recommendation would:

- produce a net benefit (ie, benefits to society are greater than costs)
- reduce red tape by up to $0.15 million per year
- have no budget impacts.

According to CIE, if all councils adopted the ‘home jurisdiction’ rule there would be a reduction of up to 1,100 inspections of mobile food vendors per year. CIE found the average inspection fee charged to mobile vendors is $140 per inspection. This would therefore lead to a reduction in red tape for mobile food businesses by up to $154,000 per year.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, p 80.

Assessment of the inspections regime

Under a risk-based approach to enforcement, there is a case for reducing inspection frequency of those businesses that have a strong record of compliance; and, conversely, focusing inspection efforts on poorer performing or higher risk businesses. This should reduce costs to food businesses and enhance regulatory outcomes.

Accordingly, we recommend the NSW Food Authority, in consultation with councils, stipulate a maximum frequency of inspections by councils of retail businesses with a strong record of compliance. Further, any such change to inspection frequency of food retail businesses with strong compliance records should be reflected in guidance material from the Food Authority to councils.
There would be cost savings to businesses (including inspection fees) and councils from less frequent inspections of retail food businesses with a strong record of compliance.

Recommendation

24 The NSW Food Authority, in consultation with councils, should stipulate a maximum frequency of inspections by councils of retail food businesses with a strong record of compliance to reduce over-inspection and costs.

Box 9.2 CIE’s analysis of this recommendation

CIE found that this recommendation would:

- produce a net benefit (ie, benefits to society are greater than costs)
- reduce red tape by $1.9 million per year
- have no cost to councils.

CIE found the reduction in cost to business for a reduced inspection frequency from at least once in 12 months to once in 18 months or once in 24 months is $1.9 million and $2.8 million, respectively. The change in benefits, such as avoided foodborne illness from retail businesses, due to a reduced inspection frequency has not been quantified.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 80-81.

The NSW Food Authority’s internal review of its regulatory arrangements

We recommend the NSW Food Authority complete its internal review and work with councils to implement reforms within 12 months of the review being completed. The review is currently considering a number of concerns or issues raised in submissions to our review. This review should:

- Remove any regulatory overlaps between the Food Authority and councils (eg, in relation to affiliated retail and non-retail food businesses). This will achieve clearer delineation of roles and responsibilities under the FRP (for councils, the Food Authority and businesses) and minimise inspection costs for businesses.
- Develop a single register of notification for all food businesses – to remove the need for councils to maintain their own register and for businesses to notify (in some circumstances) both the Food Authority and councils.
- Consider whether negligible risk food businesses should be exempt from the requirement to notify.\(^602\)

\(^602\) The Productivity Commission’s Leading Practice 9.1 notes that it is leading practice for negligible risk businesses (eg, vending machines) to be exempt from notification or registration and inspections, as happens in Victoria, Tasmania and WA.
Ensure the use of a standard inspections template by all councils in NSW, to enhance the consistency of inspections across councils and to facilitate the roll out of the ‘Scores on Doors’ program to assess the performance of food retailers in NSW.

Draft Recommendation

25 The NSW Food Authority should finalise its internal review and work with councils to implement its reforms within 18 months of its review being completed to:

- remove any regulatory overlap (eg, of related retail and non-retail food business on the same premises)
- develop a single register of notification for all food businesses, or a suitable alternative, to avoid the need for businesses to notify both councils and the Food Authority
- review the notification system to determine whether negligible risk food businesses should be exempt from the requirement to notify
- ensure the introduction of the standard inspections template for use by all councils in NSW, to enhance the consistency of inspections across the State.
Box 9.3  CIE’s analysis of this recommendation

CIE found that this recommendation would:

- produce a net benefit (ie, benefits to society are greater than costs)
- reduce red tape by $1.17 million per year
- have no budget impacts.

Removing regulatory overlap (eg, of related retail and non-retail food business on the same premises)

There are approximately 2,000 premises where both retail and non-retail combined businesses operate and which are currently inspected twice a year. Assuming an average inspection cost of $150, the cost of duplicate inspections is $300,000.

This is likely to be an upper bound estimate of the cost reduction to businesses because the cost of a single inspection of both the non-retail and retail businesses may be higher than $150 per inspection.

Developing a single register of notification for all food businesses

A single notification register for food businesses will reduce the notification cost to an individual business by $16.10. This is a total reduction in cost of $0.8 million across all food businesses.

There would be a red tape reduction of $0.8 million from developing a single register of notification for all food businesses to avoid the need for businesses to notify both councils and the Food Authority.

No notification for negligible risk food businesses

There are approximately 4,200 low risk food businesses operating in NSW that are currently required to notify the NSW Food Authority. The cost to notify NSW Food Authority is approximately $16.10 per businesses. Therefore, IPART’s recommendation would reduce cost to low risk food businesses by approximately $67,600 per annum.

Introduction of the standard inspections template

The NSW Food Authority states that the use of standardised inspection templates will improve consistency of inspections. However, data on inconsistency is not available so it is not possible to estimate the change in cost to businesses.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 81-83.
9.2 Private swimming pools

There are more than 300,000 backyard swimming pools in NSW. A review of the *Swimming Pools Act 1992* (NSW) (the Act) in 2012 resulted in a number of amendments to the Act and associated legislation. These amendments are intended to enhance the safety of children under the age of 5 years around private (‘backyard’) swimming pools in NSW.

9.2.1 Recent legislative changes - the Swimming Pools Amendment Act 2012

The amendments to the Act and associated legislation impose new requirements on councils and pool owners. The main changes are:

- the establishment of a NSW Swimming Pools Register
- the requirement for NSW pool owners to register their swimming pools by 29 October 2013
- the requirement for tourist and visitor accommodation or premises consisting of more than 2 dwellings with a swimming pool to be inspected at least once every 3 years
- the requirement for pool owners to obtain a compliance certificate before sale or lease of their property, from 29 April 2014.

Pool owners’ and councils’ responsibilities under this new legislation are outlined below.

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604 These amendments were made by the *Swimming Pools Amendment Act 2012* (NSW).

605 *Swimming Pools Act 1992* (NSW), section 30A.

606 *Swimming Pools Act 1992* (NSW), sections 30B(1) and (2).


608 *Residential Tenancies Act 2010* (NSW), section 52; *Residential Tenancies Regulation 2010* (NSW), Schedule 1, cl. 40A (to commence on 29 April 2014); *Conveyancing (Sale of Land) Regulation 2010* (NSW), Schedule 1, cl. 16 (to commence on 29 April 2014).
Pool owners

Pool owners are now required to:

- register their pools on the NSW Swimming Pools Register
- self-assess, and state when registering their swimming pool that, to the best of their knowledge, the pool complies with the applicable standard
- provide a valid swimming pool compliance certificate when selling or leasing a property with a pool from 29 April 2014.\(^{609}\)

Pool owners may request either their council or an accredited certifier (under the *Building Professionals Act 2005* (NSW)) to conduct an inspection of their pool under the Act.\(^{610}\)

Councils

Councils are required to:

- Develop and implement a swimming pool barrier inspection program in consultation with their communities.\(^{611}\)
- Include in its annual report such information (if any) about inspections as required by the regulations.\(^{612}\) Inspect pools associated with tourist and visitor accommodation and multi-occupancy developments at 3-year intervals.\(^{613}\)
- Inspect pools at the request of a pool owner of a single dwelling, prior to sale or lease.\(^{614}\)
- Issue compliance certificates for swimming pools that have been inspected and comply with the Act. Compliance certificates are valid for 3 years.\(^{615,616}\)

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\(^{609}\) *Residential Tenancies Act 2010* (NSW), section 52; *Residential Tenancies Regulation 2010* (NSW), Schedule 1, cl. 40A (to commence on 29 April 2014); *Conveyancing (Sale of Land) Regulation 2010* (NSW), Schedule 1, cl. 16 (to commence on 29 April 2014).

\(^{610}\) *Swimming Pools Act 1992* (NSW), sections 22A and 22C.

\(^{611}\) *Swimming Pools Act 1992* (NSW), section 22B(1).

\(^{612}\) *Swimming Pools Act 1992* (NSW), section 22F(2).

\(^{613}\) *Swimming Pools Act 1992* (NSW), sections 22B(2) and (4)

\(^{614}\) *Swimming Pools Act 1992* (NSW), section 22C(3).

\(^{615}\) *Swimming Pools Act 1992* (NSW), section 22D.

Based on current estimates, approximately 115,600 swimming pool inspections will be required per year. These will need to be conducted by councils and/or certifiers. The spread of pools across local government areas is highly variable across the State, so the burden of inspection requirements on individual councils will also vary. As councils must inspect pools at the request of an owner, prior to sale or lease of a property, there will also be a level of unpredictability as to the number of inspections councils will be required to undertake during any one period. For example, there could be seasonal ‘spikes’ in inspection requests associated with more properties being sold in spring and summer. If not managed properly this could result in delays with inspections that then delay the sale or lease of a property. These delays could result in significant costs to property owners.

9.2.2 Stakeholder submissions

Several councils have expressed concerns with the swimming pool inspection requirements imposed on them under the Act. For example, Shoalhaven City Council notes:

> Added responsibilities without adequate ability to raise sufficient revenues can place unreasonable impacts on existing resources (eg, proposed new Swimming Pool Fencing legislation).

Similarly, Lismore City Council states:

> Obligations and cost burdens (are) placed upon local government for compliance and enforcement activity, without any serious consideration of cost implications for councils. The provisions simply allow council to resolve these matters within their resources by development (of) an inspection program in consultation with the community. How will Council resource this consultation/program development?

Participants at our public roundtable also expressed concern about the impact of the amendments to the Act on councils and their capacity to carry out their new responsibilities:

> How many people and how much resources will I need in order to be able to satisfy our obligation to make sure that people are entering that data on the database? Am I checking databases? Am I going to aerial photography? So there is cost shifting back to local government when new legislation or agencies introduce new things.

617 *Swimming Pools Act 1992* (NSW), section 22C(3) – a local authority must, within a reasonable time period, undertake an inspection if the request is in writing and is necessary to enable the sale or lease of the premises.

618 See submissions to IPART from Lake Macquarie City Council, Lismore City Council, Orange City Council, Randwick City Council, Shoalhaven City Council, Sutherland Shire Council, Warringah Council and Wentworth Shire Council.

619 See submission from Shoalhaven City Council to IPART, October 2012.

620 See submission from Lismore City Council to IPART, November 2012, p 4.

Further, we received one anonymous submission which argues that regulation of backyard swimming pools is excessive and that self-regulation should be the preferred option. This submission argues that an increased inspection regime would impose large costs on swimming pool owners and local councils, and it is unlikely that any benefits would outweigh these costs.

9.2.3 Our recommendations

Any significant delegation of regulatory responsibility from state to local government should be accompanied by some assistance and guidance. DLG supported this principle in its comments at the roundtable:

…there was a strong message, and rightly so, that one size does not fit all. What Blacktown might need to do in terms of enforcing swimming pools will be very different from what Bourke might need to do. That is certainly a view that we had sympathy with and therefore proposed that councils needed to develop their own inspection regime that is appropriate to their local community.

We therefore recommend that DLG should:

- develop a risk based ‘model’ inspections program for councils which would allow for councils to tailor the program to their own circumstances
- issue guidance material to councils on their regulatory responsibilities under the Act
- provide a series of workshops for council employees on how to implement and comply with the Act
- promote the use of shared services or ‘flying squads’ of compliance officers for swimming pool inspections, to deal with ‘spikes’ in requests for inspections or if a backlog becomes apparent.

In developing a risk based model inspections program, DLG should consult with councils and draw on the existing expertise of councils that have been proactive in this area and have been conducting inspections, for the benefit of all councils now having to undertake inspections. This is consistent with the NSW Government’s Quality Regulatory Services initiative to promote a risk based approach to enforcement and compliance (See Box 6.1, Chapter 6).

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622 Submission from Anonymous to IPART, November 2012.
623 Ibid.
624 Corin Moffatt, NSW Department of Premier and Cabinet, Division of Local Government, Public Roundtable for IPART’s Review of Local Government Compliance and Enforcement (Public Roundtable), Transcript, 4 December 2012, p 56.
625 Given this is a new regulatory activity, it is possible there could be delays or backlogs in undertaking pool inspections to the detriment of pool owners and the community.
In developing and rolling out these measures, DLG should aim to ensure that councils have a clear understanding of their regulatory responsibilities and that these responsibilities are carried out as consistently and efficiently as possible. That is, these measures should be aimed at minimising regulatory costs to councils and the broader community, while achieving the safety objectives of the Act.

The Food Regulation Partnership between the Food Authority and councils is an example of guidance and assistance being provided by State Government to councils to support the delegation of regulatory responsibility. As noted in Chapter 2, the Food Authority has worked closely with councils under the Food Regulation Partnership to ensure council capacity to undertake the required inspections program (i.e., minimum of 1 inspection per year for all retail food premises). Where resources have been an issue, it has promoted resource sharing amongst councils (e.g., the Riverina group of councils) and the use of private contractors.626

We understand that DLG, Ageing, Disability and Home Care (ADHC) and NSW Fair Trading have recently conducted “Joint Swimming Pools and Boarding Houses Act Implementation” workshops for council staff.

We also recommend that DLG should review the Act in less than 5 years to determine whether the benefits of the legislative changes clearly outweigh the costs. This review should also assess councils’ regulatory performance and whether their inspection fees cover efficient costs.

Draft Recommendation

26 DLG should:

- develop a ‘model’ risk-based inspections program to assist councils in developing their own programs under the Swimming Pools Act 1992 (NSW)
- issue guidance material on the implementation of amendments to the Swimming Pools Act 1992 (NSW)
- provide a series of workshops for councils (by region) on how to implement and comply with their new responsibilities under the Swimming Pools Act 1992 (NSW)
- promote the use of shared services or ‘flying squads’ for swimming pool inspections, if a backlog becomes apparent under the new regulatory regime
- review the Swimming Pools Act 1992 (NSW) in less than 5 years to determine whether the benefits of the legislative changes clearly outweigh the costs.

626 NSW Food Authority’s submission to IPART, October 2012, p 9.
Box 9.4  CIE’s analysis of this recommendation

CIE found that this recommendation would:

- produce a net benefit of $4.7 million (ie, benefits to society are greater than costs)
- reduce red tape by a minimum of $7.2 million per year
- result in a small increase in costs to the State Government
- reduce costs for local government by $1.6 million per annum.

CIE notes a larger reduction in red tape could be achieved by delaying the implementation of the Swimming Pool Amendments until analysis can confirm that it is likely to have net benefits.

Model inspection program

Without detail on what development of an inspections program entails, CIE was not able to estimate the impact.

Guidance material & workshops

There may be benefit in the provision of guidance material and workshops, and associated mentoring by trained inspectors of trainees, for local councils who have not been conducting swimming pool inspections. This may particularly be the case for regional and rural councils. However, in these instances, training of staff to conduct inspection programs will be a priority and it is assumed that training gained through a certified organisation will also provide guidance material as part of the course.

CIE nevertheless estimates potential cost savings of $0.46 million per year as a result of guidance, workshops and associated mentoring programs.

Shared services

CIE estimates cost savings of $1.15 million per year by applying a shared services model to inspections of private dwellings and leases.

Reviewing the Act

This will reduce red tape by $7.2 million per year and have net benefits of over $3 million per year (annualised over the next 10 years).

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, p 84-93.

9.3 Boarding houses

Boarding houses represent only a small proportion (3%) of the NSW accommodation market. However, they have recently been subject to legislative amendments, which have caused concern amongst some councils.

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Under section 124 the *Local Government Act 1993* councils have reactionary orders powers for places of shared accommodation (including residential boarding houses). However, the new legislative changes under the *Boarding Houses Act 2012* (NSW) require councils to conduct mandatory inspections.

### 9.3.1 Recent legislative changes – the *Boarding Houses Act 2012* (NSW)

The object of the *Boarding House Act 2012* (the Act) is to ensure health, safety and welfare of boarding house residents through mandatory registration and inspection of boarding houses.628

Boarding House proprietors are required to register their registrable boarding house with NSW Fair Trading by 30 June 2013 or within 28 days, where a proprietor takes over an existing, or begins operating a new, registrable boarding house.629

Under the Act, councils are required to conduct an initial inspection of all registered boarding houses within 12 months of registration or re-registration (unless inspected within the previous 12 months) or on a change of proprietor.630 They are able to charge a fee for these initial inspections.631

Councils may also issue penalty notices for new offences relating to the registration of boarding houses.632

**Boarding House Implementation Committee**

The ADHC established a Boarding House Implementation Committee in December 2012 to guide the implementation of the Act. The Implementation Committee aims to:

- provide strategic leadership in the development and implementation of the Act and supporting regulations, policy and procedures
- provide advice, support and assistance to agencies responsible for the implementation of the Act, regulations, policy and procedures and promote a coordinated response (including support for local councils)
- ensure the implementation process is consistent with the objects of the Act
- monitor and identifies emerging risks and advise on their prevention, mitigation and management
- participate in ongoing decision making and problem solving relating to implementation

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628 *Boarding Houses Act 2012* (NSW), section 3.
630 *Boarding Houses Act 2012* (NSW), section 16(2).
631 *Boarding Houses Act 2012* (NSW), section 23.
632 *Boarding Houses Act 2012* (NSW), section 98(1).
ensure that boarding house operators, residents and service providers are informed about the implementation process and provided with appropriate information to assist them to meet their obligations

report to the responsible Minister on a regular basis.633

The Implementation Committee comprises senior representatives from the government agencies with a role under the Act (including the Division of Local Government) as well as representatives of non-government organisations.634

9.3.2 Stakeholder submissions

According to Randwick City Council and Homelessness NSW, councils do not have adequate resources to undertake the volume of inspections required under the Act.635 Boarding houses are largely located in urban areas. Therefore, the burden of inspections will fall mainly on inner city councils.636

9.3.3 Our recommendation

As a result of the new registration process, councils will be required to conduct inspections of all boarding houses within a 12-month period. This will mean considerable work in certain council jurisdictions and may detract from other areas where council are involved in enforcement and compliance.

Compounding these inspections is also the inspections required by the Swimming Pools Act 1992 (NSW) which will take place over a similar time period. The cumulative effect of a large volume of inspections could adversely impact on the capacity of some councils.

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633 ADHC, Boarding Houses Act 2012 Implementation Committee – Terms of Reference (provided by ADHC).
634 Ibid.
635 See submissions from Homelessness NSW, November 2012; and Randwick City Council, November 2012.
636 See submission from Homelessness NSW, November 2012.
To minimise costs to councils and the broader community, councils need to undertake their regulatory responsibilities as efficiently as possible. We therefore recommend ADHC, in consultation with the Division of Local Government (DLG) provide support to councils by:

- Developing a ‘model’ risk based inspections programs, including an inspections checklist\(^{637}\), which will support councils in developing their own inspections programs required to fulfil their obligations under the Act. This is consistent with the NSW Government’s Quality Regulatory Services initiative to promote a risk based approach to enforcement and compliance (See Box 6.1, Chapter 6).

- Providing guidance material and workshops to councils to assist them in understanding their regulatory responsibilities and how they can undertake these at least cost to themselves and the regulated community, while achieving the objectives of the legislation.

We understand that DLG, ADHC and NSW Fair Trading have recently conducted “Joint Swimming Pools and Boarding Houses Act Implementation” workshops for council staff. ADHC have also developed a range of guidance material for councils and boarding house proprietors.\(^{638}\)

**Draft Recommendation**

**27 Ageing, Disability and Home Care, Department of Family and Community Services**, in consultation with the Division of Local Government, should:

- develop a ‘model’ risk based inspections program, including an inspections checklist, to assist councils in developing their own programs under the Boarding Houses Act 2012 (NSW)
- issue guidance material on the implementation of the Boarding Houses Act 2012 (NSW)
- co-ordinate a series of workshops for council employees (by region) on how to implement and comply with responsibilities under the Boarding Houses Act 2012 (NSW).

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\(^{637}\) This could be based on the Local Government (General) Regulation 2005, Schedule 2, Part 1. It could be similar to the standardized inspections checklist used by the NSW Food Authority to provide greater consistency in inspections – see earlier discussion in this chapter, in particular section 9.1.3.

\(^{638}\) Personal communications, Ageing, Disability and Home Care, Department of Family and Community, Letter to IPART, 31 May 2013 and Department of Premier and Cabinet, Email to IPART, 10 October 2013.
Box 9.5  CIE’s analysis of this recommendation

CIE found that this recommendation would reduce both the red tape and net costs arising from the Act, while having little impact on the potential benefits of the Act.

However, due to a lack of data, CIE was unable to quantify this recommendation’s impact on red tape.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 93-98.

9.4 Waste Management Plan requirements in development applications

The building and construction industry is a major contributor to waste, much of which is still deposited in landfill.\(^{639}\) Therefore, in striving to achieve their waste management strategies, local councils must ensure that waste is minimised and disposed of appropriately in the development process. Councils currently impose highly inconsistent requirements for Waste Management Plans.

9.4.1 Waste Management Plans

A Waste Management Plan (WMP) sets out how waste is to be managed for a development during the demolition, construction and occupation phases of a site. The model ‘Waste Not’ Development Control Plan (DCP) was developed in 2008 by the (then) NSW Department of Environment and Climate Change (DECC) to assist councils in developing their own waste management policies. The document describes current best practice in considering demolition and construction waste, and the provision of facilities and services to provide for the ongoing separation, storage and removal of waste and recyclables at the development site. It also includes a 7-page standard WMP template, which councils may adapt to their needs.\(^{640}\)

The majority of NSW councils have developed construction waste management policies, with their own standards and provisions. Each council requires its own specific types of information to be submitted as part of WMP requirements.

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\(^{640}\) Model Waste Not DCP, Appendix A.
Based on a small sample of council WMPs, we found that:

- some councils do not specify a particular format for a WMP, just the required information
- others require boxes to be ticked in development application (DA) forms or incorporate waste management questions into environmental impact sections of the DA form
- others have 2 to 3 page WMP templates, and
- one has a 19 page WMP form.641

We did not find any examples of councils that had directly applied the model WMP template.

### 9.4.2 Stakeholder concerns

The Housing Industry Association (HIA) agrees there is a need to ensure that developers and builders understand and comply with their waste management obligations. It questions the requirement for all applicants in the development assessment process to submit a specific form of WMP (or related information) to their council as part of the DA process.642

HIA submits that the techniques used to manage waste tend to be generic and consistently used by all builders. Therefore, instead of each council requiring a different WMP, HIA would prefer a state-wide Waste Management Code or policy with prescribed compliance requirements. It also suggests that compliance with the Code could form part of a standard set of development consent conditions.643

### 9.4.3 Our recommendation

We support enhanced standardisation and consistency being introduced into WMP requirements.

To achieve this goal, HIA suggests that a state-wide Waste Management Code or policy be introduced, which sets out compliance requirements.644 However, we consider that a state-wide policy for waste management which applies to all scales of development may not be a practical option. Alternatively, a policy which is applied to smaller scale development may be more workable.

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641 We examined WMP requirements from the following councils: Blacktown City, Sutherland Shire, the Hills Shire, Parramatta City, Great Lakes, Wagga Wagga City and Warringah.
642 HIA submission to IPART, November 2012, p 8.
643 HIA and NSW Business Chamber submissions to IPART, October/November 2012.
644 HIA submission to IPART, November 2012, p 8.
Larger scale sites generate the most waste and landfill. It is important for councils to be able to assess how large scale development proposals incorporate the appropriate waste management facilities, in accordance with their own environment and waste management policies.

At the other end of the spectrum is exempt and complying development, as defined under the NSW Housing Code and NSW Commercial and Industrial Code (part of the SEPP (Exempt and Complying Development Codes) 2008). This covers a lot of smaller-scale residential development, which tends to have straightforward waste management needs and impacts.

Under the State’s model DCP, exempt development does not require a WMP. However, a person carrying out this type of development should still seek to minimise waste in the construction and operation of any such use or activity and deal with any waste generated in accordance with the exempt development criteria. For complying development, a plan is still required and must be approved by the council.645

Given the additional administrative costs incurred by builders and developers in having to submit WMPs for every complying development, we consider that this class of development should also be exempt from this administrative requirement. Instead, we recommend that:

- standard waste management requirements be included within the NSW Housing and NSW Commercial and Industrial Codes, and
- compliance with the code for the demolition and construction phases of a project be specified within standard development consent conditions.

This is consistent with reforms outlined in the NSW Government’s White Paper on a new planning system, including a proposal for standard construction conditions across NSW that are proportionate to the impact of a development.646

To ensure builders and developers are complying with the relevant Code and associated consent conditions, councils may wish to undertake their own monitoring and enforcement activity at a sample of sites, as some councils choose to do now.

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645 Model Waste Note DCP, p 3.
Draft Recommendation

28 DoPI, in consultation with the EPA and other relevant stakeholders, should:

– develop standard waste management requirements for inclusion in the NSW Housing and NSW Industrial and Commercial Codes, which establishes site waste management standards and requirements for exempt and complying development, and

– remove the need for applicants to submit separate Waste Management Plans to councils for these types of developments.

Box 9.6 CIE’s analysis of this recommendation

CIE estimates our recommendation will:

▼ produce a net benefit of $6.5 million per year (ie, benefits to society are greater than costs)

▼ reduce red tape by $6.4 million per year

▼ increase costs to the NSW Government

▼ decrease costs to councils in the order of $30,000 per year.

The number of complying development certificates per annum ranged between 9,000 and 15,000 over the 3 financial years between 2008/09 and 2010/11.

CIE estimates the cost for a private firm to prepare a waste management plan for a complying development ranges between $4,000 and $6,000. In general, the cost to prepare a plan does not vary substantially based on the value/size of the complying development. CIE found in the absence of a clear understanding about which councils require a waste management plan for complying development and for which types of developments, it is not possible to accurately quantify the impact of IPART’s recommendation.

However, CIE estimates the average red tape cost to businesses currently required to prepare a waste management plan for a complying development is $6.4 million per year. This is based on the mid-point cost of $5,000 per waste management plan and 10% of the average 12,900 complying development certificates per year requiring a waste management plan.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 77-78.
In this chapter we firstly consider a number of stakeholder concerns raised in relation to parking, including:

- the handling of parking fine appeals and correspondence between individuals, councils and the State Debt Recovery Office (SDRO)
- car parking agreements between councils and businesses.

As outlined below, our recommendations seek to reduce unnecessary regulatory burdens in this area by:

- streamlining the process of resolving parking fine reviews and appeals
- increasing the use of a model template in car park agreements between councils and businesses.

Ensuring there are adequate parking facilities and policing reasonable access to parking affects the entire community and requires substantial resourcing by councils. It can often be a highly contentious aspect of councils’ regulatory functions. The efficient, fair, reasonable and transparent development and implementation of parking regulation is therefore an important component in minimising red tape burdens on the community.

This chapter also discusses the impact of council regulation on road transport, particularly heavy vehicle access requests.

Councils are responsible for managing nearly 90% of NSW’s road network and approving heavy vehicle access to these roads. Most freight movement requires the use of a council regulated local road during picking up or dropping off of a load. Freight and logistics form a sizeable portion of the national economy. Limited access to local roads, known as the first and last mile issue, therefore has the potential to impose a significant cost on the transport industry and wider community.

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Stakeholder submissions to this review raised a number of concerns in this area:

- the capacity and capability of councils to conduct the necessary road engineering assessments for heavy vehicle access in a timely manner
- how to balance community amenity and safety concerns with greater access for heavy vehicles.

Recent national reforms should address most of these concerns. However, in our view there may still be some actions worth considering at a State level to alleviate unnecessary regulatory costs in this area and for NSW to realise the benefit of national reforms as soon as possible.

Our recommendation in this area will reduce unnecessary regulatory burdens by providing:

- increased technical support for councils conducting road access requests
- guidance to councils on how best to manage community concerns about safety and local amenity.

### 10.1 Handling parking fines

Parking regulation is a highly visible responsibility of councils and receives a significant level of media attention. A stakeholder submission criticised councils for focusing on this area to raise revenue. In 2011/12, councils issued over 1.2 million penalty notices for parking across the State, with fines totalling $163 million.

Reviews of fines are handled by both councils and the State Debt Recovery Office (SDRO). Given the involvement of 2 agencies, and the number of fines issued each year, there is potential for significant unnecessary costs if regulatory arrangements are inefficient.

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649 Banyard, R’s submission to IPART, 29 October 2012.


10 Parking and road transport

10.1.1 The review framework

Councils

Councils have a delegated function from Roads and Maritime Services (RMS) to police parking in their local area. Offences and fine levels are set by Transport for NSW, but councils receive revenue from fines they issue. All councils engage SDRO to recover and process fines. However, SDRO’s level of involvement can vary across councils. Councils will either handle requests for review of fines themselves, or authorise SDRO to handle the review or complaint.

Some councils, including Parramatta, North Sydney and Mosman, have established parking appeals panels. These panels act as an alternative review mechanism for parking fines. However, as the councils who have set up these panels also contract with SDRO, there appears to be a duplication of effort between the panels and SDRO.

State Debt Recovery Office (SDRO)

SDRO provides fine processing services to over 230 agencies, including councils. Councils contract with the SDRO for the processing and review of parking fines under either a basic or a premium service package. Under the basic service package, SDRO will collect fines for councils, but pass on all correspondence and requests for review to councils to handle as they see fit. Under the premium service package, SDRO will handle requests for review on behalf of councils.

When handling requests for review, SDRO uses a published set of review guidelines. These guidelines were developed following consultation with, amongst others, the NSW Ombudsman, Department of Attorney General and Justice, NSW Police, RMS and the Centre for Road Safety. These guidelines outline:

- how the review will be conducted
- possible outcomes of the review
- what circumstances will be taken into account when reviewing parking offences
- what detail or evidence needs to be submitted when requesting a review.

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652 This delegation is under “Delegation to Councils - Regulation of Traffic” and Part 4 of the Road Transport (Safety and Traffic Management) Regulation 1999 (NSW). This delegation is endorsed by section 50 of the Transport Administration Act 1988 (NSW).

653 Parramatta’s parking panel downgraded approximately 50% of parking fines to cautions in its first 6 months of operation. (Parramatta Council, Media Release: Six months on and Council’s Adjudication Panel earns a fine review, 2 June 2011.)

Under a premium service package, SDRO will still regularly consult with councils when seeking specific information (eg, whether a parking sign has fallen down or has been obstructed). SDRO also respects the right of the issuing council to re-evaluate or withdraw the penalty notice.655

10.1.2 Stakeholder submissions on parking fines

In its submission to our review, the NSW Ombudsman provided its 2012 report Managing Representations about Fines.656 While this review looked at all council-issued fines, rather than parking fines specifically, its findings are relevant. The Ombudsman found that, in many cases, there was:

- a lack of clear written policies or procedures for handling representations and correspondence about fines, including when they should be referred to SDRO
- a lack of knowledge by council staff about the different responsibilities of the council and SDRO under the different service level agreements
- inconsistent practices across councils about when and how matters were referred to the SDRO
- inconsistent outcomes, depending on the avenue of review chosen.657

This confusion can lead to a double handling of complaints/reviews and inconsistency in the application of discretion, both between SDRO and councils and also between individual councils. This means that a request for a review of the same offence with the same circumstances can have different outcomes, depending on which council conducts the review.

The NSW Ombudsman has argued that, by virtue of its independence and statewide focus, the SDRO is better placed than individual councils to consider applying discretion. For example, the SDRO is well placed to consider a request for a review from an individual who may have multiple fines spread across a number of separate councils.658

SDRO has noted that council parking panels have resulted in significant delays of more than 6 months in processing and deciding appeals and fine reviews. According to SDRO, this has resulted in significant dissatisfaction, wasted staff effort and overall lower revenue figures for councils.659

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655 Personal communication, State Debt Recovery Office, email to IPART, 1 March 2013.
656 NSW Ombudsman’s submission to IPART, November 2012.
657 Ibid, p 2.
658 Personal communication, telephone conversation between NSW Ombudsman and IPART, 1 February 2013.
659 Personal communication, State Debt Recovery Office, email to IPART, 17 May 2013.
In an effort to limit these outcomes, SDRO advised that it has been progressively updating the Service Level Agreements (SLA) it has with councils and agencies across the State. Under the amended SLAs, agencies will have the option of operating local review panels. However, this will involve the review of all matters and as such they will become basic level clients. This means that SDRO will have no role in reviewing matters on their behalf and will act only as a payment collection and processing agent.660

10.1.3 Our recommendation

The use of a single, consistent standard for the review of parking fines would remove the current confusion and uncertainty associated with multiple avenues of review. This can reduce costs to councils, speed up the review of fines for appellants and lead to an overall reduction in regulatory burden. A single reviewer of fine appeals means that councils avoid the costs of setting up a review mechanism where one already exists, and members of the community don’t face the possibility of inconsistent outcomes depending on who they ask for a review.661

Where a council has a premium service package with the SDRO, a council parking appeals panel represents an unnecessary and costly level of double handling. A single council does not have the economies of scale of the SDRO in dealing with fines.662 The SDRO has a comprehensive review policy, which clearly outlines the circumstances under which it will offer waivers for fines. This policy undergoes ongoing testing from a wide variety of agencies, consolidating experience from a far wider pool than any single council could manage.

Not all councils have a business case for using SDRO’s premium service package. These councils, which are predominantly smaller regional and rural councils, still issue about 87,000 fines a year (not all of these are parking fines).663 For these councils on the basic service package, we recommend they adopt SDRO’s guidelines for their handling of fine appeals or requests for review. Doing so will promote consistency and fairness across the State.

660 Ibid.
661 NSW Ombudsman’s submission to IPART, November 2012, p 8.
662 SDRO dealt with 1.44 million fines last year - Personal communication, State Debt Recovery Office, Email to IPART, 1 March 2013.
663 Ibid.
Draft Recommendation

29 Councils should either:

- solely use the State Debt Recover Office (SDRO) to handle parking fine requests for review or appeals to remove current confusion, duplication and reduce costs, or

- adopt the SDRO’s guide for handling representations where a council is using SDRO’s basic service package and retains the role of handling parking fine requests for review or appeals, to ensure consistency and fairness across the state.

Box 10.1 CIE’s analysis of this recommendation

CIE found that this recommendation would:

- produce a net benefit of $0.4 million per year (ie, benefits to society are greater than costs)
- reduce local council costs by $0.4 million per year.

CIE estimated that Parramatta Council, which uses a parking panel, has approximately 5,127 fines disputed in 2011/12. Its parking panel, which meets once a week, hears about 10% or 520 of these matters each year. CIE estimated it costs the council approximately $250,000 a year to run, primarily in staff costs.

CIE found 3 councils that use parking panels also pay for SDRO’s premium support package. Based on the number of fines each of these councils issued, and the costs of running a parking panel, CIE estimated that this recommendation would result in savings of $415,000 to these councils. There will also be a net benefit as a result of stopping the duplication of effort between councils and the SDRO.


10.2 Model agreement for privately owned free car parks

Councils often enter into agreement with businesses to provide enforcement services for privately owned free car parks – eg, council enforcing parking restrictions for a local shopping mall. Some stakeholders are concerned that the absence of consistent policy in this area is resulting in unnecessary regulatory costs.
10.2.1 The current regulatory framework

Division of Local Government (DLG) has published a guideline for councils to use when businesses wish to use their services to regulate privately owned free car parks. This outlines the criteria councils should use when assessing applications, lists matters which councils should include in any agreement, and contains a basic pro-forma or model agreement for use by councils. This document, however, has not been updated since 1998.664

10.2.2 Stakeholder submissions

Discussions with stakeholders indicate that many councils either do not have a parking policy in place, or have modified DLG’s standard pro-forma significantly. This can often result in extensive negotiations, and costly delays for businesses that work across the State, which have to carefully check multiple agreements from different councils covering essentially the same issues.

10.2.3 Our recommendation

We recommend that DLG review and, where necessary, update its *Free Parking Area Agreements Guidelines* (including model agreement), and that councils then establish free parking area agreement policies consistent with these guidelines.

Where appropriate, DLG’s guidelines should allow for local preferences and conditions – for example, how often the car park will be monitored by council staff. However, the guidelines should also reflect where there is a case for consistency or standardisation across councils. For example, specific wording on car parking signs which meet Australian standards and the identification of staff cars which are exempt from time limits. Greater consistency in council’s free parking area policies will reduce costs to business, particularly those operating across councils, by:

- reducing the time businesses have to spend negotiating aspects of agreements with separate councils
- minimising the number of changes a company needs to make to individual business arrangements in light of specific council agreements
- improve clarity for both councils and businesses by standardising the identification of free car park areas covered by the agreement
- standardising the treatment of staff parking spaces.

In reviewing its Guidelines and model agreement, DLG should consider instituting a periodic review process to allow for the ongoing incorporation of leading practices in this area.

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Draft Recommendation

30 DLG should review and, where necessary update, its free parking area agreement guidelines (including model agreements). Councils should then have a free parking area agreement in place consistent with these guidelines.

Box 10.2 CIE’s analysis of this recommendation

CIE found that this recommendation is likely to have a small reduction in the red tape for businesses and an overall net benefit, through greater clarity of agreements. However, it is not possible to fully quantify these benefits due to a lack of data on disputes. These benefits are contingent on councils using the guidelines put forward by DLG. There would also be a small increase in cost to the NSW Government and councils.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, p 99.

10.3 Road access

10.3.1 The regulatory framework for road transport

Heavy vehicles

Vehicles can be loosely divided into 2 categories, General Access Vehicles (GAVs) and Restricted Access Vehicles (RAVs):

- GAVs include cars, buses, vans and trucks up to 19 metres in length and 42.5 tonnes in mass.
- RAVs are any vehicles outside these dimensions and are often referred to as ‘higher productivity vehicles’ (HPVs). They include vehicles such as B-Doubles and Road Trains. RAVs face limitations on how they are able to access the road network.

The NSW road network

The network in NSW is divided into 3 broad categories explained in the Table below.
### Table 10.1 NSW Road Hierarchy

<table>
<thead>
<tr>
<th>ROAD NETWORK</th>
<th>RESPONSIBILITY</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>State roads (including national road components)</td>
<td>NSW Government</td>
<td>The State road network comprises 18,028 kilometres of roads, including 4,323 kilometres of national roads partly funded by the Australian Government. The State road network also includes 147 kilometres of privately funded toll roads.</td>
</tr>
<tr>
<td></td>
<td>Australian Government</td>
<td></td>
</tr>
<tr>
<td>Regional roads</td>
<td>NSW Government</td>
<td>Local Government has management and funding responsibility for 18,231 kilometres of regional roads. State funding grants are also available. The NSW Government also manages 2,970 kilometres of regional and local roads in the unincorporated area of NSW.</td>
</tr>
<tr>
<td></td>
<td>Local Government</td>
<td></td>
</tr>
<tr>
<td>Local roads</td>
<td>Local Government</td>
<td>Councils are the road authorities for 145,619 kilometres of local roads. Financial Assistance Grants and Roads to Recovery Program funding is also made directly available to councils by the Australian Government.</td>
</tr>
</tbody>
</table>


#### Councils

Under section 7 of the *Roads Act 1993* (NSW) (Roads Act), councils are the road authority for local and regional roads within their local area. As a result they are responsible for funding and conducting the ongoing maintenance of nearly 90% of NSW’s road network and approving access by heavy vehicles. In particular, this means that they are the approving authority for RAVs that wish to use local or regional roads. As the approving authority, councils can place conditions on heavy vehicle access, such as hours of operation or weight restrictions. As noted above, most freight movement requires the use of a local road during picking up or dropping off of a load, also known as the first and last mile issue.

#### NSW Roads and Maritime Services (RMS)

RMS is the State Road Authority. Amongst other tasks, it develops indicative maps of RAV access routes, which includes pertinent information such as travel restrictions.

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RMS also coordinates RAV access requests by businesses on behalf of councils. Transport or logistic companies lodge their requests with RMS, which then passes the information to councils for assessment and decision as the road authority (where the requested route covers local or regional roads managed by councils).

Under nationwide changes to heavy vehicle regulation, RMS will hand over responsibility for all aspects of heavy vehicle regulation other than licensing and registration to the new National Heavy Vehicle Regulator (NHVR) from September 2013 (see below).

**National Heavy Vehicle Regulator (NHVR)**

On 21 January 2013, the new NHVR was established (following a 2009 COAG agreement). Currently the NHVR is responsible for administering the National Heavy Vehicle Accreditation Scheme (NHVAS) and the Performance Based Standards (PBS), which are alternative compliance and access schemes for RAVs. Following the adoption by each state of a Heavy Vehicle National Law modelled off Queensland’s *Heavy Vehicle National Law 2012*, the NHVR will take over coordination of road access requests from state road authorities, including RMS. NHVR was due to take over this function from July 2013. However, the commencement date has now been delayed twice, with a new date yet to be advised.

**10.3.2 Stakeholder concerns on road transport**

Stakeholder submissions in this area focused on:

- the inability of councils to conduct road engineering assessments leading to costly delays
- the perceived excessive bias of councils towards safety, noise and congestion concerns compared to the economic benefits of increased heavy vehicle access, when making road access decisions
- the inconsistencies in council decisions.

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669 See submission from Australian Trucking Association to IPART, October 2012; and Australian Logistics Council, October 2012.
The Australian Trucking Association (ATA) argued that the net effect of all councils and the RMS as road regulators in NSW is:

…the creation of inconsistent regulations across the different jurisdictions, which can result in compliance complexities, inefficiencies and unnecessary cost burdens for stakeholders.670

The Australian Logistics Council (ALC) stated that:

ALC Members continue to report that councils continue to make decisions such as:

• Imposing delivery curfews at arbitrary times…without any regard to the costs involved in the loss of efficiency and productivity, and
• Imposing dock safety restrictions on the grounds of ‘lack of pedestrian awareness’, which could be dealt with by, for example, painting ‘hi-vies’ lines in or at dock entrances to alert pedestrians that heavy vehicles enter and exit the dock.671

Central NSW Councils (CENTROC) stated that highly technical elements of road access assessments such as bridge assessments should be conducted at the state level, using a systematic review process, rather than the current piecemeal approach by individual councils.672

Road Engineering Capacity and Coordination of Access Decisions

Given the highly technical, yet infrequent nature of road access requests, ATA argued in its submission that many councils find it difficult to conduct road access assessments in a timely manner. This creates delays and costs for businesses, which are unable to use more efficient vehicles while they wait for access decisions to be made.673

Managing Community Amenity Concerns

According to stakeholder submissions, heavy vehicle access can often be refused (or confined) by councils due to concerns about potential detrimental impacts on local amenity (ie, noise and local traffic congestion).674 These concerns can often result in blanket restrictions on larger vehicles (which can actually result in more, rather than fewer, trucks on the road) and curfews on operating hours (which force trucks to travel during peak periods).675

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670 Australian Trucking Association submission to IPART, October 2012, p 3.
671 Australian Logistics Council submission to IPART, October 2012, p 2.
672 Central NSW Councils submission to IPART, November 2012, p 2.
673 The Australian Trucking Association submission indicates that this process can take over 6 months. See Australian Trucking Association submission to IPART, October 2012, p 6.
674 See Australian Trucking Association submission to IPART, October 2012, pp 4-6.
675 Ibid.
One study found that:

Amenity factors were most often identified as a major determinant of access, and one that is often used to refuse (an) application. Unlike structural measurements there is not a transparent approach used to make amenity based decisions.676

As the decision maker on local/regional road access, councils need to consider all potential costs and benefits of heavy vehicle access. Their decisions should be able to reflect the preferences of the local community. However, they should also be based on the best available information in terms of the true impacts of heavy vehicles on the condition of local roads, safety and amenity. Providing such information to councils can assist in ensuring their decisions are well-informed and timely.

While amenity issues are an important consideration when making access request decisions, they are difficult to assess systematically. Further, access decisions require careful consideration of potential trade-offs and costs and benefits. For example, greater access to loading docks may increase late night or early morning noise levels, possibly to the detriment of some local residents, but it may also improve productivity and assist in reducing traffic congestion during peak periods. Conversely, restricted delivery hours can reduce noise impacts on local residents, but result in increased costs being passed onto consumers.

Currently, there is little effective guidance available to councils about how to best consider these potential trade-offs and amenity issues. While the current guideline published by RMS details when consultation is required, it does not go into detail about how to conduct this consultation. It only states that “the specific groups approached and the style of consultation required will depend on the circumstances of each application”.677 How best to incorporate the concerns raised by the community in the final determination process are also not addressed in the guide. As a result, there is little consistency in how these issues are assessed across different councils. This lack of consistency has cost implications for businesses.

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10.3.3 State and National reforms

The introduction of a single national regulator should directly address most stakeholder concerns in this area. The NHVR is to work closely with local government to address stakeholder concerns about council capacity for making access decisions. Current planned initiatives include:

- administering a national streamlined rulebook governing road access, fatigue management, mass dimensions and loading
- providing support and guidelines for councils making road engineering assessments, including the development of an online technical road assessment tool
- assisting councils in gazetting road access notices
- where required, providing technical assistance to councils for specific assessments
- developing a guideline to assist councils in assessing amenity concerns (including noise, traffic congestion and emissions) surrounding heavy vehicle access to create a more consistent approach to addressing these issues
- building a broader access management system, to identify gaps in the road access network which prevent single continuous journeys by RAVs.

Both the ATA and the ALC submissions called for a review mechanism for local government access decisions to be implemented as a part of any reform package recommended by our review. However, the NHVR has already flagged this reform. Under the new National Heavy Vehicle Law councils will be required to publish reasons for refusal, consistent with the NHVR’s guidelines, and allow dissatisfied persons to request an internal review of certain reviewable access decisions. The NHVR plans to have these new guidelines come into force, pending the adoption of the National Heavy Vehicle Law by each State and the NHVR taking over coordination of road access requests.

Separately, the Independent Local Government Review Panel (ILGRP) report, in discussing local government revenue shortages raised the possibility of giving local councils a share of heavy vehicle charges revenue. Were this to eventuate, it could be a useful tool to encourage local councils to loosen restrictions on heavy vehicle access and offset concerns about greater access leading to higher road repair costs.

679 Section 156 Heavy Vehicle (Adoption of National Law) Bill 2013 (NSW).
680 Section 641 Heavy Vehicle (Adoption of National Law) Bill 2013 (NSW).
681 Personal communication, telephone conversation between National Heavy Vehicle Regulator and IPART, 1 March 2013.
10.3.4 Our Recommendation

Freight and logistics form a sizeable portion of the national economy and unnecessary regulatory burdens in this area impose significant costs. Therefore, there are considerable gains that can be achieved from improving regulation and use of heavy vehicles. CIE estimates the costs of limitations of heavy vehicle access arising from regulatory fragmentation and inconsistency in NSW are up to $366 million.683

The NHVR has been set up to address these regulatory fragmentation issues and improve productivity in this sector. Their proposed reforms are extensive and worthwhile. However, they will take time to fully implement. How well and how quickly these reforms are implemented has the potential to significantly impact the scope and timing of the benefits realised.

The significant size of the coordination task to be undertaken by the NHVR means that some delay and prioritisation of focus is likely. We note that the start date for many of the NHVR’s functions has already been delayed twice. The success of implementing the national reforms will also be reliant on adequate resourcing of the NHVR. This could result in some areas, such as local government assistance, receiving less or later attention than others. We believe there is a real risk that the take-up rate of reforms by NSW local councils will be slower than optimal.

According to CIE, while a slower implementation of the NHVR reforms will still eventuate in an optimal and efficient road access regime across the State, the additional delay will impose significant red tape costs during the earlier years, when compared to a faster implementation.684

CIE assessed that the difference in avoided red tape between a low or pessimistic rate of implementation of reforms and a medium or average rate of implementation of reforms is $300 million a year for NSW alone.685 This is a significant level of red tape burden on NSW. Any delay in the NHVR offering a fully developed package of support to local councils will therefore result in the imposition of a large burden on both businesses and the community. Conversely, based on CIE’s high level estimates, any effort by the NSW Government to aid the NHVR in its task of providing assistance to NSW councils could generate significant savings of $59 million per year and far earlier compared to the status quo. CIE estimated that setting up an interim unit to provide the support to local councils would capture roughly 20% (or $59.2 million) of the potential avoided $300 million in red tape reduction.686

683 The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, p 103.
684 Ibid, p 103.
685 Ibid, p 103.
686 Ibid, pp 103-104.
In light of the potentially significant red tape savings and net benefits that could accrue to NSW through providing support to local councils in heavy vehicle access decision-making, we recommend that the NSW Government funds an interim unit to provide this assistance to local government.

This unit could provide road inspectors to assist councils experiencing difficulties in making timely assessments. It could also offer a consultation service to councils, through either a helpdesk arrangement or other mechanism to give advice to councils on how best to assess amenity issues, using RMS’s existing community consultation processes as an interim measure, and the NHVR guidelines in future. It could also support the work of the NHVR in the development of high quality, useful guidelines in this area. This will ensure a level of consistency in amenity considerations state-wide, and support the efforts of the NHVR to standardise access decision-making nationwide.

There are possibly 2 ways to fund such an interim unit. The unit could be set up in NSW by RMS. There could also be some scope to have this recognised in the Service Level Agreement (SLA) with the NHVR. This would ensure that NSW councils are always getting timely advice and support on heavy vehicle access issues and that all potential benefits of the NHVR reform are realised.

Alternatively, NSW could specifically fund the NHVR to provide additional support to NSW local councils. It could do this through varying the SLA with the NHVR to include additional priority support for NSW local councils. This has the benefit of tapping into the national regulator’s economies of scale, as well as ensuring the work of the unit is consistent with other work of the NHVR. CIE notes in its analysis that the NHVR is likely to be more efficient at providing this support to local government.687

Any delay in the implementation of national reforms to increase heavy vehicle access to local roads, will result in NSW missing out on significant red tape savings. The flow-on effects of this to the NSW economy could be substantial. Our recommendation is aimed at speeding up the rate of reform implementation to ensure that NSW realises as much of the benefit of this reform as soon as possible.

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687 The CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations*, June 2013, pp 103-104.
Draft Recommendation

31 That the NSW Government:

- notes the potential red tape savings and net benefits that could accrue to NSW through the National Heavy Vehicle Regulator (NHVR) providing:
  
  o technical assistance to councils in certifying local roads for access by heavy vehicles, and
  
  o guidelines to councils for assessing applications for heavy vehicle access to local roads in relation to potential amenity and safety impacts; and

- in the event of delay in the NHVR providing these elements of the national reforms, funds an interim unit to provide this assistance to local government.
Box 10.3  CIE’s analysis of our recommendations

CIE found that this recommendation would:

- produce a net benefit of $54.9 million per year (i.e., the benefits to society are greater than the costs)
- reduce red tape by $59.2 million per year
- increase costs to councils of $2.9 million per year
- increase costs to NSW Government of $1.4 million per year.

CIE estimated that the total cost of limitations on heavy vehicle access and fragmented regulation in NSW is up to $366 million per year. This figure is based on an estimate made by the Productivity Commission of the national gains from reforming heavy vehicle fragmentation of $1.1 billion annually. This figure was then adjusted using the National Transport Commission’s estimate of the gains that have already been realised, and NSW’s share of the national population.

The NHVR will address regulatory fragmentation issues. However, CIE noted that the level of benefit can vary dramatically if the NHVR is delayed in providing adequate technical support to councils making access decisions. The difference in avoided red tape between a low or pessimistic rate of take-up scenario and a medium or average rate of take-up scenario is $300 million a year for NSW alone. This means that any effort by the NSW Government to aid the NHVR in its task of providing assistance to NSW councils could generate significant savings compared to the status quo.

CIE recognised that IPART’s recommendation will go some way to capturing any difference between the pessimistic and medium scenarios by speeding up the implementation of reform. They assessed that setting up an interim unit to provide the support to local councils would capture roughly 20% of this potential red tape reduction, or $59.2 million annually. This level of red tape savings is highly dependent on the level of technical assistance that would be provided to local councils by any interim unit and the extent to which this support assists councils in allowing an increased level of access for heavy vehicles.

CIE assess that providing these services on an interim basis would cost approximately $4.3 million a year, translating to a ratio of 1:14 cost to benefits. These costs would be $1.4 and $2.9 million annually to the NSW Government and councils respectively. Given the $59.2 million savings, CIE estimated the overall net benefit of this recommendation to be $54.9 million annually.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 102-104.
11 Companion animal management

In this chapter we examine councils’ regulatory role in the area of companion animals.

We consider stakeholder concerns relating to the cost, administration and enforcement of companion animals regulation.

We then recommend a number of measures that seek to address these concerns.

11.1 Stakeholder concerns

Stakeholders, in particular councils, have raised a number of concerns in relation to the regulation of companion animals. These include the following:

▼ The large costs incurred by councils in running local pounds. According to Dubbo Council, the volume of work associated with local pounds is unmanageable with available resources (in particular, the number of pets to return, rehome or euthanase).688

▼ Confusion over who is the responsible regulatory authority in relation to lost and abandoned pets outside of council opening hours. For instance, Newcastle City Council notes there is overlap in police and council functions with respect to companion animals.689

▼ According to the Division of Local Government (DLG), councils are under no statutory obligation to accept or take care of pets after hours.690 However, at least 1 council has informed us that animal welfare organisations and police routinely (but wrongly) inform community members that councils are the responsible authority.691

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688 Personal communication, telephone conversation between Dubbo City Council and IPART, 21 November 2012.
689 No detail is provided in their submission on what the overlap is - Newcastle City Council, submission to IPART, 15 November 2012.
690 Personal communication, Division of Local Government, email to IPART, 8 January 2013.
691 Personal communication, telephone conversation between Dubbo City Council and IPART, 21 November 2012.
High rates of nuisance complaints, particularly about barking dogs. There is no state-wide data on the rates of such nuisance complaints. However, anecdotal evidence suggests the volume of such complaints is high. For example, the Newcastle City Council website notes that barking dogs create the highest number of complaints between neighbours every year, with over 3,000 complaints generated per year in that local government area alone.\footnote{See Newcastle City Council website, available at http://www.newcastle.nsw.gov.au/services/pets_and_animals/complaints_about_dogs, accessed 29 January 2013.}

Difficulties for councils in enforcing fines and penalties against owners in breach of the Companion Animals Act 1998 (NSW) (CA Act), due to insufficient identifying information in the companion animals register.\footnote{Wollongong City Council submission to IPART, November 2012, p 3.}

Low registration rates, with approximately 50% of all pets in NSW unregistered.\footnote{Although this still represents a 500% to 700% increase in the registration rates prior to the introduction of the Companion Animals Act.} Only 62% of dogs and 44% of cats were fully registered as required in 2011.\footnote{Division of Local Government, Companion Animals Taskforce Discussion Paper, May 2012, p 17.} In turn, this:

- wastes council resources (in time spent trying to match lost, unregistered animals with their owners)
- results in higher animal euthanasia rates and a larger number of animals in pounds (eg, in 2010/11, only 41% of dogs entering pounds and animal welfare facilities were returned to their owners, and only 2% of cats)\footnote{Ibid, p 4.}
- leads to a loss of revenue for councils; as registration fee revenue is hypothecated to a companion animals fund, which is distributed amongst councils by DLG.

Several stakeholders also noted issues with the current 2-step registration process:

- It is purported to confuse owners about their responsibilities - many buy pets that are already microchipped, which they wrongly believe to be equivalent to registration.\footnote{Personal communications, telephone conversation between Australian Veterinary Association and IPART, 8 January 2013; and telephone conversation between Dubbo City Council and IPART, 21 November 2012.}

- Anecdotal evidence from industry groups suggests that many owners are aware registration is a separate step to microchipping, but do not fulfil their statutory obligations to do so because it is too difficult to go to their local council during working hours to complete the registration form.\footnote{Personal communication, telephone conversation between Australian Veterinary Association and IPART, 8 January 2013.} There are currently no online options for registration.
11.2 Other relevant reviews currently underway

DLG recently reviewed certain companion animal issues in NSW, via the Companion Animals Taskforce.

The Taskforce considered whether reform was needed to:

- achieve lower euthanasia rates
- improve breeding practices, and
- improve the effectiveness of socially responsible pet ownership campaigns.

It also considered the regulation of dangerous dogs.

The Taskforce released a discussion paper in May 2012 and a final report in March 2013. The NSW Government received over 5,300 submissions in relation to the final reports. In August 2013, the Government released its response to the review. It intends to adopt most of the Taskforce’s 38 recommendations in full or in part, and introduce legislation into the spring session of Parliament to implement these measures.

11.2.1 The current registration process

Currently, the microchipping and registration process is a 2-step process:

1. Microchipping must happen by 12 weeks of age of the puppy or kitten, and before the point of sale (ie, by the breeder) at a licenced authorised identifier (usually a vet, but can include those with relevant training such as an animal nurse or animal welfare organisation personnel).

2. The new owner must then take their pet to become registered at their local council. Registration currently must happen in person during council hours, as there are no online registration options.

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The legislation currently provides that authorised identifiers (such as vets) can register on behalf of their customers. However:
- this is only where they are authorised to do so by DLG
- DLG Guidance Notes do not allow for authorised identifiers to recoup a fee for doing so.\(^{702}\)

The old system of registration under the *Dogs Act 1966* required annual registration of dogs. Simplification of registration processes from an annual to a lifetime (that is, one-off) system in 2001 saw registration rates increase between 500% (dogs) and 700% (cats).\(^{703}\)

### 11.2.2 Effect of low registration

The current low registration rate imposes costs in a number of ways:
- It results in a loss of about 50% of registration fee revenue. As registration fees are hypothecated in part for councils to undertake their enforcement role, the loss of this funding exacerbates constrained council resources for compliance activity in this area.
- It is resource intensive for councils who need to follow-up owners who have not registered, although the pet has been microchipped.\(^{704}\) This diverts resources from other areas of council compliance and service delivery functions.
- It results in poor return outcomes for pets placed in pounds, further draining councils’ resources through increased administrative costs, as well as increased euthanasia costs for unreturned and un-rehomed pets.

Using impounding and euthanasia data for 2010/11, the Taskforce estimates that approximately 64% of all cats and 33% of all dogs in pounds and animal welfare facilities were euthanased. This amounted to over 30,300 cats and 21,600 dogs.\(^{705}\)

Some of the high euthanasia rate can be attributed to over-breeding (eg, whole litters of kittens needing to be put down). However, it would also appear that the 2-step registration process is a factor in not being able to return or rehome pets.\(^{706}\)

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\(^{705}\) Ibid, p 4.

\(^{706}\) Ibid, p 6.
11.3 Our recommendations

As outlined below, we have made recommendations to streamline the companion animal registration process, reduce the compliance burden on councils by running targeted pet ownership campaigns, allow for the easier enforcement of companion animal penalties, and maintain the real value of registration fees (which fund enforcement activities).

11.3.1 Optional 1-step registration process

Given the large number of animal registrations in NSW, there are significant cost savings that could be achieved by streamlining the registration process. From our concurrent licensing review, we know that companion animal registrations account for about 11% of all NSW issued licences, and about 56% of all council issued licenses.  

We recommend that DLG allow for an optional 1-step registration process. This aims to make it easier and less costly for some owners to register. It would benefit those (ultimate) owners who are in possession of the animal at the microchipping stage, by allowing them to also register at this stage.

There is a risk an obligatory 1-step process could have little impact on registration rates while lowering microchipping rates. We therefore consider an optional 1-step system is preferable.

Under this system, vets (and other people who microchip) could opt-in as registration agents for councils. This would occur by providing access to online registration facilities or forwarding registration fees onto councils. In acting as registration agents, vets should receive fees reflecting the efficient costs of their registration task.

We note that the Companion Animals Taskforce considered a move to 1-step registration in its draft report. However, it moved away from this position in its final report. Instead, the Taskforce advocates a return to annual registration of companion animals.

The Taskforce considers that although this is a contentious recommendation, it is essential to:

- significantly improve the accuracy of data on the Companion Animals Register
- provide a stronger incentive for owners to desex their cat or dog

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709 Division of Local Government, NSW Companion Animals Taskforce Report to the Minister for Primary Industry and Minister for Local Government, October 2012, pp 16-17.
regularly reinforce that owning a cat or dog is an ongoing commitment

- increase the capacity of councils and the Government to undertake cat and dog management activities

- bring NSW into line with all other Australian jurisdictions which require the registration of cats and dogs.\textsuperscript{710}

We do not agree with the Taskforce. A return to annual registration will discourage dog and cat owners from registering their pets and result in significantly reduced registration rates. This will, in turn, reduce the funds raised from registration fees. We consider that retaining life time registration with an optional 1-step registration process will have preferable outcomes. These include increasing companion animal registration rates and increasing the overall pool of funding available for companion animal management.

**Draft Recommendation**

32 DLG should allow for an optional 1-step registration process, whereby:

- the owner could microchip and register their pet at the same time

- the person completing the microchipping would act as a registration agent for councils either by providing access to online facilities (per recommendation below) or passing the registration onto councils (on an opt-in, fee-for-service basis).

**11.3.2 Online registration**

There is currently no system that allows self-serviced online registration or updating of details (such as changes of address or contact details). Stakeholders have noted this as one of the biggest challenges to ensuring they register their pets, and maintain their details as current and up-to-date.\textsuperscript{711}

We recommend the DLG enable online registration and change of details. This will assist in increasing registration rates. In turn, this will increase revenue available to councils and make it easier for councils to return lost animals (particularly reducing the burden on councils with pounds) to the benefit of the community.

We consider there is scope to allow for online registration, provided there is no ‘open access’ to the register, which would breach privacy requirements (ie, data on animal owners is kept private and not made available to the community).

\textsuperscript{710} Division of Local Government, *NSW Companion Animals Taskforce Report to the Minister for Primary Industry and Minister for Local Government*, October 2012, p 1.

\textsuperscript{711} Personal communication, telephone conversation between Australian Veterinary Association and IPART, 8 January 2013.
In implementing this recommendation, DLG could consider:

- a centralised, automated self-service portal (with password encryption) – where animal owners enter their details direct into the centralised register, or
- an online portal that allows animal owners to enter their details, for subsequent incorporation (by council officers) into the existing centralised companion animals register.

The first option would require amendment to the CA Act. Currently, the CA Act notes that a person must not make any entries in the Register unless an exception applies (generally for council enforcement officers and authorised identifiers, such as vets).\textsuperscript{712}

The first option would also involve higher upfront costs in a re-designed IT system, but ultimately lower administration costs to councils in processing registrations. However, both options would reduce costs to the community as a result of not having to visit council chambers to register their pet.

Our recommendation is consistent with the Companion Animals Taskforce’s recommendation 14 that is directed at improving data entry outcomes in the Register, including through better use of internet technologies and through a self-service portal for pet owners.\textsuperscript{713}

We note that any increase in registration as a result of the ability to register online will increase revenue to the Government and councils, and therefore defray government’s cost of establishing and running the online system.

This is also consistent with the NSW Government’s Quality Regulatory Services initiative to enable electronic transactions (as discussed in Chapter 6, Box 6.1)

**Draft Recommendation**

33 DLG should allow for online companion animals registration (including provision to change details of registration online).

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\textsuperscript{712} See sections 89(2)(g) and 89(4) of the Companion Animals Act 1998.

\textsuperscript{713} Division of Local Government, NSW Companion Animals Taskforce Report to the Minister for Primary Industry and Minister for Local Government, October 2012, pp 23-24.
Box 11.1 CIE’s analysis of our recommendation

CIE assessed the impact of our recommendation to allow for online registration. It found that this would:

- reduce red tape by about $0.7 million per year
- reduce costs to councils by $0.4 million per year
- increase costs to the NSW Government by $0.3 million per year (annualised over 10 years)
- result in a net benefit of $0.8 million per annum.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, p 108.

11.3.3 Preventative companion animal education campaigns

The Taskforce notes that rates of abandonment and euthanasia are showing an upwards trend in recent years. Rates in particular are rapidly increasing for cats (with abandonment rates up 25% in the years 2008/09 to 2010/11) and are also increasing for dogs (up 6% in the same period). The issue has arisen due to a combination of factors:

- lax breeding practices by some breeders
- the ability of cats to breed very high numbers of offspring in a litter
- the lower registration rates, particularly of cats, leading to less desexing to obtain the registration rebate for desexed animals, and
- the difficulty pounds have in rehoming cats, as dogs are the preferred adoption pets.

Impact on regulated community

Increased abandonment rates impose a strain on council resources, reduce community amenity and increase public health risks. Impacts of increased abandonment rates include:

- reduced council capacity to enforce compliance in other areas, particularly due to the requirement to fund services for pounds and euthanasia facilities on a permanent, high-volume basis
- reduced community amenity, due to increased numbers of stray (and noisy) animals, particularly cats.

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715 Ibid.
716 Ibid.
717 Personal communication, telephone conversation between Dubbo City Council and IPART, 21 November 2012.
Specific sections of the community or geographic areas within NSW can be a source of high companion animal compliance effort by councils. Education campaigns can be particularly useful when delivered to specific areas in an intensive, targeted campaign. In some instances, it may be more efficient and effective to invest in educating the community (or particular segments of the community) in order to prevent or minimise breaches of compliance, rather than merely responding to breaches (see Box below).

Box 11.2 The results of companion animal education campaigns

The one-off cost of education programmes has the potential to reduce long-term enforcement and compliance costs significantly; particularly when partnering with animal welfare organisations to utilise their educational and publicity experience.

Such campaigns have been found to be most effective when accompanied by the provision of microchipping and desexing infrastructure. The RSPCA estimates that preliminary desexing programmes in NSW save $2 for every $1 spent; with additional benefits resulting from a 36% reduction in dog impounding rates and 51% decrease in dog euthanasia rates.


DLG has recently updated its website to provide information on socially responsible pet ownership and how the community can deal with nuisance animals in their local areas. We consider regular updating of easy-to-access, plain English forms and guidance part of best practice education campaigns.

Our recommendation

We recommend that DLG implement a targeted, responsible pet ownership education campaign, supported by the provision of desexing infrastructure in conjunction with local vets. We consider that this can ultimately:

- reduce regulatory administration and enforcement costs to councils, and
- enhance community amenity and welfare by reducing the number of animals creating nuisances and/or public health issues.

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This recommendation draws upon a number of the Taskforce’s recommendations relating to:

- establishment of a grant funding program for councils/partner organisations to deliver targeted microchipping and desexing programs\(^{719}\)
- development of community-wide and targeted socially responsible pet ownership education campaigns and materials.\(^{720}\)

The experience of other Australian states, and some international Western jurisdictions, suggests targeted campaigns (particularly in areas of strong concern) are critical to raising awareness of socially responsible pet ownership (thereby reducing impounding, abandonment and euthanasia rates)\(^{721}\).

**Draft Recommendation**

34 DLG should implement targeted, responsible pet ownership campaigns with councils in particular locations/communities of concern with the input of industry experts, providing accessible facilities for desexing where these campaigns are rolled out.

**Box 11.3 CIE’s analysis of IPART’s recommendations**

The NSW Government has historically supported responsible pet ownership programs including the Safe Pets Out There (SPOT) program, for which funding was $600,000 per year, and the NSW Responsible Pet Education Program, for which funding of $2.1 million was provided over 3 years.

CIE states that it’s not possible to estimate the returns from responsible pet ownership campaigns, as they will depend on how they are targeted and their level of funding. However, it notes that an evaluation of a joint initiative between the RSPCA and Bathurst Council (which has subsequently been expanded to the RSPCA’s Community Animal Welfare Scheme) suggested that benefits amounted to $2 for each dollar spent.

**Source:** The CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations*, June 2013, pp 106-107.

\(^{719}\) Division of Local Government, *NSW Companion Animals Taskforce Report to the Minister for Primary Industry and Minister for Local Government*, October 2012, pp 22-23 (Recommendation 13).

\(^{720}\) Ibid, pp 13-14 (Recommendation 6); pp 25-28 (Recommendations 15-17).

11.3.4 Enforcement of companion animal fines and penalties

Stakeholders have indicated that a high volume of complaints are received by councils in regards to companion animals.\textsuperscript{722} This includes a high number of barking dog complaints.\textsuperscript{723} Hence, it is important that councils can actually enforce (ie, collect) fines and penalties, to provide a deterrent against nuisance animals.

Poor collection rates in companion animal regulation

The collection rate for companion animal fines and penalties is currently low, reducing the effectiveness of compliance regimes. For example, Wollongong City Council noted that 54\% of their issued companion animal fines were not collected by the SDRO.\textsuperscript{724}

This information correlates with data we have received from SDRO. The table below shows that the trend in non-collections has increased over the last 6 years.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total PINs Issued</th>
<th>PINs not paid\textsuperscript{a}</th>
<th>Total PINs issued but not paid (as % of total issued)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>19,859</td>
<td>5,038</td>
<td>25.4%</td>
</tr>
<tr>
<td>2008</td>
<td>18,341</td>
<td>4,821</td>
<td>26.3%</td>
</tr>
<tr>
<td>2009</td>
<td>19,770</td>
<td>5,818</td>
<td>29.4%</td>
</tr>
<tr>
<td>2010</td>
<td>22,257</td>
<td>7,865</td>
<td>35.3%</td>
</tr>
<tr>
<td>2011</td>
<td>22,374</td>
<td>9,511</td>
<td>42.5%</td>
</tr>
<tr>
<td>2012</td>
<td>21,301</td>
<td>8,566</td>
<td>40.2%</td>
</tr>
</tbody>
</table>

\textsuperscript{a} Raw numbers.

Note: Percentages are rounded to the nearest 1 decimal point.

Source: Data from State Debt Recovery Office, December 2012.

Current data collection processes

Sutherland Shire Council noted that the high rates of non-collection of fines and penalties is because the information required to fine non-compliant people is not collected in the registration process.\textsuperscript{725}

The companion animals registration form does not currently capture an owner’s date of birth, nor sufficient other unique identifying information (which can be used to track people).

\textsuperscript{722} Personal communications, telephone conversation between Dubbo City Council and IPART, 21 November 2012; and Division of Local Government, email to IPART, 8 January 2013.

\textsuperscript{723} Ibid.

\textsuperscript{724} Wollongong City Council submission to IPART, November 2012.

\textsuperscript{725} Sutherland Shire Council submission to IPART, November 2012.
Relevant unique identifiers necessary for reform

The SDRO has confirmed that once a person’s date of birth is available, it is much easier to trace the person and enforce the fine. The SDRO\textsuperscript{726}, as well as Sutherland Shire Council\textsuperscript{727}, advised us that they have consistently asked that DLG amend the Registration and Change of Details form so a person’s date of birth is mandatorily captured information. This unique identifier is key to being able to enforce fines and penalties.

Although a person’s date of birth is the most important piece of information to capture, the SDRO also notes that the following unique identifiers are highly useful in the enforcement of fines:

- Medicare number

- Driver’s licence number (or the official Roads and Transport Authority-issued photo identification card, for those who do not have a driver’s licence).

Draft Recommendation

35 DLG should amend the companion animals registration form so an owner’s date of birth is mandatorily captured information, as well as other unique identifiers such as driver’s licence number or official photo ID number or Medicare number.

\textsuperscript{726} Personal communication, telephone conversation between State Debt Recovery Office and IPART, December 2012.

\textsuperscript{727} Sutherland Shire Council submission to IPART, November 2012.
Box 11.4 CIE’s analysis of the impacts of our recommendations

CIE notes that collecting debts can be costly when it is difficult to locate owners. For businesses, debt collectors can charge between 25% and 50% of the money they collect, depending on the difficulties of the debt being chased.

CIE estimates this recommendation will increase fee revenue by $900,000 per year, and reduce the costs of debt collection by $300,000 per year.

This assumes:

- enforcement of penalty notices increases from the current level of 60% to the 2007 level of 75%
- the median cost of fines for breaches of the Companion Animals Act of $275
- the cost of debt collection can be reduced by half for the current fines not paid and based on enforcement of these currently costing 25% of their value.

The increase in the collection of fees is a transfer from pet owners to councils. The reduced costs of debt collection are a net benefit. There may also be further benefits via improved behaviour of animal owners (if more penalties are now enforceable).

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, p 107.

11.3.5 Indexing companion animal fees to CPI

Registration fees are set by DLG, and have not changed since 2006.728

We recommend companion animal registration fees be indexed by CPI to maintain their value in real terms. It is important this occurs, as the revenue raised from these fees is used to fund local government’s companion animal regulatory activities.

We note that the Companion Animals Taskforce has made a similar recommendation.729

Draft Recommendation

36 DLG should amend the Companion Animals Act 1998 (NSW) to enable fees to be periodically indexed by CPI.

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728 Division of Local Government, Companion Animals Taskforce Report to the Minister for Primary Industry and Minister for Local Government, October 2012, p 21.

729 Ibid.
This chapter discusses a range of miscellaneous issues raised in submissions relating to the following areas:

- lease terms for footway restaurants
- section 68 Local Government Act 1993 approval processing times, and
- approvals for community events.

While the red tape savings of the recommendations made in this Chapter are small or uncertain, we still see some benefit in attempting to address smaller regulatory burden issues given the cumulative red tape impact and potential net benefits from doing so.

### 12.1 Crown lands and roads

The Catchment and Lands Division (CLD) of the Department of Trade and Investment is responsible for the sustainable and commercial management of Crown land. Crown reserves are land set aside on behalf of the community for a wide range of public purposes including environmental and heritage protection, recreation and sport, open space, community halls and special events. Crown reserves are generally managed by reserve trust boards, the CLD, local councils or State Government departments.

Councils manage Crown land on behalf of their local communities under the Crown Lands Act 1989 (Crown Lands Act). All land that is vested in a council must be classified either as community land or operational land (see Box below).

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730 Crown land comprises approximately half of all land in New South Wales. Some of this land is allocated to public uses such as national parks, state forests, schools, hospitals, sporting, camping and recreation areas, as well as lands which are managed and protected for their environmental importance.
Box 12.1 Community and operational land

This Part requires all land vested in a council (except a road or land to which the Crown Lands Act 1989 NSW applies) to be classified as either “community” or “operational”.

The classification will generally be achieved by a local environmental plan but may, in some circumstances, be achieved by resolution of the council (see sections 31, 32 and 33). The purpose of classification is to identify clearly that land which should be kept for use by the general public (community) and that land which need not (operational). The major consequence of classification is that it determines the ease or difficulty with which land may be alienated by sale, leasing or some other means. Community land must not be sold (except in the limited circumstances referred to in section 45 (4)).

Community land must not be leased or licensed for more than 21 years and may only be leased or licensed for more than 5 years if public notice of the proposed lease or licence is given and, in the event that an objection is made to the proposed lease or licence, the Minister’s consent is obtained.

No such restrictions apply to operational land. Classification or reclassification of land does not affect any estate or interest a council has in the land. Community land would ordinarily comprise land such as a public park.

Operational land would ordinarily comprise land held as a temporary asset or as an investment, land which facilitates the carrying out by a council of its functions or land which may not be open to the general public, such as a works depot or a council garage.

The use and management of community land is to be regulated by a plan of management. Until a plan of management is adopted, the nature and use of the land must not change.

Source: Local Government Act 1993 (NSW), Chapter 6 Part 2 Note.

In their submissions, some councils were concerned that the processes for dealing with a number of Crown Land related matters had a negative impact on businesses and the local community. They felt that removing such impediments would reduce red tape.
Box 12.2   Current review of legislation governing Crown Land

As part of the NSW Government’s commitment to cutting red tape and updating legislation to improve outcomes, a comprehensive review into the management of Crown land began in June 2012.

The current Crown lands legislative framework imposes significant constraints on the management of Crown land, which make it difficult for government to deliver the outcomes sought by the community.

This review intends to ensure that the best use is made of the State’s valuable Crown land assets by improving community outcomes, engaging with the private sector, and revitalising the regions. There are also opportunities to remove red tape by examining the overlap between Crown lands legislation and legislation administered by other agencies.

The review will address the overall management of Crown land including legislation, financial management, governance, and business structures.

The steering committee will submit a report to Cabinet by June 2013.


12.1.1 Stakeholder concerns

One submission raised several issues that it considers affects local businesses and the community.731 A number of other councils supported the submission’s view on some of the issues. These issues include:

▼ Crown Land (owner’s) consent732
▼ short lease terms for footway restaurants.733

The councils consider that the burdens being placed on businesses and the community include:

▼ inability to secure adequate financing for projects deemed beneficial to the community
▼ delay costs of obtaining approvals.734

731 See submission from Sutherland Shire Council to IPART, November 2012; endorsed by the Hills Shire Council.
732 See submissions from Sutherland Shire Council to IPART, November 2012; Randwick Council to IPART, November 2012; Wollongong City Council to IPART, November 2012.
733 See submissions to IPART from Sutherland Shire Council, November 2012; and Hurstville City Council, October 2012.
734 Personal communication, telephone conversation between Sutherland Shire Council and IPART, 4 March 2013.
12.1.2 Crown Land (owner’s) consent for development on public reserves

Background

Under section 98 of the Crown Lands Act 1989 (NSW), the council manages some public reserves on behalf of the Crown.

As the Crown is the owner of public reserves, the Crown must provide its consent for development on public reserves prior to or concurrently with the submission of a development application made by businesses or the community.735

Submissions noted that this can cause significant delay while the Catchment and Lands Division considers whether or not to grant owner’s consent. They suggest that council could be delegated consent powers for land for which they are responsible. Alternatively, this land should be transferred to the local council.

Our finding

We recognise that this process may cause confusion and delays for businesses and the community when owner’s consent is not provided in a timely manner. However, discussions with Catchment and Lands Division suggests that on average it takes 21 days to provide owner’s consent to councils. Further, 100% of requests for owner’s consent have been granted in the 2012/13 financial year.

The White Paper proposes to reduce the number of development applications requiring multiple agency concurrence, approval or referrals. Further, a ‘one stop shop’ will be established for any remaining concurrences and approvals as a single point of contact for councils and businesses to improve consistency across NSW.736 The White Paper does not expressly include the issue of owner’s consent in these proposed reforms.

12.1.3 Lease terms for footway restaurants

Background

Under section 125 of the Roads Act 1993 (NSW) (the Roads Act), approved footway restaurants (ie, cafes or restaurants with outdoor tables and chairs on a footpath) are required to lease the land from the council. The maximum lease term currently available to approved footway restaurants is 7 years.737
If restaurants invest in any structures (eg, bollards, marquees, platforms etc) then they must finance these with less certainty than they could under a longer term lease. This uncertainty may lead to new footway restaurants not proceeding to the detriment of the local community.

Footway restaurants are a vibrant way for the community to interact with the surrounds, and outdoor dining was not as well established as it is now when the Roads Act was drawn up in 1993. The biggest complication under footway leases is ensuring that any structures built allow access to utility service providers. This should be a strict condition of any longer term lease agreement.

Under section 125 of the Roads Act councils can grant a lease for a period “not exceeding” 7 years. Some councils require businesses to apply for a lease every 3 years (eg, Gosford City Council) or even as frequently as every 12 months (eg, Newcastle City Council). This practice is likely to impose additional (and unnecessary) costs on businesses.

We propose that the Roads Act be amended to allow councils to offer longer term (eg, 10-year) leases to footway restaurant businesses. Councils should also routinely issue longer term leases, unless there is a good reason not to. The benefit of this would be greater certainty for business and less cost to business and council of having to renew lease agreements every 7 years (or less). As an alternative, the NSW Government could also consider setting a minimum lease term for footway restaurants.

**Our recommendation**

Businesses will benefit from the ability to secure longer term leases of footways for restaurants. A longer term lease (say 10 years, up from the existing 7 years) will help them to secure finance and to invest adequately in the project. The council should ensure that the lease conditions include adequate access provisions for utility services. Footway restaurants are commonly small businesses, which add local vibrancy, innovation and ‘flavour’ that improve the local amenity of the area. Councils should move, where possible, towards issuing longer term leases to increase business security and minimise administrative costs.

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738 Personal communication, telephone conversation between Sutherland Shire Council and IPART, 4 March 2013.


Draft Recommendation

37 The NSW Government should amend section 125 of the Roads Act 1993 (NSW) to extend the lease terms for footway restaurants to 10 years, subject to lease provisions ensuring adequate access by utility providers.

Box 12.3 CIE’s analysis of this recommendation

CIE found that this recommendation would:

- produce a net benefit of $20,000 per year (i.e., benefits to society are greater than costs)
- reduce red tape by up to $10,000 per year
- reduce costs to councils by $10,000 per year.

If all councils were to issue longer term leases for footway restaurants this recommendation could have a greater impact producing larger net benefits and further reduce red tape.


12.2 Section 68 processing times

12.2.1 Timely processing of section 68 (LG Act) applications

An approval under section 68 of the Local Government Act 1993 (NSW) (the LG Act) has to be made within 40 days741 of submission, or 80 days if ‘concurrence’ is assumed742 or additional approval is also required from a State agency under section 90(5).

An application is deemed to be refused under section 105 of the LG Act if approval or concurrence is not granted within the 40 day/80 day time period. If a person wants to appeal such a refusal, they must do so to the Land and Environment Court.743 Deemed refusal gives the person the standing to lodge an appeal.

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741 Local Government Act 1993 (NSW), section 105(1)a.
742 Local Government Act 1993 (NSW), section 105(1)b.
743 Local Government Act 1993 (NSW), section 176.
Currently, councils are not required to report on the time taken to process section 68 approvals. They are required to report on the time taken to process development applications (DAs) to the Department of Planning and Infrastructure (DoPI) (as briefly discussed in Chapters 6 & 7). This has enabled councils’ performance to be benchmarked in this area, and compared to average processing times in other States. Some councils have used this data to improve their performance. Others have remained consistently poor performers. We believe DoPI, under a new ‘partnership model’, should be acting on this data to work with consistently poor performing councils to improve their performance (in the way the Food Authority currently does). Business stakeholders, such as the Housing Industry Association, would prefer to see consistently poor performing councils stripped of their planning functions.

Our recommendation

A large number of section 68 applications are submitted to councils. In Chapter 5 we recommend removing low risk activities from the list of activities currently requiring approval under section 68 of the LG Act. If this recommendation is adopted then the remaining section 68 approvals are the higher risk approvals that are more likely to have higher delay costs associated with them, such as the sewage management system approvals.

Analysis indicates there are currently 320,400 section 68 approvals in force in NSW and one of the largest numbers by type relate to install and operate a sewage management system (see Chapter 5, Table 5.1). There is therefore merit in monitoring the approval time for these high risk section 68 approvals to minimise the potential delay costs to business.

We recommend DLG should consider collecting data on the time taken for approvals to be approved or refused. The advantage of doing this is that these results could easily be compared across councils and be used as a performance indicator (see Chapter 6). This process would work in a similar way to the DA processing times monitoring reports published by DoPI.

Following reporting and performance assessment of section 68 approvals, the NSW Government could review the current deemed refusal timeframes for processing section 68 approvals under the LG Act and consider whether they remain appropriate.

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744 See Department of Planning and Infrastructure, 2010-11 Local Development Performance Monitoring, Report, 2011.
745 Housing Industry Association submission to IPART, November 2012.
746 IPART analysis based on responses to NSW local council survey, December 2012.
Draft Recommendation

38 DLG should collect data on the time taken for Section 68 approvals to be processed by councils. This data should be collated and reported as an indicator of performance in this area to reduce delays.

Box 12.4 CIE’s analysis of this recommendation

CIE found that this recommendation may:

- produce a net benefit (ie, benefits to society are greater than costs)
- reduce red tape
- increase costs to councils and the NSW government.

CIE were unable to provide clearer assessments of the costs and benefits of this recommendation as it is not known how many section 68 approvals are delayed.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 112-113.

12.3 Community events

Stakeholders have raised concerns with what they consider to be an overly onerous approvals process for holding local community events.

Wollongong City Council noted that multiple applications are needed across multiple pieces of legislation for simple community events. Approvals may be required under the Roads Act 1993 (NSW), Local Government Act 1993 (NSW), Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act), and the Crown Lands Act 1989 (NSW). Further approvals may include a licence or lease from council, a park booking, and registration of any food premises.748 Wollongong City Council argued that this process was too onerous for most community groups, leading to a lower number of community events being held.749 This can result in reduced community “social fabric”.

Similarly, an individual stakeholder was concerned with the time wasted in having to lodge a development application (DA) every year for a recurrent annual event that they have been running for 34 years. The DA process includes the need to submit a Transport Management Plan, which is time-consuming and repetitive to prepare. They suggest councils ask for DAs only every 5 years, where the event is to be held on substantially similar terms from year to year. Where changes are required to be made to the original DA consent conditions, only the changes should be required to be lodged with council.750

748 Wollongong City Council submission to IPART, November 2012.
749 Ibid.
750 Murrumbateman Field Days – Williams, K, submission to IPART, September 2012.
Marrickville Council echoed similar concerns, noting that the delay caused by multiple approvals was a key concern of community groups. Marrickville has instituted a range of measures to alleviate some of these issues, including issuing longer term DAs for recurrent community events. These measures are detailed in the Box below.

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751 Personal communication, telephone conversation between Marrickville Council and IPART, April 2013.
Marrickville Council’s processes for community events

Marrickville Council grants longer term DAs for ongoing community events. Generally, a maximum of 3 years is granted to allow for exponential growth. The approved timeframe is set as a consent condition under the EP&A Act.

Variations to consents are required to be lodged as section 96 EP&A Act modifications.

Graduated risk framework

The Council also applies a graduated risk-based framework to DAs for community events, based on the track record of the event and its proprietor, as well as the effect on the community and public assets. A DA is required for events on community land or a public road involving 2 of the following:

- changed conditions on a public road
- event runs over more than one day
- five or more stalls selling food, beverages, or other goods
- expected public participation exceeds 1,000 persons
- amplified entertainment or video/cinema projection is expected
- an entry fee is charged on public land
- any other event Council deems should be subject to a DA.

It takes a common sense, ‘hands off’ approach, based on the size and scale of the event. For example, a small scale, low impact local fun run or school bake event would not be required to submit a DA, just the relevant s68 approvals (eg, a park closure).

For new events with unknown proprietors, particularly those who do not have experience in such events and hence lack ‘institutional knowledge’ of event management, Council generally issues a 1-year ‘test run’ DA. The council may also require a financial bond for risk management purposes.

Community Liaison Officer

Marrickville Council has an Arts and Cultural Development Officer who has a significant educative role in providing advice and assisting applicants through the events approvals process. They educate applicants on the amenity and safety rationales behind regulation, provide basic templates on supporting material required, and provide further assistance as necessary (eg, helping with the preparation of an application). This frees the DA assessors in the Planning Unit from any conflict of interest, whilst proactively managing the expectations and frustrations (particularly delays) of applicants.

Source: Personal communication, telephone conversation between Marrickville Council and IPART, April 2013.
Our recommendation

Approvals relating to community events represent a challenge under the existing planning and local government Acts, as they ‘trigger’ the requirement for multiple approvals. Any reforms to streamline these approvals or tailor them more specifically to such events are likely to result in significant reductions in the time, cost and delays associated with such events. These events are often run by not-for-profit community groups, councils or other public bodies and charities.

Drawing on the example of Marrickville Council, we consider there could be merit in other councils:

▼ Considering employing a dedicated officer to assist with community events (where resources permit).

▼ Developing model or template ‘plans of management’ for adaptation or adoption by community groups making applications for these events. These templates would be for common types of local events (eg, an event offering food; involving a stage; open air; etc) and indicate the issues that need to be addressed in the plan and what would generally be acceptable to the council (eg, what amenity and safety standards or measures need to be in place).

▼ Granting DAs for recurrent community events for up to 3 to 5 years.

As discussed in earlier chapters of our report, we note that the White Paper is proposing reforms to the development assessment process, expansion of exempt and complying developments and reducing concurrences.752 These reforms may have an impact on facilitating easier and faster approvals for community events.

Draft Recommendation

39 Councils should issue longer-term DAs for periods of 3 to 5 years for recurrent local community events (subject to lodging minor variations as section 96 EP&A Act amendments).

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752 Department of Planning and Infrastructure, A New Planning System for NSW – White Paper, April 2013.
Box 12.6  CIE’s analysis of this recommendation

CIE found that this recommendation may:
\[\text{rado} \]
\[\text{rado} \]
\[\text{rado} \]
\[\text{rado} \]

CIE were unable to provide clearer assessments of the costs and benefits of this recommendation as it is not known how many community events are required to submit annual DAs.

Source: The CIE, Local Government Compliance and Enforcement - Quantifying the impacts of IPART’s recommendations, June 2013, pp 114-115.
Appendices
Other areas

IPART
Local government compliance and enforcement
A Terms of Reference

Red Tape Review – Local Government Compliance and Enforcement

I. Barry O'Farrell, Premier of New South Wales, approve the provision of services by the Independent Pricing and Regulatory Tribunal (IPART) under Section 9 of the Independent Pricing and Regulatory Tribunal Act 1992, by conducting a review of local government compliance and enforcement activity in accordance with the following terms of reference.

General

IPART is to undertake a review to identify and make recommendations for potential regulatory reforms that could provide savings to business and the community. These recommendations will help achieve the Government’s red tape reduction target of $750 million in reduced burden for business and the community by June 2015.

In investigating and reporting on the topic, IPART is to:

- a) identify the impacts of the current approach on businesses (especially small business) and the community;
- b) provide recommendations that would produce net benefits for NSW;
- c) provide estimates of the regulatory burden reduction (including red tape reductions) for NSW business (especially small business) and the community from the implementation of the recommended reforms;
- d) provide estimates of the budget implications for Government from implementation of the recommended reforms.

Evidence

IPART will collect evidence to establish the impacts of current (regulatory and non-regulatory) approaches that are under investigation, and to substantiate recommendations for reform.

Public consultation

IPART should consult with relevant stakeholders and NSW Government agencies by releasing an Issues Paper for each review. It may also hold public hearings.

Governance

Briefings on review progress should be provided to the Executive Director, Better Regulation Office at monthly intervals or as requested.

The issues paper will be submitted to the Executive Director, Better Regulation Office.

A draft review report will be submitted to the Director General, Department of Premier and Cabinet.

A final review report should be formally submitted to the Premier who will determine whether to release the report in whole or in part.
Local Government Compliance and Enforcement

IPART will examine local government compliance and enforcement activity (including regulatory powers delegated under NSW legislation) and provide recommendations that will reduce unnecessary regulatory burdens for business and the community.

IPART will consider:
1. ways to improve governance of local government compliance and enforcement, including
   a. roles and responsibilities relative to NSW Government
   b. interaction, consultation, and co-ordination with NSW government
2. the current capacity and capability of local government to undertake their regulatory responsibilities, whether and how these can be improved;
3. ways of improving the quality of regulatory administration by local government, including consistency of approach, economies of scale and recognition of registration in multiple local government areas;
4. the culture of regulatory services, in terms of understanding business and considering the economic impacts of their actions;
5. issues relevant to priority regulatory areas such as building and construction, parking and road transport, public health and safety, environmental regulation, planning and companion animal management;
6. best practice approaches in NSW and in other jurisdictions;
7. matters raised in the Productivity Commission’s report, “Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator” and the appropriateness and feasibility of adopting leading practices identified in that report in NSW;
8. ways to ensure regular assessment of regulatory performance;
9. requisite changes to local government regulatory services that would position them to maximise the opportunities from the review of the planning system.

In undertaking the review, IPART should:
- progressively report to the Better Regulation Office on each of the following:
  - identification of the nature and extent of key regulatory functions undertaken by local government
  - identification of the differences in approach across local government areas;
  - the areas of local government compliance and enforcement with the greatest regulatory impact on business and the community;
  - the opportunities for reducing regulatory burdens (highlighting red tape reductions) on business and the community;
- ensure their work complements the review of the Local Government Act 1993.

A draft report is due by 31 March 2013.

A final report is due by 30 June 2013.
Consideration of the Productivity Commission’s leading practices
Table B.1  Assessment of Productivity Commission’s leading practices

<table>
<thead>
<tr>
<th>Leading practice</th>
<th>Included in our recommendations (Yes/No)</th>
<th>If yes, in which Chapter</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Regulatory and governance frameworks</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>▶ Statutory best practice regulation principles</td>
<td>Yes</td>
<td>See Chapter 3 ‘Improving the regulatory framework at the State level’</td>
<td></td>
</tr>
<tr>
<td>Leading Practice 2.1</td>
<td></td>
<td></td>
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<tr>
<td>Well-established regulatory principles that have a statutory basis and apply to all levels of government — including local government — ensure more rigorous application by policy makers and delivery agencies, improve the transparency and accountability of the quality of regulations and send a strong signal about a government’s commitment to regulatory reform as a micro-economic policy instrument. In adapting this leading practice to the Australian federal system of government, statutory best practice regulatory principles would ideally be formulated at a national level and given effect to state and local government regulation through state legislation.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>▶ Local Better Regulation Office</td>
<td>No</td>
<td></td>
<td>The Partnership Model offers a more cost effective and efficient mechanism. See Chapter 2 ‘A new partnership between State Government and local government’.</td>
</tr>
<tr>
<td>Leading Practice 2.2</td>
<td></td>
<td></td>
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<tr>
<td>An agency, such as the United Kingdom’s Local Better Regulation Office, which had a focus on the regulatory activities of local government, including those undertaken on behalf of other tiers of government, can coordinate and prioritise regulatory objectives, responsibilities and activities between, and within, tiers of government while allowing local governments the discretion and autonomy to respond to the needs and aspirations of local communities.</td>
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</table>

<table>
<thead>
<tr>
<th>Leading practice</th>
<th>Included in our recommendations (Yes/No)</th>
<th>If yes, in which Chapter</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prioritising regulatory activities delegated to local government</td>
<td>No</td>
<td></td>
<td>A shortlist of priorities would not assist councils. The application of the Partnership Model arrangement is a better way to achieve the same outcome.</td>
</tr>
<tr>
<td>Leading practice</td>
<td>Included in our recommendations (Yes/No)</td>
<td>If yes, in which Chapter</td>
<td>Comment</td>
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<td>------------------</td>
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<td>--------------------------</td>
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</tr>
<tr>
<td>Leading Practice 3.4</td>
<td>No</td>
<td></td>
<td>Already occurs in NSW. However, see discussion of better practices in Chapter 6 'Improving regulatory outcomes'.</td>
</tr>
<tr>
<td>Leading Practice 3.5</td>
<td>Yes</td>
<td>See Chapter 3 'Improving the regulatory framework at the State level'</td>
<td>NSW does not have 'local laws' – however, we have recommended the Stenning register of local government regulatory functions be maintained to manage the stock of local government regulation.</td>
</tr>
<tr>
<td>Leading Practice 3.6</td>
<td>No</td>
<td></td>
<td>This Leading Practice is already in action in NSW.</td>
</tr>
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</table>

- Assessment for local laws and state and territory laws that delegate regulatory roles

Leading Practice 3.7
It is leading practice for local governments to conduct impact analysis for proposed local laws at a level commensurate with the likely size of impact of the proposals. While full regulation impact analysis or quantitative cost benefit analysis will often not be justified, some level of consultation with and opportunity for interested parties to consider and comment on proposals is almost always appropriate.
<table>
<thead>
<tr>
<th>Leading practice</th>
<th>Included in our recommendations (Yes/No)</th>
<th>If yes, in which Chapter</th>
<th>Comment</th>
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<tr>
<td>Leading Practice 3.8</td>
<td>Yes</td>
<td>See Chapter 3 ‘Improving the regulatory framework at the State level’</td>
<td></td>
</tr>
<tr>
<td>Developing tools to help local governments undertake simple impact assessments would improve regulatory outcomes.</td>
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</tr>
<tr>
<td>Leading Practice 3.2</td>
<td>No</td>
<td>Already occurs in NSW.</td>
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</tr>
<tr>
<td>State or territory led development and regulatory impact assessment of model laws can reduce the burden on local governments and improve the quality of regulation, thus reducing costs to business.</td>
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<tr>
<td><strong>Enhancing Competition</strong></td>
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<tr>
<td>Leading Practice 3.9</td>
<td>No</td>
<td>NSW does not have local laws.</td>
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<tr>
<td>Consistent with the Competition Principles Agreement, local laws are assessed for anti-competitive effects and, if found to be anti-competitive, are subjected to an agreed public interest test in Queensland, Victoria, South Australia, Tasmania and the Northern Territory. Similar assessments for quasi-regulation would further reduce potential adverse impacts of regulation on competition.</td>
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</table>

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### Leading Practice 3.10
Where local governments have regulatory roles that may conflict with their own interests and it is impractical to resolve these conflicts, there is the potential for compromised decision-making and the neglect of competitive neutrality requirements. Arrangements designed to meet the specific circumstances can address risks and deliver appropriate transparency, conflict resolution and probity.

- **Included in our recommendations (Yes/No):** Yes
- **Comment:** There were some concerns raised by stakeholders in relation to councils setting certifier fees. This has been looked at as part of our recommendation in relation to fee setting. Examples of systems already in place to address conflicts are the use of Independent Hearing Assessment Panels by councils in relation to determining their own DAs, and Ministry of Health inspecting council owned public swimming pools.
- **See Chapter 3 'Improving the regulatory framework at the State level'**

### Leading Practice 3.11
Local government reporting requirements and periodic reviews of regulation undertaken for state or territory governments can help to ensure that: local rules and regulations do not cause unintended consequences and do not overlap with other regulation; and, at a minimum, the benefits created outweigh the costs imposed, including costs to business. Examples include the Victorian Competition and Efficiency Commission’s review of local government regulation and Western Australia’s inclusion of local government in its state-wide red tape review.

- **Included in our recommendations (Yes/No):** No
- **Comment:** This is already occurring in NSW – an example of this is our review.

### Leading Practice 3.12
Until recently, most of the jurisdictions’ red tape reduction programs have been focused on state regulation. South Australia has recently piloted the extension of these programs to local government regulation and assessing the case for this wider coverage may find significant benefits.

- **Included in our recommendations (Yes/No):** No
- **Comment:** This is already occurring – an example of this is our review.
<table>
<thead>
<tr>
<th>Leading practice</th>
<th>Included in our recommendations (Yes/No)</th>
<th>If yes, in which Chapter</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leading practice 3.13 Keeping a watching brief on the aggregate number and</td>
<td>No</td>
<td></td>
<td>This is already occurring through our concurrent Licence Rationale and Design review and through the Stenning register of local</td>
</tr>
<tr>
<td>content of local laws and licensing/registration requirements would enable</td>
<td></td>
<td></td>
<td>government regulatory functions. These mechanisms will allow for periodic reassessment.</td>
</tr>
<tr>
<td>state and territory governments to regularly assess, say every ten years,</td>
<td></td>
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<tr>
<td>whether existing instruments are relevant and to identify a subset that</td>
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<tr>
<td>warrants further review.</td>
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<tr>
<td>Leading practice 3.14 Reviewing and appealing local government decisions and</td>
<td>Yes</td>
<td>See Chapter 5 'Improving</td>
<td>Augmenting appeal paths with internal review mechanisms, such as are already in place for local government decisions in most</td>
</tr>
<tr>
<td>procedures Having a graduated review and appeal system available for matters</td>
<td></td>
<td>the regulatory framework at</td>
<td>jurisdictions, is likely to reduce costs for business.</td>
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<tr>
<td>relating to local government decisions and procedures provides a way for</td>
<td></td>
<td>the local level'</td>
<td></td>
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<tr>
<td>affected parties to obtain ‘natural justice’ (procedural fairness) and a merits</td>
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<tr>
<td>review (a review of the outcome of the decision), while also reducing costs</td>
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<tr>
<td>and formalities. Augmenting appeal paths with internal review mechanisms, such</td>
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<tr>
<td>as are already in place for local government decisions in most jurisdictions,</td>
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<tr>
<td>is likely to reduce costs for business.</td>
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<tr>
<td>Leading Practice 3.15 Enabling Small Business Commissioners to:</td>
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<tr>
<td>• have a mediating role between local government and businesses, as they do</td>
<td>No</td>
<td></td>
<td>Already occurring in NSW. Discussed in Chapter 5 'Improving the regulatory framework at the local level'.</td>
</tr>
<tr>
<td>in New South Wales, South Australia and Western Australia</td>
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<tr>
<td>• investigate systemic issues raised through complaints would provide business</td>
<td></td>
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<tr>
<td>that is less formal, time-consuming and expensive than judicial appeals but</td>
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<tr>
<td>more independent than an internal review.</td>
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<tr>
<td>Leading practice</td>
<td>Included in our recommendations (Yes/No)</td>
<td>If yes, in which Chapter</td>
<td>Comment</td>
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<tr>
<td>Taking account of all costs and benefits in decision making</td>
<td>No</td>
<td></td>
<td>This is generally already occurring in NSW. However, see Chapter 4 ‘Enhancing regulatory collaboration amongst councils’.</td>
</tr>
<tr>
<td>Consider greater harmonisation</td>
<td>Yes</td>
<td>See Chapter 4 ‘Enhancing regulatory collaboration amongst councils’ and Chapter 2 ‘A new partnership for State Government and local government’</td>
<td></td>
</tr>
<tr>
<td>Leading practice</td>
<td>Included in our recommendations (Yes/No)</td>
<td>If yes, in which Chapter</td>
<td>Comment</td>
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</tr>
<tr>
<td><strong>Capacities of local governments</strong></td>
<td></td>
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<tr>
<td>▼ Ensuring local government regulatory capacity</td>
<td>Yes</td>
<td>See Chapter 3</td>
<td>'Improving the regulatory framework at the State level'</td>
</tr>
<tr>
<td>Leading Practice 4.1</td>
<td></td>
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<tr>
<td>State governments, by ensuring local governments have adequate finances, skills and guidance to undertake new regulatory roles, can reduce the potential for regulations to be administered inefficiently, inconsistently or haphazardly. This could be achieved by including an assessment of local government capacities as part of the regulatory impact analysis for any regulation that envisages a role for local government.</td>
<td></td>
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</tr>
<tr>
<td>▼ Assistance with setting fees</td>
<td>Yes</td>
<td>See Chapter 3</td>
<td>'Improving the regulatory framework at the State level'</td>
</tr>
<tr>
<td>Leading Practice 4.2</td>
<td></td>
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<tr>
<td>The practice of publishing fee-setting guidelines and expectations for local governments, as currently done in New Zealand, assists local governments to set efficient charges for their regulatory activities.</td>
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<tr>
<td>Leading practice</td>
<td>Included in our recommendations (Yes/No)</td>
<td>If yes, in which Chapter</td>
<td>Comment</td>
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</tr>
<tr>
<td>Leading Practice 4.3</td>
<td>Yes</td>
<td>See Chapter 3 'Improving the regulatory framework at the State level'</td>
<td></td>
</tr>
<tr>
<td>In general, if local governments set fees and levies to fully recover, but not exceed, the costs of providing regulatory services from the business being regulated, this will improve efficiency. There are possible exceptions: it may not be efficient to fully recover costs where public benefits are involved; and it may be efficient to charge more than the administrative costs where this would lead to businesses taking account of external costs imposed on the community. In addition, in order for it to be efficient to not just recover costs, it would need to be determined that fees charged to business are the best way to address these market failures.</td>
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</table>

Leading Practice 4.4
If state governments established systems and procedures to accurately measure the costs of providing regulatory services, and did not cap local government regulatory fees, this would assist local governments to accurately recover regulatory administrative costs. No We support the provision of guidance material on efficient cost setting for local government regulatory fees to State agencies and councils. See Chapter 3 'Improving the regulatory framework at the State level'.

**Assistance with writing laws**

Leading Practice 4.5
Guidance for local governments on local law and policy making is useful, with Victoria’s Guidelines for Local Laws Manual providing an example of this. The usefulness of such guidance is maximised when:

- it applies to both regulation development and review
- it is based on best-practice principles
- it includes not only written material but also training and ad hoc support.

Yes See Chapter 3 'Improving the regulatory framework at the State level'
<table>
<thead>
<tr>
<th>Leading practice</th>
<th>Included in our recommendations (Yes/No)</th>
<th>If yes, in which Chapter</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistance with administering and enforcing regulation</td>
<td>Yes</td>
<td>See Chapter 3 ‘Improving the regulatory framework at the State level’</td>
<td></td>
</tr>
<tr>
<td>Leading Practice 4.6</td>
<td></td>
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<tr>
<td>The use of a regulators’ compliance code, such as that currently in operation in the United Kingdom based on the Hampton principles, would provide guidance for local governments in the areas of regulatory administration and enforcement. Key elements of any guide would include regulatory administration and enforcement strategies based on risk management and responsive regulation.</td>
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<td></td>
<td>Yes</td>
<td>See Chapter 2 ‘A new partnership for State Government and local government’. Also see Chapter 9 ‘Public health, safety and the environment’ on Private Swimming Pools and Boarding Houses</td>
<td>As part of the Partnership Model.</td>
</tr>
<tr>
<td>Capacity development and back-up</td>
<td>Yes</td>
<td>See Chapter 2 ‘A new partnership for State Government and local government’. Also see Chapter 9 ‘Public health, safety and the environment’ on Private Swimming Pools and Boarding Houses</td>
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<tr>
<td>Leading practice 4.7</td>
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<tr>
<td>Training for local government officers from relevant state government departments develops their capacity to administer and enforce regulations and assists with delivering good regulatory outcomes. The training associated with changes to the Victorian Public Health and Wellbeing Act 2008 is an example of leading practice in this area.</td>
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<tr>
<td>Accreditation of local government officers ensures that the local government workforce is suitably qualified to undertake all of their regulatory functions, although, there is a need to ensure the accreditation criteria used reflect the roles the officers are expected to perform.</td>
<td>No</td>
<td></td>
<td>Training has been considered as part of the Partnership Model. See Chapter 2 ‘A new partnership for State Government and local government’.</td>
</tr>
<tr>
<td>Leading practice</td>
<td>Included in our recommendations (Yes/No)</td>
<td>If yes, in which Chapter</td>
<td>Comment</td>
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</tbody>
</table>
| Leading Practice 4.9  
The use of flying squads, such as the Rural Planning Flying Squad established in Victoria, moderates the effects of local government skills shortages. | Yes | See Chapter 2 ‘A new partnership between State Government and local government’ | |
| Leading Practice 4.11  
There are benefits from state governments reviewing individual local governments as is the case with the Promoting Better Practice Review program in New South Wales. The benefits of such reviews are maximised when:  
  - they extend beyond a purely financial focus to encompass other aspects of local government operation such as governance, workforce and the use of technology  
  - they aim to identify leading and/or noteworthy practices in local governments as well as identify areas for potential improvement  
  - state and territory governments work with local governments to address identified areas for improvement  
  - the reviews are made publically available upon completion to enable other local governments to benefit from the relevant findings. | No | | This is already occurring in NSW. Discussed as a better practice finding in Chapter 6. |

**Coordination and consolidation**

Leading Practice 4.10  
By making the optimal use of various forms of cooperation and coordination, local governments are able to achieve economies of scope and scale in resources and skills. Provisions under Western Australia’s Building Act 2011 that allow local governments to share building approval services provide an example of this.  

Yes | See Chapter 4 ‘Enhancing regulatory collaboration amongst councils’ | This has also been considered under the Independent Local Government Review Panel and/or the Local Government Acts Taskforce reviews. |
<table>
<thead>
<tr>
<th>Leading practice</th>
<th>Included in our recommendations (Yes/No)</th>
<th>If yes, in which Chapter</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leading Practice 5.1</td>
<td>Yes</td>
<td>See Chapter 4</td>
<td>‘Enhancing regulatory collaboration amongst councils’</td>
</tr>
<tr>
<td>Local government coordination or consolidation requires a genuine and clear</td>
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<td>This has also been considered under the Independent Local Government Review Panel review.</td>
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<tr>
<td>agreement among local governments to achieve regulatory efficiency objectives,</td>
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<td>particularly to:</td>
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<tr>
<td>– Reduce regulatory duplication or unwarranted inconsistency among local</td>
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<tr>
<td>governments</td>
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<tr>
<td>– Improve the competency and capacity of local governments to effectively</td>
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<tr>
<td>undertake their regulatory functions.</td>
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<tr>
<td>The agreement may be stand-alone, or mediated through a coordinating body</td>
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<tr>
<td>or under legislation.</td>
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<tr>
<td>Leading Practice 5.2</td>
<td>Yes</td>
<td>See Chapter 4</td>
<td>‘Enhancing regulatory collaboration amongst councils’</td>
</tr>
<tr>
<td>Regulatory efficiency can be improved by including express provisions in local</td>
<td></td>
<td></td>
<td>This has also been considered under the Independent Local Government Review Panel and the Local Government Acts Taskforce reviews.</td>
</tr>
<tr>
<td>government Acts:</td>
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<tr>
<td>– to permit joint local government activities to address regulatory efficiency</td>
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<td>objectives</td>
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<td>– to enable a joint local government entity to be established to undertake</td>
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<tr>
<td>regulatory functions in an efficient manner.</td>
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<tr>
<td>In addition, state and Northern Territory governments could provide administrative</td>
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<td>guidance to clarify the scope of the provisions, including that coordination</td>
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<td>and consolidation is relevant to more than just service delivery.</td>
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<tr>
<td>Leading Practice 5.3</td>
<td>Yes</td>
<td>See Chapter 4</td>
<td>‘Enhancing regulatory collaboration amongst councils’</td>
</tr>
<tr>
<td>Legislative provisions that impede local governments from coordinating and</td>
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<td></td>
<td>This has also been considered under the Independent Local Government Review Panel and the Local Government Acts Taskforce reviews.</td>
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<tr>
<td>consolidating in effective ways run contrary to leading practice.</td>
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<tr>
<td>Leading practice</td>
<td>Included in our recommendations (Yes/No)</td>
<td>If yes, in which Chapter Comment</td>
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</table>
| Leading Practice 5.4  
Suitable state government incentives and support to address regulatory efficiency improve the outcomes from local government coordination and consolidation. | Yes | See Chapter 4 ‘Enhancing regulatory collaboration amongst councils’ |
| Leading Practice 5.5  
Resource sharing among local governments can address deficiencies in the capacity of individual local governments to discharge their regulatory functions. In particular, sharing staff resources provides individual local governments with access to additional skills and resources which is likely to assist in reducing the delays on business in obtaining local government approvals and permits. | Yes | See Chapter 4 ‘Enhancing regulatory collaboration amongst councils’ |

**Regulation of building and construction**

| Leading practice 7.1  
A gateway approach (similar to that used in Queensland, Victoria and Western Australia) to scrutinise proposed building standards that are inconsistent with either the National Construction Code or relevant jurisdictional Development Codes guards against potentially costly requirements being imposed by local governments. | Yes | See Chapter 8 ‘Building and construction’ |
| Leading practice 7.2  
Use of enforceable conditions or standards in the regulation and management of construction site activity, with the conditions being flexible enough to deal with genuine differences in local circumstances, is the most consistent and effective means of regulating construction sites. | No | See Chapter 7 ‘Planning in relation to developing suites of standard conditions of consent’ Standard conditions of consent could cover construction site issues. |
<table>
<thead>
<tr>
<th>Leading practice</th>
<th>Included in our recommendations (Yes/No)</th>
<th>If yes, in which Chapter</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leading practice 7.3</td>
<td>No</td>
<td></td>
<td>The Building Professionals Board is currently planning regulation to reduce compulsory inspections for lower risk buildings, and increase them for higher risk construction. The effectiveness of this change on the building inspection process will need time to be assessed. Additionally the implementation of the building model in WA has met with delays and increased uncertainty which prohibits an accurate assessment of the effectiveness of the model at this time. NSW Fair Trading became the State’s plumbing regulator on 1 July 2012. NSW has adopted the Plumbing Code of Australia as the technical standard which incorporates risk based elements.</td>
</tr>
<tr>
<td>Parking regulation Leading practice 8.1</td>
<td>No</td>
<td></td>
<td>Transparency already exists for councils in NSW. NSW councils must detail the levying, collection and use of parking contributions in their contributions plans required under the EP&amp;A Act and Regulation.</td>
</tr>
</tbody>
</table>

The risk-based approach to building inspections being contemplated by Western Australia offers a more cost-effective means of regulating building compliance without compromising the integrity of the building process. Similarly, regulating compliance with relevant plumbing standards on the basis of risk would offer equivalent benefits.

Local government policy on when cash-in-lieu contributions will be accepted as a substitute for providing parking spaces would be more transparent and provide more certainty to business if the policy is clear and accessible and outlines:
- the circumstances in which cash-in-lieu contributions will be considered
- how contributions will be calculated
- how the money collected will be applied.
<table>
<thead>
<tr>
<th>Leading practice</th>
<th>Included in our recommendations (Yes/No)</th>
<th>If yes, in which Chapter</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>While no one local government appears to have a parking policy that addresses all of these issues, many local governments in Tasmania have clear and accessible cash-in-lieu policies, as do Redlands City Council (Queensland) and Darwin City Council.</td>
<td>Yes</td>
<td>See Chapter 10 'Parking and Road Transport'</td>
<td>Interim measure until this task is taken over by the National Heavy Vehicle Regulator</td>
</tr>
<tr>
<td><strong>Heavy vehicle regulation</strong></td>
<td></td>
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</tr>
<tr>
<td>Leading practice 8.2</td>
<td>Yes</td>
<td>See Chapter 10 'Parking and Road Transport'</td>
<td></td>
</tr>
<tr>
<td>In order to facilitate the development of maps indicating which roads can be accessed by compliant vehicles, state and the Northern Territory governments or the National Heavy Vehicle Regulator (when operational) could provide support, including technical and financial resources, to local governments in identifying and gazetting suitable roads according to the Performance Based Standards Classification.</td>
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</tr>
<tr>
<td>Leading practice 8.3</td>
<td>Yes</td>
<td>See Chapter 10 'Parking and Road Transport'</td>
<td></td>
</tr>
<tr>
<td>It is more efficient for local governments to target the outcomes of transport activities (such as safety and road damage) where this approach can meet community expectations, rather than placing restrictive conditions on vehicle dimensions. That said, there may be times where the appropriate regulatory approach is to impose restrictive regulatory conditions (such as defined hours of operation to restrict noise levels).</td>
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<tr>
<td><strong>Food safety regulation</strong></td>
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<tr>
<td>Leading Practice 9.1</td>
<td>Yes</td>
<td>See Chapter 9 'Public health, safety and the environment'.</td>
<td>The NSW Food Authority is reviewing this issue as part of its current internal review.</td>
</tr>
<tr>
<td>It is a leading practice to exclude businesses selling food with negligible risk from requirements to register or notify their business as a food business, as currently provided for in Victoria, Tasmania and Western Australia.</td>
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<tr>
<td>Leading Practice 9.2</td>
<td>No</td>
<td></td>
<td>NSW has already instituted this Leading Practice.</td>
</tr>
<tr>
<td>Burdens on businesses and local governments can be reduced if standardised forms are made available to local government regulators. This is currently done for food safety regulation by the NSW Food Authority, the South Australian Government and the Municipal Association of Victoria.</td>
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<tr>
<td>Leading practice</td>
<td>Included in our recommendations (Yes/No)</td>
<td>If yes, in which Chapter</td>
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</tr>
<tr>
<td>Leading Practice 9.3</td>
<td>Yes</td>
<td>See Chapter 9 ‘Public health, safety and the environment’</td>
<td>Burdens on business can be reduced if administrative arrangements only require food businesses to register with one local government. Victoria, Queensland, South Australia and Western Australia have introduced such arrangements (for example, in respect of mobile food vendors not having to register with multiple local governments).</td>
</tr>
<tr>
<td>Leading Practice 9.4</td>
<td>No</td>
<td>The current Food Model in NSW is leading practice according to many stakeholders and provides sufficient guidance to councils. The NSW Food Authority has food safety programs in place for its licenced premises – this is not a role for councils.</td>
<td>In instances when states require food businesses to have food safety programs, it would assist local governments, which usually administer and enforce the food safety programs, if they also provided either templates for different types of business (as in South Australia and Victoria) or online tools that allow businesses to generate food safety templates (as is available for Victorian businesses).</td>
</tr>
<tr>
<td>Leading Practice 9.5</td>
<td>No</td>
<td>NSW has already instituted this Leading Practice.</td>
<td>If local governments systemically collect and use information on risk and the compliance history of individual food businesses to inform their regulatory practices — such as inspection frequency and fee setting — it should both improve outcomes and reduce burdens on low-risk and compliant businesses. This is already done by most local governments.</td>
</tr>
</tbody>
</table>
B. Consideration of the Productivity Commission’s leading practices

<table>
<thead>
<tr>
<th>Leading practice</th>
<th>Included in our recommendations</th>
<th>If yes, in which Chapter</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leading Practice 9.6: Food businesses and consumers benefit from a transparent food regulation process. Examples include:</td>
<td>No</td>
<td></td>
<td>NSW has already instituted this Leading Practice.</td>
</tr>
<tr>
<td>– providing information explaining the basis for food safety policy —</td>
<td></td>
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<tr>
<td>particularly the reasons why some businesses are treated differently — to</td>
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<tr>
<td>assist local governments and other parties in understanding the food safety</td>
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<tr>
<td>system. The NSW Food Authority makes this information available to the public</td>
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<tr>
<td>– state governments providing information on various food safety regulatory</td>
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<tr>
<td>activities of local governments, including fees and charges imposed, the</td>
<td></td>
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<tr>
<td>frequency of inspection activities and the results of food safety enforcement</td>
<td></td>
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<tr>
<td>actions, as is the case in New South Wales, Queensland, South Australia and</td>
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<tr>
<td>Western Australia.</td>
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</tr>
<tr>
<td>Regulation of cooling towers and warm water systems</td>
<td></td>
<td></td>
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<tr>
<td>Leading Practice 10.1: When states collect data on the regulatory public health functions undertaken by local governments on their behalf, it is leading practice for that information to be published with information on each local government’s performance. Most states do this for food safety and 2 states — South Australia and Tasmania — are moving towards this for public health and safety functions.</td>
<td>Yes</td>
<td>See Chapter 2 ‘A new partnership model for State Government and local government’</td>
<td>This is captured through application of the Partnership Model</td>
</tr>
<tr>
<td>Leading Practice 10.2: To identify areas requiring more focused risk management and responsive enforcement approaches, states could review local government performance data. Appropriate actions to improve local government capacity can include articulating the expected performance of local governments (along with relative priorities), providing additional assistance to local governments, and education and training.</td>
<td>Yes</td>
<td>See Chapter 2 ‘A new partnership model for State Government and local government’</td>
<td>This is captured through application of the Partnership Model</td>
</tr>
<tr>
<td>Leading practice</td>
<td>Included in our recommendations (Yes/No)</td>
<td>If yes, in which Chapter</td>
<td>Comment</td>
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<tr>
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</tr>
<tr>
<td><strong>Regulation of swimming pools</strong></td>
<td></td>
<td></td>
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<tr>
<td>Leading Practice 10.3</td>
<td>No</td>
<td></td>
<td>NSW has already instituted this Leading Practice.</td>
</tr>
<tr>
<td>Some states do not provide explicit guidance on what role — if any — local government should have in regulating public swimming pools. This can lead to uncertainty for affected businesses. Western Australia has addressed this by clearly enshrining the responsibilities that local governments have in relation to regulating public swimming pools in their regulations.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Leading Practice 10.4</td>
<td>No</td>
<td></td>
<td>This is captured through application of the Partnership Model. See Chapter 2 'A new partnership model for State Government and local government'.</td>
</tr>
<tr>
<td>If local governments base the frequency of swimming pool inspections on both the identified risk categorisation and compliance history, this would reduce the unnecessary compliance burden on businesses subject to swimming pool regulations.</td>
<td></td>
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</tr>
<tr>
<td><strong>Regulation of brothels</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leading Practice 10.5</td>
<td>No</td>
<td></td>
<td>NSW Government is currently considering a licencing scheme for brothels.</td>
</tr>
<tr>
<td>Local governments are not well placed to be the leading agency for brothel regulation. Two jurisdictions have alternative lead agencies: in the ACT, the Office of Regulatory Services is responsible for registering and regulating legal brothels and the police are responsible for regulating unregistered brothels; recent changes have allowed Victoria Police to take the lead role in investigating brothels, allowing effective collaboration between regulatory agencies.</td>
<td></td>
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<tr>
<td><strong>Regulation of skin penetration premises</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Leading Practice 10.6</td>
<td>No</td>
<td></td>
<td>This is captured through application of the Partnership Model. See Chapter 2 'A new partnership model for State Government and local government'.</td>
</tr>
<tr>
<td>Some local governments use a risk-based approach to determine the frequency of inspections of skin penetration premises taking into account the inherent risks of the activities undertaken and the prior compliance history of the business. There are merits in adopting such a system if the risk approach is based on state or nationwide data and supported by a rigorous testing regime to ensure the robustness of the approach.</td>
<td></td>
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</tr>
<tr>
<td>Leading practice</td>
<td>Included in our recommendations (Yes/No)</td>
<td>If yes, in which Chapter</td>
<td>Comment</td>
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<tr>
<td>------------------</td>
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</tr>
<tr>
<td><strong>Regulation of premises selling alcohol</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Leading Practice 10.7</td>
<td>No</td>
<td></td>
<td>There were no concerns raised by stakeholders.</td>
</tr>
<tr>
<td>Businesses have a better basis for determining the viability of proposed licensed premises if they have clear information about likely operational requirements at the project inception stage. Some local governments have a clear and publicly accessible policy indicating the conditions they will place on development approvals for licensed premises and the criteria they have for supporting applications to the relevant state regulator for a liquor licence — as is done by Byron Shire Council.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Leading Practice 10.8</td>
<td>No</td>
<td></td>
<td>There were no concerns raised by stakeholders. This already appears to be occurring in NSW through the Office of Liquor, Gaming &amp; Racing website.</td>
</tr>
<tr>
<td>State licensing regulators providing explicit advice to prospective liquor licence applicants of the approvals that they need to get from local governments — as is done by the Office of the Liquor and Gambling Commissioner of South Australia — would assist applicants.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Environmental regulation</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leading Practice 11.1</td>
<td>No</td>
<td></td>
<td>This has been considered in the NSW Planning System review.</td>
</tr>
<tr>
<td>To minimise the overall costs of regulation and in order to be useful to both business and local government, any additional environmental plans required with development applications, need to be requested by local governments at the appropriate stage of the development rather than requiring all information to be provided at the initial development application stage.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leading Practice 11.2</td>
<td>No</td>
<td></td>
<td>This is currently being reviewed by a Coastal Ministerial Taskforce, stage 1 of their reforms were implemented in January 2013.</td>
</tr>
<tr>
<td>There is scope to reduce the regulatory burdens on business through the use of risk management by local governments in managing the regulation of development in coastal areas prone to sea level rises and tidal inundation.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Leading Practice 11.3
There is scope to reduce the regulatory burdens on business by clearly delineating responsibilities between local governments and the often large range of state agencies with environmental responsibilities. While the boundaries of responsibility usually appear to be clear to local governments, there is some evidence of duplication in information requirements placed on business, for example, in relation to land clearing applications.

**Included in our recommendations (Yes/No):** Yes

**Chapter:** See Chapter 2 ‘A new partnership model for State Government and local government’

### Planning, zoning and development assessment

Leading Practice 12.1
Decision-making processes can be made more reflective of the relevant risks, reduce costs to business and streamline administrative processes through:

- pre-lodgement meetings with advice provided in writing, clear and accessible planning scheme information and application guidelines
- the use of a standard approval format
- timely assessment of applications and completion of referrals
- facilities that enable electronic submission of applications
- the wider adoption of track-based assessment.

**Included in our recommendations (Yes/No):** No

**Comment:** These leading practices are likely to be implemented as part of the reforms under the NSW Planning System review.
Leading Practice 12.2
The adoption of the following measures would assist in strengthening the overall planning system, reduce confusion for potential developers and assist local governments by facilitating early resolution of land use and coordination issues:

- developing strategic plans and eliminating as many uncertainties as possible at this stage and make consistent decisions about transport, other infrastructure and land use
- developing and implementing standardised definitions and processes to drive consistency in planning and development assessment processes between local governments
- ensuring local planning schemes are regularly updated or amended to improve consistency with state-wide and regional planning schemes and strategies
- providing support to local governments that find it difficult to undertake strategic planning and/or align local plans with regional or state plans.

No

Comment: This is partly addressed by the Partnership Model. Other components of these reforms are being implemented through the current NSW Planning System review. See Chapter 2 ‘A new partnership model for State Government and local government’.

Leading Practice 12.3
Making information, on lodgement and decisions relating to planning applications, publicly available increases transparency for business and the community. Public confidence can be improved through periodic external auditing of assessment decisions and processes.

No

Comment: This was not raised by stakeholders. This has been considered in the NSW Planning System review.

Leading Practice 12.4
The implementation of broad land-use zones in local planning schemes that apply across the state or territory has the potential to increase competition, allow businesses to respond to opportunities more flexibly and reduce costs for businesses operating in more than one jurisdiction.

No

Comment: This has been considered in the NSW Planning System review.

Leading Practice 12.5
Engaging an independent consultant can increase transparency and probity where a development application relates to land owned by a local government, as practised by some local governments.

No

Comment: Discusses the Better practice findings. See Chapter 6 ‘Improving regulatory outcomes’.
<table>
<thead>
<tr>
<th>Leading practice</th>
<th>Included in our recommendations (Yes/No)</th>
<th>If yes, in which Chapter</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leading Practice 12.6</td>
<td>No</td>
<td></td>
<td>This is already done in NSW.</td>
</tr>
<tr>
<td>Businesses wishing to expand mobile telecommunications infrastructure may benefit from clear state guidelines relating to the assessment of development proposals in this area. New South Wales, Victoria and Western Australia provide specific guidelines to promote consistent decision making and assist local governments in assessing development applications for mobile telecommunications infrastructure.</td>
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<td></td>
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</tr>
<tr>
<td>Leading Practice 12.7</td>
<td>No</td>
<td></td>
<td>This should be achieved through the current NSW Planning System review reforms.</td>
</tr>
<tr>
<td>Tourism developments can be more easily facilitated by allowing them to be tested against the strategic intent of the local planning scheme, as is the case in Queensland.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Leading Practice 12.8</td>
<td>No</td>
<td></td>
<td>DoPI has already addressed this and in NSW this falls under State significant development.</td>
</tr>
<tr>
<td>Development of guidelines can clarify the responsibilities of each level of government, particularly local government involvement, in the development and regulation of mining and extractive industries.</td>
<td></td>
<td></td>
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<tr>
<td>Leading Practice 12.9</td>
<td>No</td>
<td></td>
<td>This was not raised directly in our review. These issues have been considered in the NSW Planning System review.</td>
</tr>
<tr>
<td>Following the guidelines proposed by the Local Government Planning Ministers Council to reduce the regulatory burden on home-based business, local governments can adopt:</td>
<td></td>
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<tr>
<td>– a self-assessment process (with prescriptive criteria) to determine whether development approval is required</td>
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<tr>
<td>– outcome-based criteria to ensure that home-based businesses do not adversely affect the amenity of the community where they operate.</td>
<td></td>
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</tr>
<tr>
<td>State and local government websites can make online facilities more useful for potential home-based business operators by providing detailed information, including advice on development approval exempt characteristics to enable operators to undertake a self-assessment of whether they are compliant.</td>
<td></td>
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</tbody>
</table>
C Other issues raised by stakeholders

The table below contains how we’ve considered other issues raised by stakeholders.
### Table C.1  Other issues raised by stakeholder not addressed in our report

<table>
<thead>
<tr>
<th>Issue</th>
<th>Stakeholder/s</th>
<th>Why no recommended action by IPART</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ongoing assessment of performance</strong></td>
<td><strong>The use of surveys of communities and business to assess individual council performance against a set of DLG developed indicators.</strong></td>
<td>This issue was assessed however the costs of conducting surveys of sufficient granularity to provide performance data on each council was considered to be in excess of the expected benefit.</td>
</tr>
<tr>
<td><strong>Planning</strong></td>
<td><strong>Sex worker planning controls and the different council approaches to the regulation of legalised sex service premises in their area.</strong></td>
<td>On behalf of the NSW Government, the former Better Regulation Office (BRO) reviewed the regulation of brothels in NSW. BRO released an issues paper for comment in late 2012 and a final report is due to be provided to the Government. The issues that stakeholders have raised in our review are already being considered by this review.</td>
</tr>
<tr>
<td></td>
<td><strong>Restrictions on radio and other related radio transmission structures which exceed federal standards.</strong></td>
<td>DoPI advises that it has considered representation from stakeholders regarding requests to lift restrictions on radio and other related radio transmission in line with federal standards, but that it does not consider that the standards are sufficient to ensure the protection of the local amenity, particularly in higher density areas.</td>
</tr>
<tr>
<td></td>
<td><strong>Council approaches to developments with mobile telecommunications infrastructure can involve unnecessary delays, excessive charges, inappropriate conditions of consent and unfair refusals of leases or licences when development consent is already granted (because the council is the owner/land manager of the public land).</strong></td>
<td>We have limited evidence of this occurring on a wide scale in NSW. We note that most development is already occurring and that councils have the right to negotiate with commercial providers about the terms of the land, and also respond to community concerns about impacts of this infrastructure.</td>
</tr>
<tr>
<td>Issue</td>
<td>Stakeholder/s</td>
<td>Why no recommended action by IPART</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
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</tr>
<tr>
<td>The onerous requirements of some councils (namely, Ryde City Council) regarding tree requirements including the need for an additional DA for tree removal in otherwise complying development cases and 2 arborists (council and private) to be onsite at times during work (presumably for tree preservation purposes).</td>
<td>Housing Industry Association</td>
<td>Ryde City Council has denied that 2 arborists are required. The council also reviewed a sample of their development assessments and advised that the requirements are not onerous. This issue has not been raised by other stakeholders.</td>
</tr>
<tr>
<td>State Government should share cost of head works (ie, structures at the head or diversion point of a waterway), at least for some time, to encourage regional development.</td>
<td>Bega Chamber of Commerce and Industry</td>
<td>This is a policy issue rather than a regulatory concern about local government compliance and enforcement.</td>
</tr>
<tr>
<td>Introduce deemed approval to reduce development assessment times</td>
<td>NSW Business Chamber</td>
<td>Delays will be addressed by planning reforms.</td>
</tr>
<tr>
<td>Joint Regional Planning Panels should be properly briefed and not permitted to make changes to proposals supported by the council and applicant, where design review has already been completed.</td>
<td>Urban Taskforce</td>
<td>Should be addressed by planning reforms and cultural change.</td>
</tr>
<tr>
<td>DoPI should provide far more clear checklists of what is required to meet a CDC application – particularly if the massive expansion of complying development flagged in the Green Paper becomes law. Whilst clause 51 of the EP&amp;A Regulations lists minimum submission requirements, there is insufficient detail and clarity in what is required</td>
<td>Liverpool City Council</td>
<td>This could be an example of the sort of work the dedicated team could do in implementing the Partnership Model.</td>
</tr>
<tr>
<td>The Minister for Local Government should be able to approve reclassification of lands from community land to operational land (in order to promote easier leasing of land). Remove current requirement to change whole LEP. Institute ability of Minister to refer the application to the DG of Planning if necessary</td>
<td>Sutherland Shire Council</td>
<td>Classification of community and operational lands has been considered by the Local Government Acts Taskforce Review.</td>
</tr>
<tr>
<td><strong>Building and Construction</strong></td>
<td>N/A</td>
<td>Costing analysis suggested this recommendation may not result in net overall benefits.</td>
</tr>
<tr>
<td>The adoption of a central online portal where certifiers would be required to lodge their appointment, inspection and complaints data that they currently keep in paper form.</td>
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</tbody>
</table>
### Environment

A number of agencies, including councils, are involved in regulating asbestos. The effective regulation of asbestos is of critical importance to the welfare of the community. Therefore, it is important that regulatory agencies have a clear understanding of their regulatory roles and responsibilities, and interact effectively.

Several council submissions to our review (eg, Orange, Wollongong) note there is regulatory overlap in relation to asbestos management. Warringah Council states there is no formal requirement for a State agency or council to notify each other of asbestos investigations. Notably, these submissions were all made after the establishment of the HACA and the charter, but prior to the release of DLG’s Model Asbestos Policy for NSW Councils (November 2012).

We recognise that current arrangements are in place to ensure communication and coordination between the agencies and regulators responsible for managing asbestos. We also note that stakeholder concerns were expressed before the release of DLG’s Model Asbestos Policy for NSW Councils. We therefore consider it is too soon to say whether the HACA and the Policy address concerns of regulatory overlap and coordination satisfactorily. We do, however, support ongoing measures to ensure clarity in relation to regulatory roles and responsibilities; and sufficient council regulatory capacity and capability (such as Local Government NSW’s asbestos program).

The Coastal Residents Incorporated (CRI) want an investigation into floodplain management practices and flood event management, as they feel there is no State direction in this area and councils are over estimating the risks and prescribing unnecessary building requirements. They consider the data being used to create flood event scenarios is out dated, and not well presented (as there is too much of it and it is too complex).

This area is currently subject to review by the Coastal Ministerial Taskforce. The Taskforce is currently reviewing the Coastal Protection Act 1979. As part of this review, OEH will be releasing 2 supporting documents to assist councils with coastal zone and floodplain management. Stakeholder concerns are likely to be addressed through the initiatives from this review.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Stakeholder/s</th>
<th>Why no recommended action by IPART</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environment</td>
<td>Several council submissions to our review (eg, Orange, Wollongong)</td>
<td>We recognise that current arrangements are in place to ensure communication and coordination between the agencies and regulators responsible for managing asbestos. We also note that stakeholder concerns were expressed before the release of DLG’s Model Asbestos Policy for NSW Councils. We therefore consider it is too soon to say whether the HACA and the Policy address concerns of regulatory overlap and coordination satisfactorily. We do, however, support ongoing measures to ensure clarity in relation to regulatory roles and responsibilities; and sufficient council regulatory capacity and capability (such as Local Government NSW’s asbestos program).</td>
</tr>
<tr>
<td>The Coastal Residents Incorporated (CRI)</td>
<td>This area is currently subject to review by the Coastal Ministerial Taskforce. The Taskforce is currently reviewing the Coastal Protection Act 1979. As part of this review, OEH will be releasing 2 supporting documents to assist councils with coastal zone and floodplain management. Stakeholder concerns are likely to be addressed through the initiatives from this review.</td>
<td></td>
</tr>
</tbody>
</table>
### Issue

To carry out native vegetation clearing, it is necessary, in some circumstances, for a landholder to obtain both:

- a development consent from the local council under the EP&A Act (which must also comply with the council’s Tree Preservation Order (TPO), where it exists), and
- a development consent or a Property Vegetation Plan (PVP) from CMAs (soon to be Local Land Services or LLSs) under the Native Vegetation Act (NV Act).

This potential for dual consent only applies in rural and regional areas, as NVA does not apply to urban areas.

### Stakeholder/s

This issue was raised by several council stakeholders eg, Great Lakes, Lismore, Shoalhaven. According to Shoalhaven City Council, the burdens imposed on developers of the dual consent process include:

1. the costs of making 2 applications (a development application to councils and a PVP to CMAs/LLSs); and
2. delay associated with the unnecessary lengthy process, particularly if the council and CMA/LLS make different decisions.

### Why no recommended action by IPART

OEH recently reviewed the Native Vegetation Regulation, with the new Regulation commencing on 23 September 2013. One of the aims of this review was to rationalise the dual consent process. The current NSW Planning System review may also affect this area (specifically, in terms of zoning in rural and regional areas).
D  Best Practice Regulatory Approaches to Onsite Sewage System Management

Onsite sewage management systems (onsite systems) are regulated by councils through approvals issued under section 68 of the Local Government Act 1993 (NSW) (the LG Act). In Chapter 5 of our Report we considered options to streamline section 68 approvals for low risk activities to reduce costs to business and the community. In this Appendix, we identify some examples of ‘best practice’ regulation by councils in relation to onsite systems. Installation and operation of onsite systems are high risk activities, as systems which are not properly installed, maintained and operated can pose significant public health and environmental risks.

Onsite systems are sewage treatment and disposal facilities installed at premises which are not connected to a reticulated sewerage system (ie, generally unsewered areas). These are typically household septic tanks and aerated wastewater treatment systems installed by the landowner.\footnote{In 2001, standard septic tanks represented about 80% of onsite systems in NSW: Division of Local Government, On-site Sewage Management Risk Assessment System Handbook, (Draft) April 2001 (OSRAS Handbook), p 2-9, available at \url{http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_osras.asp}, accessed on 20 November 2013.}

The largest number of section 68 approvals granted or renewed by councils each year is for onsite systems.\footnote{According to our licence survey for the period 1 July 2011-30 June 2012, councils granted 25,580 and renewed 24,645 approvals to operate an onsite system: IPART, Licensing Survey, Regulation Review – Licence Rationale and Design, unpublished.} According to our recent licence survey, there were a total of 93,275 approvals to operate an onsite system in force during 2011-2012.\footnote{Ibid.} However, the number of systems in NSW has previously been estimated to be over 284,000.\footnote{Kenway, S and Irvine, R, Sewage Pollution Risk Assessment for Environmental Health, Conference Proceedings Environmental Health Conference 2001, Bathurst, 11-12 September 2001, p 1, available at \url{http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Environmental%20Health%20Bathurst%202001.pdf}, accessed on 2 December 2013.}

Given the large number of onsite system approvals and the need for ongoing regulation to protect public health and the environment, the broader adoption of best practice regulatory approaches in this area has the potential to reduce costs and provide benefits to councils, businesses and the community.
D.1 Background

D.1.1 Why regulate onsite systems?

In 2000, the Division of Local Government (DLG) estimated that around 70% of systems failed to meet environmental and health protection standards. Failing onsite systems can release sewage into the environment, seeping into and contaminating waterways, which may spread disease or lead to environmental degradation. This is of particular concern when systems are within drinking water catchments or near areas with commercial aquaculture interests (such as oyster farming). The cumulative effects of numerous failing systems can be significant. For example, in 1997, over 4 hundred people were ill and one person died after eating oysters from Wallis Lake that were contaminated with the Hepatitis A virus. The exact source of the virus was never identified, but available evidence indicated the presence of faulty onsite systems which leaked raw sewage into the waterway which fed into Wallis Lake. Following the Wallis Lakes incident, the requirement to obtain an approval to operate was imposed.

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761 OSRAS Handbook, p 2-1.
762 Domestic Wastewater Inquiry Report, p 17.
D.1.2 Who regulates onsite systems?

Councils have the primary regulatory role for licensing onsite systems. Councils are required to manage the cumulative impacts of pollution from sewage in their local government area, which includes responsibility for approving onsite systems and monitoring their ongoing performance. Councils are required to keep an up-to-date register of all onsite systems in their area. Councils are also encouraged to develop and implement sewage management policies. The LG Act allows councils to charge a fee for approval applications or renewals, and for undertaking inspections to fulfil their ongoing monitoring role.

NSW Health is responsible for accrediting the design of onsite systems generally available for purchase by households (ie, premises normally occupied by no more than 10 persons).

NSW Health Certificates of Accreditation require periodic servicing for certain systems which pose higher risks than other systems due to using more complicated technology. For example, quarterly servicing by a service contractor is required for Aerated Wastewater Treatment Systems (AWTS). The servicing can be undertaken either by a representative of the system manufacturer / distributor, or a service contractor “acceptable” to the council. Councils impose this servicing requirement on the landowner as a condition of the section 68 approval.

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763 OSRAS Handbook, pp 2-12.
764 Local Government Act 1993 (NSW), section 113.
766 Local Government Act 1993 (NSW), sections 80, 107 and 608.
767 Local Government (General) Regulation 2005 (NSW), clauses 40-41.
771 For example, Port Macquarie-Hastings Council passes on the condition in the s68 approval to operate: Personal communication, Port Macquarie-Hastings Council, Email to IPART, 6 September 2013.
The Table below outlines the regulatory framework for the majority of onsite systems, being those used by households.

<table>
<thead>
<tr>
<th>Regulatory step</th>
<th>Responsible body</th>
<th>Low risk technology</th>
<th>High risk technology (eg, AWTS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accreditation (of system design and manufacture)³</td>
<td>NSW Health</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>s68 Approval to Install issued to landowner</td>
<td>Council</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>One-off Inspection (ensuring system installed in accordance with approval)⁴</td>
<td>Council</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>s68 Approval to Operate issued to landowner</td>
<td>Council</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Periodic servicing of system³</td>
<td>Service contractor</td>
<td>X</td>
<td>✓</td>
</tr>
<tr>
<td>Periodic inspections of system (to ensure system continuing to operate properly)⁴</td>
<td>Council</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

³ Local Government (General) Regulation 2005 (NSW), clauses 40-41.
⁴ Local Government (General) Regulation 2005 (NSW), clause 34. Port Macquarie-Hastings Council, Email to IPART, 6 September 2013.


DLG also has an advisory role in this area. It develops guidance material for councils and for onsite system operators. The key guidance document developed, in collaboration with other key State agencies with responsibilities in this area, is the 1998 *Environmental and Health Protection Guidelines: On-Site Sewage Management for Single Households* (the ‘Silver Book’ or ‘Silver Bullet’).\(^\text{772}\) These are the technical standards used in the regulation of onsite systems. DLG also provides other separate guidance material, such as:

- a draft handbook on an onsite sewage risk assessment system (OSRAS Handbook), using spatial analysis technology (Geographic Information Systems (GIS)) to assess and map the likelihood or hazard of onsite system failure in varying circumstances\(^\text{773}\)
- a handbook to assist councils to develop an information management system for onsite systems\(^\text{774}\)
- model conditions for approval to operate an onsite system, for use in section 68 approvals\(^\text{775}\)
- easy septic guide for householders\(^\text{776}\)
- general website information for councils and system operators.\(^\text{777}\)


D.1.3 Other relevant reviews

There are a number of reviews underway (or recently concluded) that have considered matters related to the regulation of onsite systems.

Urban Water Regulation Review

The Metropolitan Water Directorate is leading a joint review of the *Water Industry Competition Act 2006* (NSW) (WIC Act) and regulatory arrangements for water recycling under the LG Act.\(^{778}\)

Onsite systems on single or dual occupancy dwellings, normally occupied by no more than 10 persons (ie, small-scale household systems), are exempt from regulation under the WIC Act.\(^{779}\) Therefore, the Metropolitan Water Directorate’s review has not considered these onsite systems.\(^{780}\)

Our discussion of onsite systems in this Appendix is confined to the regulation by councils of only small-scale household systems.

Domestic Wastewater Inquiry

In 2011, the Committee on Environment and Regulation (a standing committee of the NSW Legislative Assembly) began an inquiry on the regulation of domestic wastewater issues in NSW, releasing a final report in November 2012.\(^{781}\) The NSW Government released an official response in 2013, deferring a decision on certain recommendations until the completion of the Urban Water Regulation Review, Independent Local Government Review Panel and Local Government Acts Taskforce reviews.\(^{782}\)

---


\(^{779}\) *Water Industry Competition (General) Regulation 2008* (NSW), Schedule 3, clause 9.


D.2 Best practice regulatory approaches

Stakeholders made a number of comments on this area of regulation, including:

- resourcing and capacity issues preventing councils from adequately regulating onsite systems

- the value of implementing a risk-based approach to the regulation of onsite systems.

Through our further research of this area, we identified best practice regulatory approaches that also address issues with:

- ineffective servicing by service contractors
- dual approvals for installing and operating onsite systems.

These issues and best practice approaches are discussed further below.

D.2.1 Resourcing and capacity constraints

Councils have the regulatory powers to set performance standards, related maintenance and reporting requirements through approvals to operate, and to recover approval, renewal and inspection fees towards the cost of risk assessment and performance supervision. However, stakeholders have indicated that due to resource constraints, some councils are unable to implement satisfactory inspection and compliance programs for onsite systems.

Maintaining an ongoing inspection program can be very costly for councils.

As noted by Port Macquarie-Hastings Council:

Inspection procedures are ...at the discretion of local councils ... The extent of monitoring is usually directly related to the resources of the particular council.

---

783 Liverpool Plains Shire Council’s submission to IPART, October 2012.
786 For example, Liverpool Plains Shire Council’s submission to IPART, October 2012, p 6.
787 Personal communication, Telephone conversation between Whitehead & Associates Environmental Consultants and IPART, 9 August 2013.
Revenue policy for onsite system approvals and inspection fees is a matter for each council to determine (eg, the exact fee and what the money is used for).\textsuperscript{789} Some councils find their current resources are insufficient to conduct the number of on-the-ground inspections needed.\textsuperscript{790} Some councils disburse funds raised back into general revenue for the overall council, rather than dedicating fees for onsite system regulation and inspections.\textsuperscript{791}

As the number of onsite systems in NSW is considerable, regulation of these systems can be a large impost on council’s human resources. Moreover, Environmental Health Officers (EHOs) are generally responsible for a wide range of health matters (not just onsite systems).\textsuperscript{792}

Pressure on staff resources could be exacerbated by the clustering of systems in certain geographical areas, which results in uneven resource implications across the State. This may affect council’s capacity to adequately regulate and inspect systems. The Figure below demonstrates clustering of systems across council types.


\textsuperscript{791} Personal communication, Telephone conversation between Wollondilly Shire Council and IPART, 3 September 2013.

\textsuperscript{792} Personal communication, Telephone conversation between Whitehead & Associates Environmental Consultants and IPART, 9 August 2013.
Regional councils issue the majority of approvals to operate (67%). Regional councils near waterways and with related industries (e.g., tourism, aquaculture, oyster farming) were found to have implemented ‘best practice’ regulatory programs, due to the expertise gained with having large numbers of high risk onsite systems.793

Urban fringe councils issue 26% of approvals to operate. These councils often experience resource pressures due to rapid growth, impacting on their regulatory capacity.794

Rural and remote councils – while only 3% of approvals to operate in force were issued by rural-remote councils, these councils can lack the resources and expertise to undertake adequate regulation.795 Such councils are responsible for large land masses, and can have high travel costs and limited budgets and staff.796

793 For example, Eurobodalla Shire Council, Port Macquarie Hastings Council and Wagga Wagga City Council – see section D.2.2 for further details.
794 Personal communications, Telephone conversation between Metropolitan Water Directorate and IPART, 29 July 2013; Telephone conversation between IPART Water and Regulation Review teams, 31 July 2013.
795 Liverpool Plains Shire Council’s submission to IPART, October 2012.
796 Wentworth Shire Council submission to IPART, October 2013.
Major metropolitan councils issue a small percentage of approvals (2%). As a result these councils can lack the technical and regulatory experience to manage these systems properly.797

D.2.2 Best Practice approach: Risk-based regulation

A number of councils have implemented risk-based regulation and revenue policies which enable better management of limited resources and more efficient regulation.

In one council, use of such a regulatory program reduced non-compliances (structural defects and/or unhealthy conditions) dramatically. In 2003, 75% of onsite systems within the Eurobodalla Shire Council’s boundaries needed work. In 2011, this had reduced to only 15% of systems needing work.798

The Box below outlines the 2 key elements for best practice regulation in this area.

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797 Personal communication, Telephone conversation between IPART Water and Regulation Review teams, 30 October 2013. For example, Randwick City Council has indicated it currently has only 5 systems approved to operate in its local government area: Personal communication, Randwick City Council, Email to IPART, 17 October 2013.

Box D.1  Best practice regulation – 2 key elements

Efficient sewage management revenue policies - setting fees efficiently to recover costs, using the provisions of the LG Act to automate payment, and dedicating revenue to onsite system regulation.

Risk-based, targeted approvals and inspections - the use of appropriate risk frameworks to guide decision-making in setting approval/renewal durations and inspection frequency. This would (at minimum) include the following risk factors in any basic risk framework:

- compliance history of applicant,
- volume of effluent system is capable of treating,
- location of system, including proximity to water, soil type and topography,
- concentration of systems,
- disposal area (land size, efficiency at processing), and
- risk/complexity of the technology of the system (ie, technology type).

---

The Table below highlights 3 examples of best practice approaches incorporating these key elements.

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### Table D.2  Best practice regimes of councils in onsite system regulation

<table>
<thead>
<tr>
<th>Risk-based approach to licencing?</th>
<th>Efficient revenue policy?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Approvals</strong></td>
<td><strong>Ongoing Inspections</strong></td>
</tr>
<tr>
<td>Port Macquarie-Hastings Council\textsuperscript{a}</td>
<td>Yes – initial section 68 approval issued for 5 years. After 5 years, system is inspected and risk rated. Approval must be renewed based on risk rating, every 1, 3 or 5 years (ie, high, medium or low risk). Licensees with positive compliance history may be rewarded with less frequent renewal periods.</td>
</tr>
<tr>
<td>Eurobodalla Shire Council\textsuperscript{b}</td>
<td>Yes – section 68 approvals issued for 1, 2 or 5 years based on a risk assessment. Licensees with positive compliance history are rewarded with less frequent renewal periods.</td>
</tr>
<tr>
<td>Wagga Wagga City Council\textsuperscript{c}</td>
<td>Yes – section 68 approvals issued for 3, 6 or 12 months, or 1, 1-3, 3-5, 5-10 or 10 years based on a risk assessment.</td>
</tr>
</tbody>
</table>

\textsuperscript{a}  Personal communications, Port Macquarie-Hastings Council, Emails to IPART, 6 August 2013, 18 November 2013, 9 December 2013 and 13 March 2014.


Implementation of a risk-based approach to onsite system regulation represents ‘best practice’ by reducing costs to landowners who are ‘good’ operators or operate low risk systems through reduced approval, renewal and inspection fees. Implementing a risk-based approach allows better targeting of limited resources and results in more effective regulation. For example, more inspections/more frequent servicing of high risk systems or fewer inspections/less frequent servicing of low risk systems.\textsuperscript{799} An alternate may be having reduced inspection requirements for systems with good compliance history. This has net benefits to the community through better protection of public health and the environment.

Attaching renewal and inspection fees to the annual Rates Notice (issued quarterly), rather than to a single lump sum invoice, is an approach that enables landowners to spread the costs of council onsite system inspections over the year.\textsuperscript{800} It also gives owners the opportunity to pay by instalments if necessary,\textsuperscript{801} as well as automatically renewing the approval.\textsuperscript{802} We consider this is ‘best practice’ because it reduces the red tape imposed on the landowner, as they do not have to fill out renewal paperwork (the approval is taken to be renewed on the same terms). It also reduces resource pressures on the council by automating the renewal process. Dedication of these fees to onsite system management also ensures such programs are efficiently funded.

\subsection*{D.2.3 Ineffective servicing by onsite system contractors}

Stakeholders have raised a number of issues with the servicing of onsite systems undertaken by some private contractors, including:

\begin{itemize}
  \item variable quality services\textsuperscript{803}, and
  \item a lack of standardised information provided by service contractors\textsuperscript{804}.
\end{itemize}

\footnotesize
\textsuperscript{799} The number of services (e.g., annual, quarterly, etc.) and council inspections required for different systems is generally known at the outset, so people can choose a system with that in mind.


\textsuperscript{801} Ibid.

\textsuperscript{802} Personal communication, Telephone conversation between Port Macquarie-Hastings Council and IPART, 8 January 2013.


Best practice approach to variable quality servicing

Councils have indicated there is variable quality in contractor services. Since 1998, the market was opened to allow private contractors to conduct these services (rather than having to be serviced by the system’s manufacturer). There is no licencing or accreditation scheme for service contractors. Stakeholders have complained that the quality of servicing undertaken by contractors varies greatly. This is a cause for concern for system operators as they remain liable for any failures to comply with the conditions of the approval.

Where contractors find issues or system faults, there can be limited incentives for documenting them in service reports, as the contractor is engaged and paid by the system operator (not the council). If the service report contains defects, service contractors could lose a revenue stream if operators prefer to look for “a more obliging service provider”. This can exacerbate the public health risk from potential system failure.

Some service contractors also undertake ‘tick and flick’ servicing, where the actual septic tank is not checked or the service contractor does not even access the property on which the system is situated.

Councils can determine the “acceptability” of service contractors in their area by setting minimum criteria. Any service contractors operating in their area can then apply to the council for inclusion on their list of acceptable service contractors provided they meet the criteria.

The Box below outlines an innovative current practice that addresses this issue using the current regulatory framework.

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806 Personal communications, Telephone conversation between Port Macquarie-Hastings Council and IPART, 8 September 2013; Telephone conversation between Whitehead & Associates Environmental Consultants and IPART, 9 August 2013.

807 BioSeptic submission to Domestic Wastewater Inquiry, December 2011, p 6; Personal communication, Port Macquarie-Hastings Council, Email to IPART, 31 October 2013.

808 Personal communications, Telephone conversation between Port Macquarie-Hastings Council and IPART, 8 September 2013; Telephone conversation between Whitehead & Associates Environmental Consultants and IPART, 9 August 2013.


810 We note the Domestic Wastewater Inquiry discusses the regulation of service contractors and makes recommendations for change to the existing regulatory framework in this area: Domestic Wastewater Inquiry Report, pp 42-45.
Box D.2 Using regional groupings to set common service standards

Some councils have grouped together regionally to swap knowledge of contractors to address issues with variable quality services (for example, the Septic Tank Action Group (STAG) in the Hunter). STAG have jointly determined the acceptable criteria, in order to have a consistent, high standard for service contractors on a regional basis. This enhances consistency across council boundaries and raises the quality of services undertaken. This initiative has been supported as best practice by DLG, the Domestic Wastewater Inquiry and by NSW Health.

This practice assists in the management of service contractors and encourages cross-fertilization of effective onsite system management practices amongst councils, without imposing the extensive regulatory requirements of a formal licensing regime. The Domestic Wastewater Inquiry noted that Regional Organisations of Councils (ROCs) provide another model for regional collaboration in this area.


Best practice approach to lack of standardised information reporting

Service contractors are to provide a copy of the service report to the system operator and the council (as well as retaining a copy for themselves). There is currently no standard service report for contractors to use. As a result, the information provided can be highly variable and inconsistent. Stakeholders have indicated that the interpretation of forms and data provided can be a time-consuming and expensive process. Where key information required to assess risk is missing, councils are also more limited in their ability to proactively manage public health challenges associated with onsite systems. This leads to additional resource pressures on councils, as it is estimated that some councils could deal with more than 16,000 reports per year.

811 NSW Health, Certificate of Accreditation, Aerated Wastewater Treatment System as per Personal communication, Port Macquarie-Hastings Council, Email to IPART, 5 November 2013.
812 Personal communication, Telephone conversation between Port Macquarie-Hastings Council and IPART, 8 September 2013; see also Septic Tank Action Group (STAG) submission to Domestic Wastewater Inquiry, January 2012, p 3.
813 Septic Tank Action Group (STAG) submission to Domestic Wastewater Inquiry, January 2012, p 3.
814 Septic Tank Action Group (STAG) submission to Domestic Wastewater Inquiry, January 2012, p 3; Personal communication, Telephone conversation between Port Macquarie-Hastings Council and IPART, 8 September 2013.
815 Personal communication, Telephone conversation between NSW Health and IPART, 9 August 2013.
To address these issues, the Domestic Wastewater Inquiry recommended that Fair Trading or DLG develop a common reporting standard and template to be submitted through a State Government electronic portal and that the reports should be filed on a common database that is accessible by all councils.816

Some councils or groups of councils have progressed work on such a template. The Box below provides one such example of a draft template developed by the Southern NSW Onsite System Special Interest Group (‘Southern NSW SIG’).817 Members of the Septic Tank Action Group (STAG)818 believe there will be considerable efficiencies gained by using a template to streamline processes, to the benefit of councils, service contractors and system operators. They also envisage that an electronic format of a finalised template could be developed to further ease the regulatory burden of onsite system service reports.819

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816 Domestic Wastewater Inquiry Report, pp vii and 46.
817 The Southern NSW SIG is made up of many southern council Environmental Health Officers or EHOs, including Eurobodalla Shire Council and Bega Valley Shire Council.
818 STAG is made up of many Central Coast and Mid-North Coast NSW Council EHOs, including Port Macquarie Hastings Council and Great Lakes Council.
819 Personal communication, Port Macquarie Hastings Council, Email to IPART, 13 December 2013; Personal communication, Great Lakes Council, Email to IPART, 13 December 2013.
Figure D.2  Possible Template for Contractors Inspecting Aerated Systems

<table>
<thead>
<tr>
<th>1. Septic tank</th>
<th>Condition</th>
<th>4. Irrigation Area</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Septic tank condition</td>
<td>Inline Filter check</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Septic tank condition</td>
<td>Pipe Buried/Movable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sludge depth</td>
<td>mm</td>
<td>Sprinklers/Drippers</td>
<td></td>
</tr>
<tr>
<td>Deaerator required</td>
<td>Y</td>
<td>N</td>
<td></td>
</tr>
<tr>
<td>Scum depth</td>
<td>mm</td>
<td>Subsurface</td>
<td></td>
</tr>
<tr>
<td>Outlet filter</td>
<td>N/A</td>
<td>Signage (number)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Treatment tank</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Air valves working</td>
<td>Ponding</td>
<td></td>
</tr>
<tr>
<td>Check &amp; adjust Air supply</td>
<td>Bore on Property</td>
<td></td>
</tr>
<tr>
<td>Skimmer working</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Clarifier clarity</td>
<td>mm</td>
<td>Odour</td>
</tr>
<tr>
<td>Sludge depth in Clarifier</td>
<td>mm</td>
<td>Plans in Meter Box, Y/N</td>
</tr>
<tr>
<td>Sludge return Working</td>
<td>Y/N</td>
<td></td>
</tr>
<tr>
<td>Chlorine Contact tank clarity</td>
<td>mm</td>
<td></td>
</tr>
<tr>
<td>Chlorine test</td>
<td>N/A</td>
<td>mg/L</td>
</tr>
<tr>
<td>pH Test</td>
<td>mg/L</td>
<td></td>
</tr>
<tr>
<td>Dissolved Oxygen test</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Chlorine tablets remaining</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Chlorine tablets added</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>

6. Comments/Recommendations

3. Electronic components

<table>
<thead>
<tr>
<th>Air blower working</th>
<th>N/A</th>
<th>Y/N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Filter check</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Air Pump working</td>
<td>Y/N</td>
<td>amps</td>
</tr>
<tr>
<td>Irrigation pump working</td>
<td>Y/N</td>
<td>amps</td>
</tr>
<tr>
<td>Sludge return pump working</td>
<td>N/A</td>
<td>Y/N</td>
</tr>
<tr>
<td>UV Working</td>
<td>Y/N</td>
<td></td>
</tr>
<tr>
<td>Timer check</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: * A/V = Audible/Visual

<table>
<thead>
<tr>
<th>Start time</th>
<th>Finish time</th>
</tr>
</thead>
<tbody>
<tr>
<td>am/pm</td>
<td>am/pm</td>
</tr>
</tbody>
</table>

Service technician 1: ___________________________ Signed
Service technician 2: ___________________________ Signed

Source: Southern NSW Onsite System Special Interest Group - Personal communication, Eurobodalla Shire Council, Email to IPART, 18 September 2013.
D.2.4 Best practice approach to dual approvals

Prior to the Wallis Lakes incident, landowners only required an approval to install an onsite system. Following Wallis Lakes, an approval to operate was also required. This is the current situation.

The approval to operate requires regular renewal and ongoing council inspections, to ensure that a system continues to function properly over its lifetime.\textsuperscript{820} Whereas an approval to install is not renewed by councils once the system is installed and operating.

However, stakeholders have indicated that landowners do not like having to apply for 2 approvals, as they do not understand why 2 approvals are necessary.\textsuperscript{821} Some councils, such as Port Macquarie-Hastings Council, have started issuing the approval to install and approval to operate together as a package of approvals in the initial licence grant, in order to reduce paperwork for the system owner.\textsuperscript{822}

The Box below outlines Port Macquarie-Hastings Council’s approach.

\begin{center}
\textbf{Box D.3 Issuing Both Approvals at Once - Port Macquarie-Hastings Council}
\end{center}

Port Macquarie-Hastings Council issues a 5-year approval to install and a 5-year approval to operate together as a package. After the expiry of these initial approvals, systems are risk-rated to determine how often the approval to operate must be renewed and the system must be inspected.

Under clause 34 of the \textit{Local Government (General) Regulation 2005}, a standard condition of an approval to install is that the system cannot be operated until the council has given notice in writing that it is satisfied the system has been installed in accordance with the approval. That is, the system owner cannot operate the system under the initial approval to operate until the council provides such notice, without being in breach of their approval to install.

This reduces costs to system owners by reducing processing times, dual provision of information, and delays (through processing both approvals at the one time).

\textbf{Sources:} Personal communications, telephone conversations between Port Macquarie-Hastings Council and IPART, 10 December 2013; Port Macquarie-Hastings Council, Email to IPART, 6 September 2013; \textit{Local Government (General) Regulation 2005} (NSW), clause 34.

\textsuperscript{820} \textit{Local Government Amendment (Miscellaneous) Act 2002} (NSW), No 40, Schedule 1 [11]-[13].

\textsuperscript{821} Personal communications, Telephone conversation between Port Macquarie-Hastings Council and IPART, 8 September 2013; Telephone conversation between Eurobodalla Shire Council and IPART, 12 September 2013.

\textsuperscript{822} Personal communication, Telephone conversation between Port Macquarie-Hastings Council and IPART, 10 December 2013.
### Issues Paper submissions

Table E.1 Stakeholders that made submissions to the Issues Paper for this review

<table>
<thead>
<tr>
<th>Stakeholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advanced Building Certifiers</td>
</tr>
<tr>
<td>Anonymous – Individual (1)</td>
</tr>
<tr>
<td>Anonymous – Individual (2)</td>
</tr>
<tr>
<td>Association of Accredited Certifiers</td>
</tr>
<tr>
<td>Australian Hotels Association (AHA)</td>
</tr>
<tr>
<td>Australian Institute of Building Surveyors</td>
</tr>
<tr>
<td>Australian Logistics Council</td>
</tr>
<tr>
<td>Australian Trucking Association (ATA)</td>
</tr>
<tr>
<td>Banyard, R.</td>
</tr>
<tr>
<td>Bega Chamber of Commerce and Industry</td>
</tr>
<tr>
<td>Boyd, R.</td>
</tr>
<tr>
<td>Business Council of Australia</td>
</tr>
<tr>
<td>Cacciotti, J.</td>
</tr>
<tr>
<td>Caltex Australia</td>
</tr>
<tr>
<td>Coalition of Radio Amateur Experimenters</td>
</tr>
<tr>
<td>Coastal Residents Incorporated</td>
</tr>
<tr>
<td>Colong Foundation for Wilderness</td>
</tr>
<tr>
<td>Daniels, J.</td>
</tr>
<tr>
<td>Development and Environmental Professionals’ Association (DEPA) – Robertson, I.</td>
</tr>
<tr>
<td>Fitness Australia</td>
</tr>
<tr>
<td>Gibling, J.</td>
</tr>
<tr>
<td>Homelessness NSW</td>
</tr>
<tr>
<td>Hornsby and Districts Amateur Radio Club (HADARC)</td>
</tr>
<tr>
<td>Housing Industry Association (HIA)</td>
</tr>
<tr>
<td>Hutcheson, J.</td>
</tr>
<tr>
<td>Jewell, M. (Stanton Precinct, North Sydney)</td>
</tr>
<tr>
<td>Live Performance Australia</td>
</tr>
<tr>
<td>Local Government and Shires Association of NSW (LGSA)</td>
</tr>
<tr>
<td>Lundell, H.</td>
</tr>
</tbody>
</table>
Meetings/consultations with regulators and other stakeholders

<table>
<thead>
<tr>
<th>Stakeholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile Carriers Forum</td>
</tr>
<tr>
<td>NSW Business Chamber – Orton, P.</td>
</tr>
<tr>
<td>Oxley Region Amateur Radio Club</td>
</tr>
<tr>
<td>Restaurant and Catering Industry Association (R&amp;CA)</td>
</tr>
<tr>
<td>Richards, F.</td>
</tr>
<tr>
<td>Rolfe, H.</td>
</tr>
<tr>
<td>Sanford, N.</td>
</tr>
<tr>
<td>Scarlet Alliance (Australian Sex Workers Association)</td>
</tr>
<tr>
<td>Tamworth Business Chamber</td>
</tr>
<tr>
<td>The Wireless Institute of Australia</td>
</tr>
<tr>
<td>Urban Taskforce Australia</td>
</tr>
<tr>
<td>Vescio, J. (Provincial Planning)</td>
</tr>
<tr>
<td>Williams, K. (Murrabateman Field Days)</td>
</tr>
</tbody>
</table>
Table E.2  Local councils that made submissions to the Issues Paper for this review

<table>
<thead>
<tr>
<th>Stakeholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central NSW Councils ROC (Centroc)</td>
</tr>
<tr>
<td>Albury City Council</td>
</tr>
<tr>
<td>Ashfield Council</td>
</tr>
<tr>
<td>Campbelltown City Council</td>
</tr>
<tr>
<td>City of Sydney Council</td>
</tr>
<tr>
<td>City of Newcastle Council</td>
</tr>
<tr>
<td>Coolamon Shire Council</td>
</tr>
<tr>
<td>Gosford City Council</td>
</tr>
<tr>
<td>Great Lakes Council</td>
</tr>
<tr>
<td>Holroyd City Council</td>
</tr>
<tr>
<td>Hurstville City Council</td>
</tr>
<tr>
<td>Lake Macquarie City Council</td>
</tr>
<tr>
<td>Leichhardt Municipality Council</td>
</tr>
<tr>
<td>Lismore City Council</td>
</tr>
<tr>
<td>Liverpool City Council</td>
</tr>
<tr>
<td>Liverpool Plains Shire Council</td>
</tr>
<tr>
<td>Orange City Council</td>
</tr>
<tr>
<td>Pittwater Council</td>
</tr>
<tr>
<td>Port Stephens Council</td>
</tr>
<tr>
<td>Randwick City Council</td>
</tr>
<tr>
<td>Shellharbour City Council</td>
</tr>
<tr>
<td>Shoalhaven City Council</td>
</tr>
<tr>
<td>Strathfield Council</td>
</tr>
<tr>
<td>Sutherland Shire Council</td>
</tr>
<tr>
<td>Upper Hunter Shire Council</td>
</tr>
<tr>
<td>Warringah Council</td>
</tr>
<tr>
<td>Wentworth Shire Council</td>
</tr>
<tr>
<td>Wollongong City Council</td>
</tr>
</tbody>
</table>

Table E.3  State government agencies that made submissions to the Issues Paper for this review

<table>
<thead>
<tr>
<th>Stakeholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Planning and Infrastructure (DoPI) and the Building Professionals Board (BPB) joint submission</td>
</tr>
<tr>
<td>EPA (NSW)</td>
</tr>
<tr>
<td>NSW Fair Trading</td>
</tr>
<tr>
<td>NSW Food Authority</td>
</tr>
<tr>
<td>NSW Ombudsman</td>
</tr>
<tr>
<td>NSW Small Business Commissioner</td>
</tr>
</tbody>
</table>
**Meetings/consultations with regulators and other stakeholders**

## Roundtable participants

### Table E.4 Public roundtable participants, 4 December 2012

<table>
<thead>
<tr>
<th>Participant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Association of Accredited Certifiers</td>
</tr>
<tr>
<td>Australian Institute of Building Surveyors</td>
</tr>
<tr>
<td>Australian Logistics Council</td>
</tr>
<tr>
<td>Caltex</td>
</tr>
<tr>
<td>Campbelltown City Council</td>
</tr>
<tr>
<td>Coles</td>
</tr>
<tr>
<td>Division of Local Government, Department of Premier and Cabinet</td>
</tr>
<tr>
<td>Holroyd City Council</td>
</tr>
<tr>
<td>Housing Industry Association (HIA)</td>
</tr>
<tr>
<td>Liverpool City Council</td>
</tr>
<tr>
<td>Local Government and Shires Association (LGSA)</td>
</tr>
<tr>
<td>Newcastle City Council</td>
</tr>
<tr>
<td>NSW Business Chamber</td>
</tr>
<tr>
<td>NSW Department of Planning and Infrastructure (DoPI)</td>
</tr>
<tr>
<td>NSW Fair Trading</td>
</tr>
<tr>
<td>NSW Food Authority</td>
</tr>
<tr>
<td>NSW Small Business Commissioner</td>
</tr>
<tr>
<td>Randwick City Council</td>
</tr>
<tr>
<td>Restaurant and Catering Industry Association</td>
</tr>
<tr>
<td>Shoalhaven City Council</td>
</tr>
<tr>
<td>Sutherland Shire Council</td>
</tr>
<tr>
<td>Urban Taskforce Australia</td>
</tr>
<tr>
<td>Wentworth Shire Council</td>
</tr>
<tr>
<td>Wollongong City Council</td>
</tr>
</tbody>
</table>

*Note:* In total there were about 66 attendees at our public roundtable which was held on 4 December 2012. This table does not list all public roundtable attendees. It only lists those attendees who sat at the roundtable.
### Other stakeholder meetings/consultations

**Table E.5  Stakeholder meetings/consultations held during the course of this review**

<table>
<thead>
<tr>
<th>Stakeholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Veterinary Association</td>
</tr>
<tr>
<td>Building Professionals Board (BPB)</td>
</tr>
<tr>
<td>Better Regulation Office (BRO)</td>
</tr>
<tr>
<td>Blue Mountains Shire Council</td>
</tr>
<tr>
<td>Bryon Bay Shire Council</td>
</tr>
<tr>
<td>City of Sydney Council</td>
</tr>
<tr>
<td>Companion Animals Taskforce (DLG)</td>
</tr>
<tr>
<td>Crown Lands Division</td>
</tr>
<tr>
<td>Development and Environmental Professionals’ Association (DEPA)</td>
</tr>
<tr>
<td>Division of Local Government (DLG)</td>
</tr>
<tr>
<td>Department of Planning and Infrastructure (DoPI)</td>
</tr>
<tr>
<td>Dubbo City Council</td>
</tr>
<tr>
<td>Environmental Defenders Office (EDO)</td>
</tr>
<tr>
<td>Eurobodalla Council</td>
</tr>
<tr>
<td>General Managers’ Forum (from Bankstown, Botany Bay, Campbelltown, Canterbury, Penrith, Randwick, The Hills, Sutherland and Wollongong Councils)</td>
</tr>
<tr>
<td>Housing Industry Association (HIA)</td>
</tr>
<tr>
<td>Independent Local Government Review Panel (ILGRP)</td>
</tr>
<tr>
<td>Local Government Acts Taskforce Secretariat</td>
</tr>
<tr>
<td>Local Government Manager’s Association (LGMA)</td>
</tr>
<tr>
<td>Local Government Manager’s Association - Governance Network Forum</td>
</tr>
<tr>
<td>Local Government NSW (formerly LGSA)</td>
</tr>
<tr>
<td>Marrickville Council</td>
</tr>
<tr>
<td>Metropolitan Water Directorate</td>
</tr>
<tr>
<td>National Heavy Vehicle Regulator (NHVR)</td>
</tr>
<tr>
<td>National Transport Commission</td>
</tr>
<tr>
<td>NSW Fair Trading</td>
</tr>
<tr>
<td>NSW Food Authority</td>
</tr>
<tr>
<td>NSW Ministry of Health</td>
</tr>
<tr>
<td>NSW Ombudsman</td>
</tr>
<tr>
<td>NSW Small Business Commissioner</td>
</tr>
<tr>
<td>Office of Environment &amp; Heritage (OEH)</td>
</tr>
<tr>
<td>Office of State Revenue (OSR)</td>
</tr>
<tr>
<td>Port Macquarie Hastings Council</td>
</tr>
<tr>
<td>Productivity Commission</td>
</tr>
<tr>
<td>Property Council of Australia (NSW)</td>
</tr>
<tr>
<td>Scarlett Alliance</td>
</tr>
<tr>
<td>Transport NSW</td>
</tr>
</tbody>
</table>
Meetings/consultations with regulators and other stakeholders

<table>
<thead>
<tr>
<th>Stakeholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK Department of Business Innovation and Skills – Better Regulation Delivery Office</td>
</tr>
<tr>
<td>Urban Taskforce</td>
</tr>
<tr>
<td>Victorian Competition and Efficiency Commission (VCEC)</td>
</tr>
<tr>
<td>Whitehead Environmental Consultants</td>
</tr>
<tr>
<td>Wollondilly Shire Council</td>
</tr>
</tbody>
</table>