IPART
New South Wales

Independent Pricing and Regulatory Tribunal

Local government compliance and enforcement

Regulation Review — Final Report
October 2014

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Contents

1 Executive summary 1
- 1.1 Our task and approach 2
- 1.2 Overview 4
- 1.3 Other related reviews 14
- 1.4 Our process 18
- 1.5 Report structure 19
- 1.6 Recommendations 20
- 1.7 Findings 30

2 A new partnership between State and local government 33
- 2.1 The Partnership Model based on the Food Regulation Partnership (FRP) 35
- 2.2 Assessment of the FRP 39
- 2.3 Applying the Partnership Model to planning 42
- 2.4 Applying the Partnership Model to environmental regulation 53
- 2.5 Applying the Partnership Model to other areas 61
- 2.6 An alternative to the Partnership Model? 68

3 Improving the regulatory framework at the State level 72
- 3.1 Achieving and implementing better local government regulation 74
- 3.2 Establishing better regulation principles with a statutory basis 84
- 3.3 Register of local government regulatory functions 86
- 3.4 Supporting better implementation of regulation 92
- 3.5 An enforcement policy for local government 102
- 3.6 Local Orders Policies 108
- 3.7 Transparent fees and charges 112

4 Enhancing regulatory collaboration amongst councils 123
- 4.1 Benefits of enhanced council collaboration 124
- 4.2 Current collaborative arrangements amongst councils 129
- 4.3 Different models to increase strategic capacity 132
- 4.4 Improving collaborative arrangements 134

5 Improving the regulatory framework at the local level 146
- 5.1 Streamlining section 68 approvals under the Local Government Act 146
- 5.2 Mutual recognition of section 68 approvals 160
- 5.3 Local Approvals Policies 163
- 5.4 Improving local government enforcement of regulations 167

5.5 Improving dispute resolution 173

6 Improving regulatory outcomes 180
6.1 Assessing local government regulatory performance 180
6.2 Best practice findings 194

7 Planning 238
7.1 Current regulatory environment 238
7.2 Delays in the development assessment process 239
7.3 Inconsistent administration of planning regulation 243
7.4 Onerous and unnecessary development consent conditions 245
7.5 Compliance difficulties associated with Development Control Plans 256
7.6 Restrictions in current zoning policies 257
7.7 Change of use for commercial premises 257
7.8 Sex services premises 258

8 Building and construction 262
8.1 Current regulatory environment 263
8.2 Other reviews 269
8.3 Improving compliance and enforcement 274
8.4 Establishment of a single State building regulator 275
8.5 Improving the visibility of certifier conduct 284
8.6 Addressing regulatory creep 288
8.7 Improving council regulatory performance 300
8.8 Clarifying roles and regulatory responsibilities 306
8.9 Annual Fire Safety Statement requirements 309

9 Public health, safety and the environment 313
9.1 Food safety 313
9.2 Private swimming pools 327
9.3 Boarding houses 336
9.4 Waste Management Plans 341

10 Parking and road transport 346
10.1 Parking fines 347
10.2 Model agreement for privately owned free car parks 352
10.3 Trailer and caravan parking 355
10.4 Road access 360

11 Companion animals management 372
11.1 Current regulatory environment 372
11.2 Other relevant reviews 374
11.3 Optional one-step registration process 377
11.4 Online registration 380
11.5 Preventative companion animals education campaigns 383
11.6 Enforcement of companion animals fines and penalties 386

12 Other areas **391**
12.1 Approvals for footway restaurants 391
12.2 Approvals for community events 394
12.3 Approval processing times 399
12.4 Landowner's consent for Crown reserves 400

Appendices **405**
A Terms of Reference 407
B Extension letter 409
C Consideration of the Productivity Commission's leading practices 410
D Other issues raised by stakeholders 432
E Onsite Sewage Management Systems 436
F Meetings/consultations with regulators and other stakeholders 443
G Table of changes between Draft and Final Reports 450

Abbreviations and acronyms **470**

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.

We have found that councils have 121 regulatory functions, involving 309 separate regulatory roles, emanating from 67 State Acts, which are administered by approximately 31 State agencies.[2] Our recommendations in this Final Report are expected to:

- reduce red tape to businesses and individuals by at least $177.7 million per year
- save councils an estimated $41.9 million per year
- save the NSW Government an estimated $1.3 million per year, and
- provide an estimated $220 million per year in net benefits to the community of NSW.[3]

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1 Premier's Memorandum, *M2012-02 Red tape reduction - new requirements*, February 2012, available at: http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/2012/m2012-02_red_tape_reduction_-_new_requirements accessed on 14 October 2014.

2 Stenning & Associates, *Register of regulatory functions undertaken by Local Government in NSW, October 2012*, available at: http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Local_Government/Local_Government_Compliance_and_Enforcement accessed on 14 October 2014 (Stenning register). Analysis was based on data available as at 30 June 2012.

3 Centre for International Economics (CIE), *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014 (CIE Report). Dollar figures in the report are presented in 2011/12 real dollars unless stated otherwise.

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

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 on average over the next decade by preventing new red-tape.[4] Overall, this would provide a net benefit of $21 million to businesses and the community.[5]

1.1 Our task and approach

The full Terms of Reference (ToR) for this review are provided at Appendix A.

Under these ToR, IPART was required to examine local government compliance and enforcement activity (including regulatory powers conferred or delegated under NSW legislation) and provide recommendations to reduce regulatory burdens for business and the community.

In NSW, local government compliance and enforcement responsibilities are extensive and diverse (see Box 1.1 below). As discussed, they arise under the *Local Government Act 1993* (NSW) (LG Act) and an array of other State legislation. 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.

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 for local councils to apply
- impediments to efficient and effective local government implementation and enforcement
- the role of local government relative to the State Government in implementing and enforcing key areas of regulation
- the extent of cooperation and coordination between councils, and whether this lessens or removes unnecessary costs of regulation for councils, business and the community

4 CIE Report, p 5.
5 Ibid.

- 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.

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.

Source: Stenning & Associates, *Register of regulatory functions undertaken by Local Government in NSW – Final Report,* October 2012, available at: http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Local_Government/Local_Government_Compliance_and_Enforcement accessed on 14 October 2014.

1.2 Overview

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 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 impacts of the 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 an estimated $41.9 million per year
- save the NSW Government an estimated $1.3 million per year, and
- provide net benefits to the community of NSW of $220 million per year.[6]

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]

6 CIE Report, p 5.

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. Better Regulation Office, *Guidelines for estimating savings under the red tape reduction target,* February 2012 available at: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0004/136237/Guidelines_for_estimating_savings_under_the_red_tape_reduction_target.pdf accessed on 14 October 2014.

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 million per year. Potentially the gains are far larger, with heavy vehicle access restrictions estimated to cost $366 million per year in NSW.[8]
- 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 Environment (DPE) and local government would reduce red tape by around $19 million per year and have net benefits of $18 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.[9]

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.

8 CIE Report, p 4.
9 Ibid.

Table 1.1 CIE's analysis of our recommendations (by group)

Area	Reduction in red tape ($m/year)	Savings to councils ($m/year)	Savings to State Govt. ($m/year)	Other impacts ($m/year)	Net Benefits[a] ($m/year)
Planning: partnership model	19.4	2.3	-3.9		**17.9**
Supporting better local government implementation of regulation	30.9	8.6	7.0		**46.5**
Transparent local government fees and charges				3.3	**3.3**
Streamlining approvals under the Local Government Act	4.8	0.3			**5.1**
Improving the ability to share services		30.0			**30.0**
Improving regulatory outcomes	10.0				**10.0**
Building and construction	36.0				**36.0**
Building: annual fire safety statement	0.7	0.4	-0.1		**1.0**
Environment: waste management plan	6.4	0.03			**6.5**
Public health: food safety	3.2				**3.2**
Public health: swimming pools	7.2	1.2		-4.2	**4.2**
Parking		0.4			**0.4**
Road transport	59.2	-2.9	-1.4		**54.9**
Companion animals	-0.2	1.6	-0.3		**1.1**
Other areas	0.02				**0.02**
Total	**177.7**	**41.9**	**1.3**	**-0.9**	**220.0**

a 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: CIE Report, p 5.

1.2.1 Changes between our Draft and Final Reports

In our Draft Report, we made 39 recommendations and 14 best practice findings. In our Final Report, we have made 42 recommendations and 16 best practice findings.

In our Final Report, we have discussed stakeholder submissions we received on our Draft Report. We have revised several recommendations and findings accordingly. We have also:

- included one new recommendation about information to be included in Fair Trading's Consumer Building guide and Building Professionals Board's mandatory contract (Recommendation 22)
- included two new best practice findings about regional illegal dumping squads and onsite sewage management systems (Findings 15 and 16)
- deleted our draft recommendation about collecting approval processing times data, due to concerns raised by councils about the limited value of the data and the resources and time required to collect it.

In addition, where applicable, we have:

- updated government agency name changes
- included recent policy developments, including the NSW Government's *Fit For the Future Response* in September 2014[10]
- noted recommendations that have been accepted by the NSW Government since our Draft Report
- extended timeframes to implement recommendations from 2014 to 2015.

We have also updated CIE's assessment of the impacts of our final recommendations.

1.2.2 Need to improve State and local government interactions

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

In our view, there is a need for more effective interaction between the two 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.

[10] Office of Local Government (OLG), *Fit for the Future - NSW Government Response*, September 2014, available at: http://www.fitforthefuture.nsw.gov.au/ accessed on 14 October 2014 (Fit for the Future Response).

In contrast, many stakeholders supported the Food Regulation Partnership instituted between the 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 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 two-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 signing of the *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships*.[11]

1.2.3 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.

[11] Office of Local Government (OLG), *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships*, 8 April 2013, available at: http://www.olg.nsw.gov.au/news/intergovernmental-agreement-guide-nsw-state-local-government-relations-strategic-partnerships-8 accessed on 14 October 2014.

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 recent NSW Business Chamber Annual Red Tape Surveys, as discussed in Chapter 3. In the 2013 survey, around 41% of respondents indicated that dealing with local government was either extremely or very complex.[12] In the 2012 survey, local government was the most utilised regulatory authority, with 77% of respondents having dealings with councils in the preceding year.[13]

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 final recommendations seek to do this through a number of systemic and area-specific reforms.

1.2.4 Consistency versus local preferences

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 one 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.

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12 NSW Business Chamber, *Annual Red Tape Survey 2013*, 2013, p 3 available at: http://www.nswbusinesschamber.com.au/Advocacy/Business-Conditions-Survey accessed on 14 October 2014.

13 NSW Business Chamber, *Annual Red Tape Survey 2012*, 2012, p 15 available at: http://www.nswbusinesschamber.com.au/Advocacy/Business-Conditions-Survey accessed on 14 October 2014.

Consistency of approach is clearly more challenging with 152 different council regulators, than with a single State agency regulator.[14] 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 local circumstances. 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).[15]

Where we have considered it more efficient and fair, we have sought to promote consistency and standardisation in our final 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 practice findings', identified in Chapter 6 (and listed at the end of this chapter), 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 would involve councils in close consultations with their local community to develop an instrument that reflects the community's values and goals.[16]

1.2.5 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.

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14 We note that the NSW Government has indicated a preference for fewer councils in its response to the report of the Independent Local Government Review Panel. To support councils to voluntarily merge, the Government is providing up to $22.5 million for new councils in Greater Sydney, the Central Coast and the Newcastle/Lake Macquarie area and up to $13.5 million for new councils in regional areas. See: Fit for the Future Response, p 12.

15 Personal communications, meeting with Food Authority, 25 October 2012; email from Food Authority, 17 July 2013.

16 NSW Government, *A New Planning System for NSW - White Paper*, April 2013, p 91, available at: http://www.planning.nsw.gov.au/white_paper accessed on 14 October 2014 (Planning White Paper).

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' code to lead cultural change in how councils undertake their enforcement activities, which enshrines:

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

1.2.6 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 Chapters 2 and 6 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 and the provision of greater guidance to facilitate arrangements. We note that the NSW Government has supported a number of reforms in this area in its *Fit for the Future Response*.[17] This is further discussed in Chapter 4 of this report.

Our report also highlights 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). These practices have scope to further reduce red tape and benefit councils, businesses and the community, if more broadly adopted.

1.2.7 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 myriad 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)).

[17] Fit for the Future Response, pp 5, 11-12.

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.

1.2.8 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.

1.2.9 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 were expected to be addressed through the NSW planning system review.

Our recommendations in planning 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 building regulation and certification.

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).[18] 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).

In our view, there is also scope for the NSW Government to provide councils with technical assistance and guidance when assessing amenity issues around 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 in improving the 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).[19] 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 animals management.

1.3 Other related reviews

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

- Independent Local Government Review Panel
- Local Government Acts Taskforce
- NSW planning system
- building certification system
- Companion Animals Taskforce
- Crown lands management.

[18] CIE Report, p 5.
[19] Ibid.

Independent Local Government Review Panel

The Independent Local Government Review Panel (ILGRP) recently investigated and identified options for governance models, structural arrangements and boundary changes for local government in NSW. The ILGRP published its Final Report outlining proposed reform options in January 2014.[20]

We note that the NSW Government has considered the 65 recommendations presented by the ILGRP and indicated support for the majority of recommendations in its *Fit for the Future Response*.[21]

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

Local Government Acts Taskforce

The Local Government Acts Taskforce (LG Acts Taskforce) recently undertook a review of the LG Act and *City of Sydney Act 1988* (NSW). It released its Final Report in January 2014.[22]

These two Acts establish the statutory basis for local government in NSW, including how it is constituted, administered, financially managed, financed, operated and made accountable. The Acts also set out core local government service and regulatory functions, and general enforcement powers. However, the 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 LG Acts Taskforce made recommendations for legislative changes necessary for a new LG Act. We note that the NSW Government recently indicated general support for the LG Acts Taskforce's recommendations.[23]

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

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20 ILGRP, *Revitalising Local Government*, October 2013, available at: http://www.localgovernmentreview.nsw.gov.au/accessed on 14 October 2014 (ILGRP Final Report).

21 Fit for the Future Response, p 2.

22 LG Acts Taskforce, *A New Local Government Act for NSW and Review of the City of Sydney Act 1988*, October 2013, available at: http://www.olg.nsw.gov.au/content/local-government-acts-taskforce accessed on 14 October 2014 (LG Acts Taskforce Final Report).

23 Fit for the Future Response, p 2.

NSW planning system

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 Planning 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.[24] The Planning White Paper also proposed changes to building regulation and certification to ensure better quality of construction and fire protection over the life of buildings.[25]

The NSW Government introduced the Planning Bill 2013 and Planning Administration Bill 2013 into Parliament on 22 October 2013.[26] However, the Bills are not currently progressing.[27] We note that the NSW Government is now considering options on the best means to implement its planning reform program as set out in the Planning White Paper.

The planning and building reforms are discussed further in Chapters 2, 7 and 8.

Building certification review

The NSW Government commissioned this review to complement the Planning White Paper reforms. The review's aim was to examine and suggest improvements for a more robust certification system, so as to better support the new planning system.[28]

It found that stakeholders had significant concerns with council's role in certification. Further, the boundaries between the responsibilities of councils and private certifiers were unclear.[29] It recommended an expert panel define these responsibilities and develop a framework requiring greater co-operation between councils and private certifiers.[30]

Chapter 8 of this report discusses these findings and recommendations in greater detail.

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24 Planning White Paper, p 4.

25 Planning White Paper, p 5.

26 Further details of the Planning Bill 2013 and Planning Administration Bill 2013, including the second reading speeches are available at: http://www.parliament.nsw.gov.au/ accessed on 14 October 2014.

27 The Planning Administration Bill has been passed by Parliament but cannot progress as it is cognate to the Planning Bill.

28 Maltabarow G, *Building certification and regulation – serving a new planning system for NSW*, May 2013, p 4 available at http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=6356 accessed on 14 October 2014 (Maltabarow Report).

29 Maltabarow Report, p 7.

30 Maltabarow Report, pp 18, 21 and 34.

Companion Animals Taskforce

The Companion Animals Taskforce was established in 2011 to provide advice on key companion animals issues and, in particular, strategies to reduce the current rate of companion animals euthanasia.

A Discussion Paper was released in May 2012 which received over 1,400 public submissions.[31] Two Final Reports were released:

- the Companion Animals Taskforce Final Report (October 2012)[32]
- the Companion Animals Taskforce Report on the Management of Dangerous Dogs (February 2013).[33]

The NSW Government received over 5,300 submissions in relation to the Final Reports.[34] On 30 October 2013, the NSW Government passed legislation to implement a number of recommendations, largely related to improving the regulation of dangerous dogs.[35] In February 2014, the NSW Government released its full response to the Companion Animals Taskforce, supporting most of the Taskforce's 38 recommendations, in full or in part.[36]

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

Crown lands management

The NSW Government also recently conducted a review into the overall management of Crown land including legislation, financial management, governance, and business structures. The Final Report was released in 2013.[37]

The NSW Government published a review summary and response to that report supporting or supporting-in-principle most of the recommendations made in the report.[38] The Crown Lands Legislation White Paper, published in early 2014, progresses a number of the recommendations made in the Final Report.

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31 OLG, *NSW Companion Animals Taskforce Report*, October 2012, p 1, available at: http://www.olg.nsw.gov.au/sites/default/files/Companion-Animals-Taskforce-report-to-Ministers.pdf accessed on 14 October 2014.

32 Ibid.

33 OLG, *Companion Animals Taskforce – Report to the Minister for Local Government on the management of dangerous dogs in NSW*, February 2013, available at http://www.olg.nsw.gov.au/sites/default/files/Companion-Animals-Taskforce-report-dangerous-dog-management.pdf accessed on 14 October 2014.

34 OLG, *Companion Animals Taskforce*, available at: http://www.olg.nsw.gov.au/public/dogs-and-cats/companion-animal-taskforce accessed on 14 October 2014.

35 *Companion Animals Amendment Act 2013* (NSW).

36 OLG, *Release of the Government Response to the Companion Animals Taskforce*, 3 February 2014 available at: http://www.olg.nsw.gov.au/sites/default/files/M14-01.pdf accessed on 14 October 2014.

37 NSW Trade and Investment, *Comprehensive review of NSW Crown Land Management*, available at http://www.lpma.nsw.gov.au/crown_lands/comprehensive_review_of_nsw_crown_land_management accessed on 14 October 2014.

38 Ibid.

Submissions to the Crown Lands Legislation White Paper closed in June 2014. Those submissions are presently being considered and will inform the development of the new Crown lands legislation.[39]

Chapter 12 of this report discusses the Crown lands management review.

1.4 Our process

In September 2012, we released our Issues Paper. We invited all interested parties to make written submissions in response to our Issues Paper. We received 93 submissions in response to the Issues Paper, due in October 2012. In October 2012, we released our consultant's, Stenning & Associates, register of NSW local government regulatory functions. We conducted a public roundtable in December 2012.

In April 2013, the Department of Premier and Cabinet (DPC) asked us to consult further with NSW Government departments and agencies on our recommendations, prior to the release of our Draft Report. This consultation was undertaken in May and early June 2013. The timetable for the review was revised to include this additional step in our consultation process.[40] Further consultation with agencies was undertaken by DPC in subsequent months. We provided versions of our Draft Report to DPC in July and October 2013.

In May 2014, we released our Draft Report. We sought stakeholder comments on our Draft Report, recommendations and findings. We received 61 submissions to the Draft Report, due in July 2014. Most of the submissions to our Draft Report were lodged by councils, NSW Government departments and agencies, and organisations.

Comments made by stakeholders in their submissions on the Draft Report were taken into account to formulate our final recommendations and findings. Submissions indicated that there was general support for most of our recommendations and findings.

Submissions to our Issues Paper and Draft Report, and a transcript of the Roundtable discussion, are available on our website: http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Local_Government/Local_Government_Compliance_and_Enforcement

Having considered all of the information and views expressed in submissions, we submit our Final Report to the NSW Government.

Table 1.2 sets out our timetable for this review.

39 Ibid.
40 Extension Letter – refer to Appendix B.

Table 1.2 Indicative review timetable

Task	Timeframe
Terms of Reference	3 July 2012
Issues Paper	17 September 2012
Stenning register of local government regulatory functions	16 October 2012
Stakeholder submissions due	29 October 2012
Public roundtable discussion	4 December 2012
Preliminary Draft Report to DPC	8 April 2013
Consultation with Government agencies	May-June 2013
Revised Draft Report to DPC	12 July 2013
Further consultation with agencies undertaken by DPC	Aug-Sept 2013
Draft Report to DPC	October 2013
Draft Report	22 May 2014
Stakeholder submissions due	4 July 2014
Final Report to Government	October 2014

1.5 Report structure

The rest of this report explains our final recommendations and findings, 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 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 practice findings' 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 and community events.
- **Appendices A-G** include:
  - a copy of the ToR
  - a copy of the extension letter
  - consideration of the Productivity Commission's leading practices
  - other issues raised by stakeholders not dealt with in the body of the report
  - background information on onsite sewage management systems
  - stakeholder consultation
  - a table of changes between our draft and final recommendations and findings.
- **Abbreviations and acronyms** sets out a list of terms commonly used in our report.

1.6 Recommendations

A list containing our final recommendations is set out below, along with the page number where the recommendation can be found in this report.

A new partnership between State and local government

1 Subject to cost benefit analysis, the NSW Department of Planning and Environment 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: 51

- enshrining the partnership model in legislation 51
- clear delineation of regulatory roles and responsibilities 51
- risk-based approach to regulation supported by a compliance and enforcement policy 51
- use and publication of reported data to assess and assist council performance 51
- dedicated consultation forum for strategic collaboration with councils 51

- ability for councils to recover their efficient regulatory costs 51
- system of periodic review and assessment of the partnership agreement 51
- dedicated local government unit to provide: 51
  - council hotline to provide support and assistance 51
  - password-protected local government online portal 51
  - guidelines, advice and protocols 51
  - standardised compliance tools (eg, forms and templates) 51
  - coordinated meetings, workshops and training with councils and other stakeholders. 51

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 Recommendation 1). 60

3 State agencies administering legislation with regulatory responsibilities for local government, such as the NSW Ministry of Health, NSW Office of Liquor, Gaming and Racing, Office of Local Government, and Roads and Maritime Services, should adopt relevant elements of the Partnership Model. 68

Improving the regulatory framework at the State level

4 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: 84

- consideration of whether a regulatory proposal involves responsibilities for local government 84
- clear identification and delineation of State and local government responsibilities 84
- consideration of the costs and benefits of regulatory options on local government 84
- 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 84
- collaboration with local government to inform development of the regulatory proposal 84
- if establishing a jointly provided service or function, agreement with local government as to the objectives, design, standards and shared funding arrangements 84
- development of an implementation and compliance plan. 84

5 The NSW Government should establish better regulation principles with a statutory basis. This would require: 85

- amendment of the *Subordinate Legislation Act 1989* (NSW) or new legislation 85
- giving statutory force to the NSW *Guide to Better Regulation* (November 2009) and enshrining principles in legislation. 85

6 The NSW Government should maintain the register of local government regulatory functions (currently available on IPART's website) to: 91

- manage the volume of regulation delegating regulatory responsibilities to local government 91
- be used by State agencies in the policy development of regulations to avoid creating duplications or overlaps with new or amended functions or powers. 91

7 The Department of Premier and Cabinet should: 101

- Develop a Regulators' 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. 101
- Include local government regulators in the Department of Premier and Cabinet's regulators group. 101
- Develop simplified cost benefit analysis guidance material or a resource kit for local government to undertake proportional assessments of the costs and benefits of regulatory actions or policies, including consideration of alternatives. 102
- Develop simplified guidance for the development of local government policies and statutory instruments, and on risk-based compliance. 102

8 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: 108

- The model policy should be developed in collaboration with State and local government regulators. 108
- The model policy should be consistent with the proposed Regulators' Code, if adopted. 108
- The NSW Ombudsman should assist councils to implement the model enforcement policy and guidelines, through fee-based training. 108

  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. 108

9 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. 111

10 The NSW Government should publish and distribute guidance material for: 122

- councils in setting their regulatory fees and charges (to apply to fees and charges, where councils have discretion) 122
- State agencies in setting councils' regulatory fees and charges. 122

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. The guidance material should also include ways to address affordability issues through hardship provisions, if required. 122

Enhancing regulatory collaboration amongst councils

11 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: 143

- 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 143
- amending section 377, which prohibits any delegation by a council of the acceptance of tenders. 143

Whichever forms of council collaboration are used in future, consideration should be given to whether the Act should specify how and in what form the collaborative arrangements should be established (including whether management frameworks should be prescribed). 143

12 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 availability of repayable funding arrangements 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. 144

Improving the regulatory framework at the local level

13 The *Local Government Act 1993* (NSW) should be reviewed and amended in consultation with councils to: 159

- 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; installation of amusement devices; installation and operation of manufactured homes; stormwater drainage approvals 159
- allow for longer duration and automatic renewal of approvals 159
- provide more standard exemptions or minimum requirements from section 68 approvals, where possible, in areas such as: footpath restaurants; A-frames or sandwich boards; skip bins; domestic oil or solid fuel heaters; 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. 159

14 The *Local Government Act 1993* (NSW) should be amended to enable councils to recognise section 68 approvals issued by another council (ie, mutual recognition of section 68 approvals), subject to published local requirements, for example with mobile food vendors and skip bins. Councils should be able to recover the costs of compliance associated with approvals granted by another council. 162

15 The *Local Government Act 1993* (NSW) should be amended to 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 the Office of Local Government's (OLG) website; consolidate activities within one LAP per council; and OLG to provide a model LAP in consultation with councils. 167

16 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. 173

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. 173

17 Councils should support the use of alternative and internal review mechanisms (for example, the NSW Ombudsman, Office of the NSW Small Business Commissioner, and private providers of alternative dispute resolution 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. 178

Improving regulatory outcomes

18 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: 193

- consider councils' responsibilities in developing their risk-based approach to compliance and enforcement 193
- consider councils' responsibilities in defining the regulatory outcomes and setting monitoring mechanisms to measure the outcomes, and 193
- 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. 193

These requirements should be developed in consultation with local government regulators and commence by the end of 2015. 193

Planning

19 The Department of Planning and Environment, in consultation with key stakeholders and on consideration of existing approaches, should: 254

- identify which development consent conditions may be applied across council areas, including regional groupings of councils, and which conditions will vary across council areas 254
- then develop (where appropriate) a standardised and consolidated set of development consent conditions for councils to use for different forms of development. 254

Building and construction

20 The NSW Government should: 283

- 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, the building regulation expertise of the Department of Planning and Environment and the building trades regulation aspects of NSW Fair Trading, and 283

– create a more robust, coordinated framework for interacting with councils through instituting a ‘Partnership Model’ (as discussed in Chapter 2). 283

21 The Building Professionals Board or Building Authority (if adopted) should: 287

– initially, modify its register of accredited certifiers to link directly with its register of disciplinary action 287

– 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. 287

22 NSW Fair Trading, in its consumer building guide or other appropriate material, and the Building Professionals Board, in its mandatory contracts between certifiers and clients or other appropriate material, should refer consumers of building services to the Building Professionals Board’s register of accredited certifiers and register of disciplinary action. 287

23 Councils seeking to impose conditions of consent above that of the National Construction Code must conduct a cost benefit analysis justifying the benefits of these additional requirements and seek approval from an independent body, such as IPART, under a ‘gateway’ model. 299

24 Certifiers should be required to inform councils 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: 305

– if the breach relates to the National Construction Code (NCC), the council should be required to respond to the certifier in writing within a set period of time 305

– if the breach is not related to the NCC, the council should be required to respond to the certifier in writing within a set period of time, and if they do not respond within the specified period, then the certifier can proceed to issue an occupation certificate. 305

25 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. 308

26 The NSW Government (eg, the Department of Planning and Environment) should enable building owners to submit Annual Fire Safety Statements online for access by councils and the Commissioner of the Fire and Rescue Service. 311

Public health, safety and the environment

27 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 taken into account by other councils when considering if inspection is warranted. 322

28 The NSW Food Authority, in consultation with councils, should provide guidance on reducing the frequency of routine inspections by councils of retail food businesses with a strong record of compliance to reduce over-inspection and costs. 323

29 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: 325

- remove any regulatory overlap (eg, of related retail and non-retail food business on the same premises) 325
- develop a system of notification for all food businesses that avoids the need for businesses to notify both councils and the Food Authority 325
- review the notification system to determine whether negligible risk food businesses should be exempt from the requirement to notify 325
- ensure the introduction of a standard inspections template for use by all councils in NSW, to enhance the consistency of inspections across the State. 325

30 The Office of Local Government should: 335

- develop a 'model' risk-based inspections program to assist councils in developing their own programs under the *Swimming Pools Act 1992* (NSW) 335
- promote and assist councils to use shared services or 'flying squads' for swimming pool inspections, if a backlog becomes apparent under the new regulatory regime 335
- review the *Swimming Pools Act 1992* (NSW) within five years from commencement of the amendments to determine whether the benefits of the legislative changes clearly outweigh the costs 335
- review councils' regulatory performance and inspection fees prescribed by the *Swimming Pools Regulation 2008* (NSW), including whether inspection fees recover councils' efficient costs 336
- undertake regular reviews of its guidance material for councils and pool owners to ensure this material is current, reflects best practice, and that it incorporates learning from implementation of amendments to the *Swimming Pools Act 1992* (NSW). 336

31 NSW Fair Trading should undertake regular reviews of the boarding house guidance material for councils and boarding house operators to ensure this material is current, reflects best practice, and that it incorporates learnings from implementation of the *Boarding Houses Act 2012* (NSW). 340

32 The Department of Planning and Environment, in consultation with the NSW Environment Protection Authority and other relevant stakeholders, should: 344

- 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 344
- remove the need for applicants to submit separate Waste Management Plans to councils for complying developments. 344

Parking and road transport

33 Councils should either: 351

- solely use the State Debt Recovery Office (SDRO) to handle parking fine requests for review or appeals to remove current confusion, duplication and reduce costs, or 351
- adopt the SDRO's guide for handling representations where a council is using SDRO's basic service package and retain the role of handling parking fine requests for review or appeals, to ensure consistency and fairness across the state. 352

34 The Office of Local Government should review and, where necessary update, its free parking area agreement guidelines (including model agreements) for use in agreements with private companies, State agencies and owners corporations. Councils should then have a free parking area agreement in place consistent with these guidelines. 355

35 That the NSW Government: 370

- 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 engineering assessments of infrastructure; and 370
- 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. 370

Companion animals management

36 The Office of Local Government should allow for an optional one-step registration process, whereby: 379

- the owner could microchip and register their pet at the same time 379
- 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). 379

37 The Office of Local Government should allow for online companion animals registration (including provision to change owner address and contact details online for animals that are not under declaration). 382

38 The Office of Local Government 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. 386

39 The Office of Local Government 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. 389

40 The Office of Local Government should amend the *Companion Animals Regulation 2008* (NSW) to enable fees to be periodically indexed by CPI. 390

Other

41 The NSW Government should amend section 125 of the *Roads Act 1993* (NSW) to extend the approval term for footway restaurants to 10 years and councils should ensure that approval conditions enable adequate access by utility providers. 393

42 Councils should adopt measures to simplify and streamline the approvals process for local community events. This could include: 398

- specifying some temporary uses of land as exempt development in local environmental plans, or 398
- issuing longer-term development consents for periods of three to five years for recurrent local community events (subject to lodging minor variations under section 96 of the *Environmental Planning and Assessment Act 1979* (NSW)). 398

1.7 Findings

A list containing our final findings is set out below, along with the page number where the finding can be found in this report.

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. 194

2 Greater use of existing networks such as the Australasian Environmental Law Enforcement and Regulators neTwork and Hunter & Central Coast Regional Environmental Management Strategy provide greater resources, consistency of approach and build expertise or capability in undertaking council environmental compliance activities. 197

3 Councils would benefit from the use of the following self-assessment tools: 199

- the Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS) Practical Systems Review tool for local government to evaluate the capability and performance of compliance systems 199
- the HCCREMS Electronic Review of Environmental Factors Template to assist councils in undertaking Part 5 assessments under the *Environmental Planning & Assessment Act 1979* (NSW) of their own activities 199
- the Smart Compliance Approach, currently used by Newcastle City Council and adapted from the US Environmental Protection Agency, to provide a framework for using performance data to achieve better regulatory outcomes 199
- the NSW Environment Protection Authority's (EPA) online "Illegal Dumping: A Resource for NSW Agencies" tool/guide available through Australasian Environmental Law Enforcement and Regulators network and EPA websites. 199

4 Publication of more significant individual local government regulatory instruments on a central site, funded by the NSW Government, 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, Development Control Plans, Local Approvals Policies and Local Orders Policies). 205

5 The use of 'SmartForms' by councils reduces costs to businesses and councils by enabling online submission and payment of applications directly to councils. 207

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 or the Queensland Local Government Toolbox (www.lgtoolbox.qld.gov.au), can reduce the regulatory burden on businesses and the community. 209

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. 212

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). 214

9 Memoranda 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. 215

10 Councils engaging independent panels or consultants where development applications relate to land owned by local government improves transparency and probity. 217

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 development application to be submitted could reduce unnecessary costs for proponents. 218

12 Councils can use order powers under the *Environmental Planning & Assessment Act 1979* (NSW) (eg, under section 121O) to allow modifications to developments in appropriate circumstances. This avoids the need for the applicant to obtain additional council approvals or development consents when there are concerns with existing structures (eg, safety concerns). 219

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. 221

14 Broadening the scope of the Office of Local Government's (OLG) current Promoting Better Practice program would strengthen its assessment of regulatory performance. Greater promotion of OLG's better practice findings amongst all councils would improve regulatory outcomes. 222

15 The establishment of Regional Illegal Dumping Squads helps councils to combat illegal dumping across member council boundaries using a strategic coordinated approach in partnership with the NSW Environment Protection Authority. 225

16 Councils could regulate onsite sewage management systems more efficiently by: 227

- implementing risk-based regulation and efficient revenue policies to better manage limited resources 227
- working together regionally to swap knowledge of contractors (eg, the Septic Tank Action Group) to address issues with variable quality servicing 227
- developing standardised service report templates for services undertaken by contractors to streamline processes and improve consistency of reporting 227
- issuing approvals to install and operate onsite sewage management systems together in one package of approvals to reduce paperwork and administrative costs. 227

2 A new partnership between State and local government

This chapter considers how State 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 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 building, public health, swimming pools, liquor and roads regulation
- 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 Environment (DPE) 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.[41] However, DPE 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.

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".[42] Specifically, the ILGRP proposes:

> Establishing State-local relations as a key function of the Premier's cluster of departments – led by the Division of Local Government and including other key areas of DPC [Department of Premier and Cabinet], DP&I [Department of Planning and Infrastructure] and the Office of Environment and Heritage, which together could foster a new culture of cooperation with local government across all State agencies.[43]

According to the ILGRP, State and local governments need to be seen as complementary elements of a broader NSW public sector.[44]

Our proposed Partnership Model between local government and DPE and EPA 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 *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships*.[45]

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

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41 NSW Government, *A New Planning System for NSW - White Paper*, April 2013, available at: http://www.planning.nsw.gov.au/white_paper accessed on 14 October 2014 (Planning White Paper).

42 ILGRP, *Revitalising Local Government*, October 2013, p 31, available at: http://www.localgovernmentreview.nsw.gov.au/accessed on 14 October 2014 (ILGRP Final Report).

43 ILGRP Final Report, p 124.

44 Ibid.

45 OLG, *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships*, 8 April 2013, available at: http://www.olg.nsw.gov.au/news/intergovernmental-agreement-guide-nsw-state-local-government-relations-strategic-partnerships-8 accessed on 14 October 2014.

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

The 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.[46] 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 relevant council's inspection policy. Low risk food businesses are not inspected routinely.[47]
- Report their inspections to the Food Authority.[48]

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, following extensive consultation with stakeholders. The Food Act was then amended 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.[49]

The FRP aims to improve the efficiency, effectiveness and consistency of local government food inspections. The benefits are, consequently, reduced retail food sector related foodborne illness and duplication of inspection services between State and local government.[50]

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46 Food Authority submission, October 2012.

47 These businesses are inspected in response to complaints received and/or incidents. These businesses sell packaged, non-potentially hazardous foods such as potato chips, chocolate bars and packaged confectionery: Food Authority, *Summary report of NSW enforcement agencies' activities*, 2011 available at: http://www.foodauthority.nsw.gov.au/_Documents/local-government_pdf/summary_report_council_activities_2010_11.pdf accessed on 14 October 2014. See also: *Food Act 2003* (NSW), sections 93(1)-(5).

48 *Food Act 2003* (NSW), section 113(1).

49 Food Authority submission, October 2012.

50 Ibid.

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.[51]

Key elements of the FRP, outlined by the Food Authority, include:[52]

- Legislated commitment from the Food Authority and councils (ie, the Food Act was amended in 2008 to formalise the FRP).[53]
- 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.[54]
- 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.[55]
- A system of periodic review and assessment of the FRP.[56]

Notably, the Food Authority provides its assistance to, and oversight of, councils through a dedicated Local Government Unit (LGU), comprising five full time equivalents. The Food Authority's LGU:

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51 Productivity Commission, *Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator*, July 2012, p 355, available at: http://www.pc.gov.au/projects/study/regulation-benchmarking accessed on 14 October 2014 (Productivity Commission Performance Benchmarking Report).

52 Food Authority submission, October 2012.

53 See *Food Amendment Act 2007* (NSW), Schedule 1 (commenced 1 January 2008).

54 Food Authority submission, October 2012.

55 The FRP is guided by a statutory consultation mechanism known as the Food Regulation Forum, 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 115B.

56 Food Authority submission, October 2012.

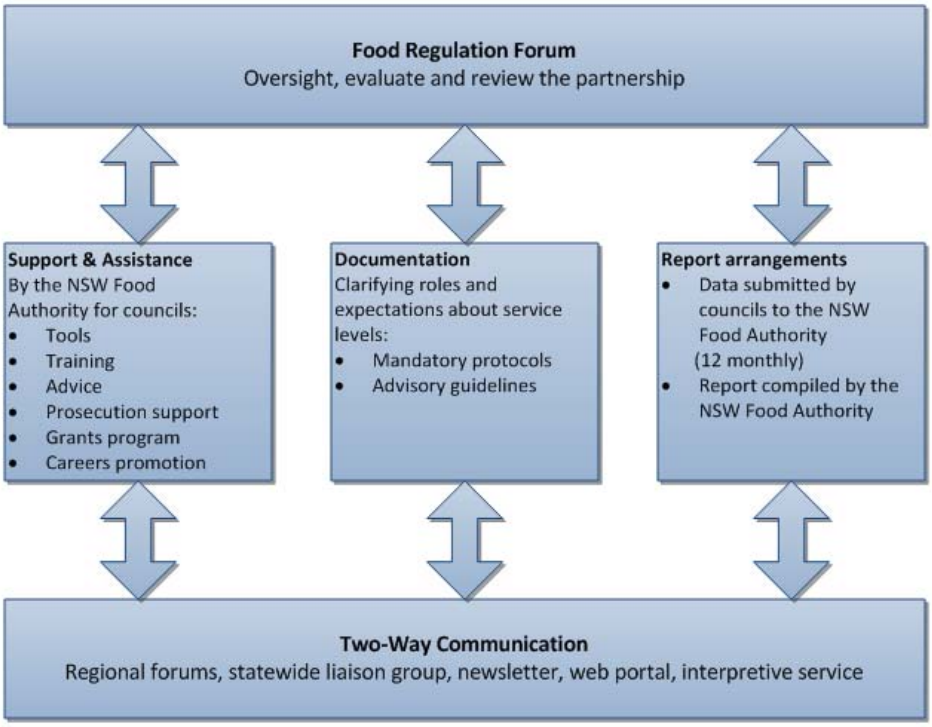
- Provides support and assistance to councils via advice, guidelines, protocols, standardised compliance tools, a dedicated telephone 'hotline' and a dedicated website portal for council officers. Specifically, this has included the Food Authority:
  - making recommendations on the frequency of council 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.[57]
- Collates and publishes information on council performance in regard to food safety surveillance.[58]
- Coordinates meetings, workshops and training with councils and other stakeholders.[59]

An important feature of the FRP is the two-way flow of information and communication between the Food Authority and councils. It is a partnership between the responsible State 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.

57 Food Authority submission, October 2012.
58 *Food Act 2003* (NSW), section 113A.
59 Food Authority submission, October 2012.

Figure 2.1 The Food Regulation Forum



Data source: Food Authority submission, October 2012.

Under the legislation, the Food Authority is responsible for appointing councils as enforcement agencies. However, the Food Authority cannot appoint a council before it has undergone a consultation process. The Food Authority must:

- consult with the council and consider any representations
- consider the resources and skills available to the council to enable the exercise of the proposed enforcement functions
- consider any representations made by another local council as to that council's willingness to exercise the enforcement functions in the area concerned
- consider the resources and skills available to that other council to enable the exercise of the proposed enforcement functions.[60]

The three categories of enforcement agencies are set out in the Box below.

60 *Food Act 2003* (NSW), section 111.

Box 2.1 Categories of enforcement agencies

Category A

The minimum function level for an enforcement agency. Functions are limited to acting where there is an imminent threat to public health and safety or the health of any individual, in connection with food, such as an urgent food recall.

Category B

The standard function level for an enforcement agency. Functions are limited to category A functions plus enforcement responsibilities for retail food businesses. Responsibilities include the power to routinely inspect premises, examine food and investigate certain complaints about retail outlets.

Category C

The broadest function level for an enforcement agency. Functions are limited to category B functions plus responsibilities for some non-retail food businesses.

Source: Food Authority, *Enforcement agency appointments*, available at: http://www.foodauthority.nsw.gov.au/aboutus/lists-registers/list-of-enforcement-agencies/#.VBD0jfN-9Fo accessed on 11 September 2014.

2.2 Assessment of the FRP

The FRP has been reviewed three times since it was established. 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 five years, versus the costs of $8.0 million.[61]

[61] Food Authority submission, October 2012.

In 2011/12, the Food Authority evaluated the FRP.[62] Five evaluation projects were undertaken, which 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).[63]

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 and 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 and increased community awareness).[64]

2.2.1 Stakeholder views on the FRP

Many stakeholders have supported, and advocated wider application of, the FRP or Partnership Model.[65] Orange City Council noted:

> The roll out of the NSW Food Blueprint, through the 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.[66]

62 Food Authority, *Food Regulation Partnership*, available at: http://www.foodauthority.nsw.gov.au/science/evaluating-what-we-do/food-regulation-partnership/ accessed on 14 October 2014.
63 Ibid.
64 Food Authority submission, October 2012.
65 For example, see submissions from Leichardt Municipal Council, City of Sydney Council and Local Government and Shires Association (now Local Government NSW), October 2012.
66 Orange City Council submission, November 2012.

Campbelltown City Council recommended the State Government adopts the FRP for all State agencies who share a regulatory role with councils.[67] Stakeholders have specifically submitted that there would be benefits in extending the Partnership Model to the following regulatory areas - planning, environment, building, health[68], swimming pools[69], liquor[70] and roads[71]. These areas are discussed in the following sections.

The NSW Business Chamber noted:

> 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.[72]

Several stakeholders commented on the importance of consultation and collaboration with councils. For example, in their submissions, Environmental Health Australia and Camden Council both submitted that the success of the FRP has been due to extensive consultation with local government along with a high level of collaboration.[73] The views and opinions that were expressed by councils were taken into account during the formulation of the FRP and the Food Authority therefore got "buy-in" from local government.[74]

We acknowledge that there were some stakeholders that expressed concerns with the FRP.[75] For example:

- Tumbarumba Shire Council commented that the FRP has created another State bureaucracy and that the volume of emails generated requires a significant amount of administrative time and resources.[76]
- City of Canada Bay Council noted that the FRP is a case of the NSW Government "creating powers and then handing the job over to local government" with funding to be achieved through inspection fees and fines.[77]

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67 Campbelltown City Council submission, October 2012.
68 Blacktown City Council submission, July 2014.
69 Warringah Council submission, July 2014.
70 OSBC submission, July 2014.
71 Ibid.
72 NSW Business Chamber submission, October 2012.
73 For example, see submissions from Environmental Health Australia and Camden Council, July 2014.
74 Ibid.
75 For example, see submissions from Tumbarumba Shire Council, City of Canada Bay Council and Botany Bay City Council, July 2014.
76 Tumbarumba Shire Council submission, July 2014.
77 City of Canada Bay Council submission, July 2014.

- Botany Bay City Council submitted that there are dangers of work "falling into cracks" where it may be incorrectly assumed that one or other is taking up the slack on coverage.[78]

North Sydney Council also commented on funding:

> It should be noted that in the Food Regulation Partnership, councils are duty bound to carry out the functions that are mandated. In this partnership the onus is on Council to provide the necessary funds to ensure the required inspections are completed.[79]

The Food Authority has recognised there is scope to improve some aspects of food regulation within the FRP (eg, the notification system) and is 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. We acknowledge that planning regulation is more complex than food regulation, but we still consider the elements of the Partnership Model can be applied to planning with suitable adaptations to realise substantial benefits.

The sections below discuss stakeholder concerns in relation to planning, and our recommendation for the establishment of a formal Planning Regulation Partnership between DPE 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 Planning White Paper. We note that the Planning Bill 2013 and Planning Administration Bill 2013 were introduced into Parliament on 22 October 2013. However, the Bills are not currently progressing.[80] The NSW Government is now considering options on the best means to implement its planning reform program as set out in the Planning White Paper.

78 Botany Bay City Council submission, July 2014.
79 North Sydney Council submission, July 2014.
80 The Planning Administration Bill has been passed by Parliament but cannot progress as it is cognate to the Planning Bill.

2.3.1 Stakeholder concerns

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)[81], 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.

Stakeholder concerns in relation to planning are discussed further in Chapter 7.

2.3.2 Our draft recommendation

We recommended in our Draft Report that 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 DPE and councils, has the potential to address many of the above-mentioned stakeholder concerns.

[81] Holroyd City Council noted in its submission that significant delays are experienced when developments require concurrence from the State. See: Holroyd City Council submission, November 2012.

We recognised that DPE 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, DPE 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 Planning White Paper, as set out in the Box below.

Box 2.2 Planning White Paper – 'cultural change' program and other initiatives

The 'cultural change' program is to include:

- Establishing a Cultural Change Action Group to be tasked with the design and oversight of the implementation of culture change actions alongside the implementation of 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 DPE and local councils.
- Identifying culture change champions and leaders, including in local government, to provide guidance and support to the profession.

The following initiatives are also proposed:

- A new performance monitoring framework to apply to all strategic plans, including the performance of the development assessment system.
- Enhanced and clearer partnership between State and local government for the preparation of Regional Growth Plans and Subregional Delivery Plans.
- 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.

Source: Planning White Paper, pp 39, 40-41 and 73-83.

However, we considered that there was further scope to improve consistency, capacity and capability across councils, as well as interactions and coordination between DPE 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 Productivity Commission survey found planning and building to be the key areas of concern for businesses in their interactions with local government.[82] CIE estimate that the excessive or unnecessary costs of the NSW planning system are currently at least $300 million per annum.[83]

We therefore considered there was benefit in DPE 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 DPE, and feedback to DPE from councils on the quality and usefulness of this support
- getting 'buy in' from councils in adopting DPE guidance and advice
- monitoring of councils' regulatory performance, and working with councils to improve performance.

We also acknowledged 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 DPE 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 are anticipated to be approved under streamlined assessment processes, using code assessment.[84] A more robust, transparent and effective compliance and enforcement regime is also proposed, with greater consistency in the exercise of discretion within that framework.[85] These reforms will improve the integrity of the certification system and make councils' role in enforcing compliance with planning and building regulation more important.

82 Productivity Commission Performance Benchmarking Report, p 234.
83 CIE Report, p 4.
84 Planning White Paper, p 8.
85 Ibid, p 146.

Examples of potential applications of the Partnership Model to planning

Under our proposed model, we suggested the dedicated LGU within DPE 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.[86]
- **Promote best practice** in how councils approach and administer planning regulation through the provision of 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) instead of requiring separate council approvals or consents when there are safety concerns with existing structures eg, a retaining wall.[87] Stakeholders identified Wagga Wagga City Council's (former) requirements for awnings to be particularly onerous (eg, engineering reports required every five years for all structures); whereas City of Canada Bay Council's awnings policy was considered best practice in minimising compliance costs for building owners.[88]
- **Regularly consult or collaborate** 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).[89]
- **Tailor council performance reporting requirements** to better capture data on specific areas of concern.
- **Provide feedback and, where necessary, assistance to councils based on reported data** – eg, work with consistently poor performing councils to improve performance.

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86 The NSW Government indicated that DPE 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 LGU developing other standard templates and guidance where possible (eg, for merit-assessed development) and making these available online.

87 Campbelltown City Council submission, October 2012.

88 NSW Business Chamber submission, November 2012.

89 Planning White Paper, pp 146-148.

- **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.[90]

- **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.[91]

- **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.[92]

As outlined in section 2.5.1 below, the Planning Partnership Model should also cover councils' 'building' enforcement role (under planning legislation), but exclude its role as building certifier.

90 NSW Business Chamber submission, November 2012.

91 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 submission, November 2012.

92 Productivity Commission Performance Benchmarking Report, pp 175-176.

Box 2.3 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.

Source: Productivity Commission Performance Benchmarking Report, p 176. See also: Victorian Department of Transport, Planning and Local Infrastructure (formerly, Victorian Department of Planning and Community Development), *Rural Council Planning Flying Squad*, available at: http://www.dtpli.vic.gov.au/planning/about-planning/projects-and-programs/rural-council-planning-flying-squad accessed on 14 October 2014.

2.3.3 Stakeholder feedback

There was a high level of stakeholder support in response to our draft recommendation.[93]

Several stakeholders commented on the importance of collaboration in implementing a Partnership Model.[94] For instance, stakeholder comments included that the Planning Regulation Partnership:

- must be a genuine partnership[95]
- should be established in close consultation with key stakeholders, including councils, Local Government NSW and the Office of Local Government (OLG), as per the FRP[96]
- should enable councils to determine what sort of regulatory role they will undertake (eg, as a Category A, B or C council) as per the FRP.[97]

Stakeholders also commented that:

- the Planning Regulation Partnership should be linked to any initiatives proposed as part of the Planning White Paper's cultural change program[98]
- an Implementation Co-ordination Working Party should be convened[99]
- regional based districts should be established[100]
- the dedicated LGU should advise on the interpretation and application of planning legislation[101]
- standard audit tools for assessing regulatory performance should be developed.[102]

93 For example, see submissions from Blacktown City Council, City of Ryde Council, City of Sydney Council, Environmental Health Australia, NSW Business Chamber, OSBC and Wyong Shire Council, June/July 2014.
94 For example, see submissions from Environmental Health Australia and Central NSW Councils, July 2014.
95 The Hills Shire Council submission, July 2014.
96 Environmental Health Australia submission, July 2014.
97 For example, see submissions from Environmental Health Australia and Camden Council, July 2014.
98 Tweed Shire Council submission, June 2014.
99 Willoughby City Council submission, July 2014.
100 City of Ryde Council submission, June 2014.
101 Coffs Harbour City Council submission, June 2014.
102 Newcastle City Council submission, June 2014.

However, some concerns were also raised by stakeholders, mostly related to council resources and funding. For example, stakeholder comments included that:

- there must be an ongoing commitment to adequately fund and resource the initiatives over many years[103]
- care should be taken to ensure that any fee-based training meet the needs for regional NSW.[104]

2.3.4 Our final recommendation

We acknowledge that there would need to be adequate resourcing of the Planning Regulation Partnership by DPE and councils, and time and effort invested into the ongoing implementation of the partnership, to ensure its success. We note that DPE supports the Partnership Model, but expressed concerns that the FRP operates within a defined scope and that planning regulation is broader and more complex.[105] In our view, the elements of the Partnership Model can still be applied to planning with suitable adaptations to realise substantial benefits.

We consider that it would not be appropriate for the Planning Regulation Partnership to include provision of legal advice from State agencies to councils, but substantial guidance and assistance with the application of legislation is envisaged.

In our view, there could be benefits in allowing councils to determine their level of regulatory responsibilities (eg, similar to Category A, B or C under the FRP – see section 2.1.1 above). We consider that this is already encompassed by our recommended Partnership Model, as this should be considered in the process of clearly delineating the regulatory roles and responsibilities between State and local government. However, we note that the FRP approach to delineating responsibilities may not be suitable for all areas of regulation.[106]

We consider that there is merit in the suggestion of revising our recommendation to refer to "collaboration" rather than "consultation".

In response to the high level of stakeholder support, we have maintained our recommendation subject to the small change discussed above.

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103 Environmental Health Australia submission, July 2014.
104 Central NSW Councils submission, July 2014.
105 Personal communication, email from DPE, 13 October 2014.
106 For example, delineation of responsibilities is achieved differently under environmental legislation – see Schedule 1 of the *Protection of the Environment Operations Act 1997*.

Recommendation

1 Subject to cost benefit analysis, the NSW Department of Planning and Environment 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
- risk-based approach to regulation supported by a compliance and enforcement policy
- use and publication of reported data to assess and assist council performance
- dedicated consultation forum for strategic collaboration with councils
- ability for councils to recover their efficient regulatory costs
- system of periodic review and assessment of the partnership agreement
- dedicated local government unit to provide:
  - council hotline to provide support and assistance
  - 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 2.4 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: CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014, Chapter 3 'Planning' (CIE Report).

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, 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 Regulation Partnership (ERP) 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'. The EPA is the appropriate regulatory authority for activities that require an environment protection licence (as specified in Schedule 1 of the Act) and for activities operated by public authorities. Councils are the appropriate regulatory authority for all other regulatory activities.[107]

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.[108]

As the consent authority under the EP&A Act, councils impose conditions on developments that are aimed at mitigating or avoiding adverse environmental impacts.[109] Councils also regulate environmental impacts under several other Acts, including the *Local Government Act 1993* (NSW), *Coastal Protection Act 1979* (NSW), *Contaminated Land Management Act 1997* (NSW), *Pesticides Act 1999* (NSW), *Noxious Weeds Act 1993* (NSW), *Native Vegetation Act 2003* (NSW), and *Marine Pollution Act 1987* (NSW).

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107 *Protection of the Environment Operations Act 1997* (NSW), section 6(2).
108 CIE Report, pp 76-77.
109 *Environmental Planning and Assessment Act 1979* (NSW), section 4.

2.4.2 Stakeholder concerns

NSW Environment Protection Authority

According to the EPA, its regulatory roles and those of councils are clearly defined under the POEO Act.[110] It also notes that it works with councils to coordinate and deliver effective compliance campaigns, audit programs and regulatory responses.[111] It states these activities provide an opportunity to share skills and experiences, leading to a more consistent regulatory approach.

The EPA provided details of a number of examples of its involvement with councils.[112] For example:

- **Joint compliance audit programs:** The EPA and councils 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. These include:
  - *Waste Less, Recycle More Initiative*, the largest waste and recycling funding program in Australia and is designed to stimulate investment in waste and recycling infrastructure, combat littering and illegal dumping and achieve the State's recycling targets. The initiative allocated $137.7 million over five years for the new Local Government Waste and Resource Recovery program.
  - *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.

110 For example, see submissions from EPA, November 2012 and July 2014.
111 Ibid.
112 Ibid.

- *Illegal Waste Dumping forum:* 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.
- *Regional Illegal Dumping Squads,* 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 has recently established a number of new RID squads with regional groupings of councils.

- **Implementation of the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2014* (NSW):** 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.

Other stakeholders

Other stakeholder submissions, however, have indicated scope to improve the EPA's interactions with councils, at least in some areas. They 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.[113]

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.

[113] For example, see submissions 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.

Councils

Several councils said there was overlap or uncertainty in relation to their regulatory roles relative to the EPA. For instance, stakeholders said there can be confusion or uncertainty as to who is the appropriate regulatory authority under the POEO Act.[114] Specific examples cited were:

- cement premises[115]
- 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[116]
- waste disposal, in particular when "large amount[s] of fill [are] dumped on private property" (one council believed the EPA was the appropriate regulatory authority, the EPA believed the council was the appropriate regulatory authority)[117]
- pollution from State-owned utility.[118]

Warringah Council said it has limited interaction with, and help from, the EPA (amongst a range of other NSW Government agencies).[119] City of Sydney Council stated that, whilst councils often liaise with locally based state officers, interactions between both levels of government need to be more structured and coordinated.[120] City of Sydney Council also argued State agencies should engage in more effective partnership arrangements with local government (as per the FRP Model).[121] Similarly, Leichhardt noted that communication between State agencies and local government requires more structure and coordination, "especially between the EPA and councils."[122]

Lake Macquarie City Council 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.[123] Likewise, Randwick City Council 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.[124]

114 Ibid.
115 Warringah Council submission, November 2012.
116 Newcastle City Council submission, November 2012.
117 Shellharbour City Council submission, October 2012.
118 Hurstville City Council submission, October 2012.
119 Warringah Council submission, November 2012.
120 City of Sydney Council submission, January 2013.
121 Ibid.
122 Leichardt Municipal Council submission, November 2012.
123 Lake Macquarie City Council submission, November 2012.
124 Randwick City Council submission, November 2012.

CIE reports that one 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.[125]

On the other hand, Liverpool Plains Shire Council stated the EPA openly and actively supports it through regulatory training and legislative 'handovers'.[126]

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 that this results in overly cautious or prescriptive regulatory requirements, meaning the regulated business incurs unnecessary costs.[127]

Caltex supported this view. It recommended that the EPA set environmental standards and requirements, with councils simply responsible for monitoring compliance and reporting to the EPA. Alternatively, it stated that councils should pool their regulatory resources, to enhance capacity and capability, and deliver better regulatory outcomes at lower cost.[128]

Caltex also noted the following:

- Petrol station forecourt refuelling area effluent control is subject to regulatory overlap. The EPA monitors quality standards under the POEO Act[129], while councils set conditions through the development assessment process.[130] 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.

125 CIE Report, p 78.
126 Liverpool Plains Shire Council submission, October 2012.
127 Australian Sustainable Business Group submission to IPART's Licence Rationale and Design Review Issues Paper, November 2012.
128 Caltex submission, November 2012.
129 *Protection of the Environment Operations Act 1997* (NSW), section 6(1).
130 *Environmental Planning and Assessment Act 1979* (NSW), section 4.

2.4.3 Our draft recommendation

We recommended that the Partnership Model be applied to environmental regulation in our Draft Report. 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. We also recognise in Chapter 5 of our report that good cost recovery mechanisms already exist for councils under the POEO Act. 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 and, in most cases, these offices have developed a network of contacts within local government within their regions.[131] However, the work of each office is not necessarily co-ordinated, shared or applied consistently across the State.

We consider that a more structured and formalised partnership arrangement could:

- clearly delineate regulatory roles and responsibilities across all shared areas of environmental regulation
- 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 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, we recommended in our Draft Report that the Environmental Regulation Partnership and its elements be established in close consultation with key stakeholders, including councils, Local Government NSW and OLG.

[131] Personal communication, email from EPA, 14 October 2014.

2.4.4 Stakeholder feedback

Stakeholders generally supported our recommendation.[132] For example:

- Environmental Health Australia commented that this would re-establish a valuable section of the EPA that was gradually dissolved and abandoned outright in the early 2000s.[133]
- City of Ryde Council submitted that it would welcome a stronger partnership with EPA.[134]
- City of Sydney Council agreed that a partnership between the EPA and councils would be a positive initiative.[135]

The Sydney Catchment Authority has also indicated its support of an Environmental Regulation Partnership and being part of such a partnership in Sydney's drinking water catchments.[136]

We note that the EPA has not indicated support for our recommendation. The EPA commented that its regulatory roles and those of councils are clearly defined under the POEO Act.[137] It also noted that it already works with councils to coordinate and deliver effective compliance campaigns, audit programs and regulatory responses (see section 2.4.2 above).

The EPA has provided further information on the work it has undertaken to support and build capacity in local councils. This includes:

- **Capacity building courses:** As a member of the Australasian Environmental Law Enforcement and Regulators neTwork (AELERT), the EPA delivers training courses specific to local government needs, including workshops on illegal dumping and contaminated land management, and a specified course for "authorised officers" within councils on the POEO Act.[138]
- **Memorandum of Understanding (MoU) between Local Government NSW and the EPA:** This MoU is regarding a range of initiatives including:
  - establishing and maintaining a framework for consultation and coordination
  - ensuring a close working relationship between the parties to the MoU
  - providing opportunities for collaboration and partnership, and
  - assisting the organisations involved to fulfil their respective statutory functions and obligations and ensure they are credible regulators.

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132 For example, see submissions from City of Sydney Council, Environmental Health Australia, Ku-ring-gai Council, Holroyd City Council, Marrickville Council, Mosman Municipal Council, OSBC and Willoughby City Council, June/July 2014.
133 Environmental Health Australia submission, July 2014.
134 City of Ryde Council submission, June 2014.
135 City of Sydney Council submission, July 2014.
136 Personal communication, email from DPC, 24 September 2013.
137 EPA submission, July 2014.
138 Personal communication, email from EPA, 14 October 2014.

- **Liaison Committee:** The MoU is currently under review, but is considered to be an important mechanism for the organisations to engage at a strategic level, and includes a Liaison Committee with the following functions:
  - ensure an open line of communication at all levels of each organisation
  - identify, discuss and resolve priority issues and concerns
  - discuss opportunities to advance issues jointly or to foster collaborative activities, and
  - explore the potential to develop partnerships to address environmental issues through a sharing of resources.[139]

The EPA has suggested that given its regional presence and strong local networks throughout the State, it would be more efficient to strengthen these arrangements than develop a new central model.

2.4.5 Our final recommendation

On balance, we consider that we should retain the recommendation, in light of strong council and other stakeholder support. We think that a more structured and formalised partnership arrangement between councils and the EPA will lead to considerable benefits. The formal framework for partnership should apply to all regulatory areas (eg, waste, contaminated land, noise, water pollution) where local government and the EPA have shared regulatory functions.

In undertaking the cost benefit analysis, the alternatives suggested by the EPA should be evaluated in determining whether to implement a formal partnership model (eg, strengthened regional offices and the MoU with Local Government NSW).

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 Recommendation 1).

[139] Ibid.

Box 2.5 CIE's analysis of this recommendation

CIE notes that there may be a benefit of establishing a partnership model for environmental regulation 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 (ie, 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 was 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: CIE Report, Chapter 12.

2.5 Applying the Partnership Model to other areas

We received a number of submissions from stakeholders commenting that there would be benefits in extending the Partnership Model to building, health[140], swimming pools[141], liquor[142] and roads[143].

Given the costs and resources required to establish a successful formal Partnership Model like the FRP, we have limited our Partnership Model recommendations to planning, environment and building. We consider that these are the regulatory areas in which the Partnership Model has the potential to provide the largest red tape savings.

[140] Blacktown City Council submission, July 2014.
[141] Warringah Council submission, July 2014.
[142] OSBC submission, July 2014.
[143] OSBC submission, July 2014.

However, we recommend in section 2.5.6 below that all State agencies administering legislation with regulatory responsibilities for local government adopt relevant elements of the Partnership Model.

2.5.1 Building

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

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 Planning White Paper proposes to address these issues through:

- clarifying roles and responsibilities of the certifying authority, consent authority and the council[144]
- removing building and construction requirements from consents and addressing these issues through the construction certification process[145]
- developing consistent consent conditions.[146]

However, as noted above, the planning reforms are anticipated to increase the reliance on the certification system and accentuate the importance of councils' enforcement role in maintaining the integrity of that system. At a minimum, there should be a partnership between the State Government and councils in relation to building regulation to 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 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.

144 Planning White Paper, p 192.
145 Ibid, p 186.
146 Ibid, p 187.

2.5.2 Health

We do not recommend formal application of the full Partnership Model between councils and the NSW Ministry of Health (NSW Health).

While it was suggested by some stakeholders that a Partnership Model could be applied to NSW Health, most stakeholders did not raise health regulation as a major area of concern. Some councils cited poor consultation in relation to amendments to the *Public Health Act 2010* (NSW);[147] while others expressed positive views.[148]

Councils' compliance and enforcement of public health matters are shared between councils and NSW Health under the *Public Health Act 2010* (NSW) and the *Public Health Regulation 2012* (NSW). This relates to the regulation of public swimming pools[149], warming/cooling towers[150] and skin penetration procedures.[151]

Like food safety, environment and planning regulation, health is potentially a high risk or high cost area. However, 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 three areas of public health for which council is the regulator.[152]

For these reasons, combined with the costs of establishing a Partnership Model, we have not recommended formal application of the full Partnership Model to NSW Health. However, we recommend that all State agencies adopt relevant elements of the Partnership Model, as discussed below in section 2.5.6.

147 For example, see submissions from Campbelltown City Council, Holroyd City Council, and Sutherland Shire Council, October/November 2012.

148 For example, see submissions from Lismore City Council and Orange City Council, October/November 2012.

149 *Public Health Act 2010* (NSW), Part 3, Division 3.

150 *Public Health Act 2010* (NSW), section 31.

151 *Public Health Act 2010* (NSW), Part 3, Division 4.

152 CIE Report, p 86 and IPART, Licence Rationale and Design Draft Report, October 2013 available at: http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design accessed on 16 October 2014. IPART analysis of licence survey data collected for the period of 1 July 2011 to 30 June 2012.

2.5.3 Office of Local Government

We received some support from stakeholders to establish a formal Partnership Model between councils and OLG.[153] OLG is responsible for local government across NSW. OLG's organisational purpose is "to strengthen the Local Government Sector" and its organisational outcome is "successful councils engaging and supporting their communities".[154]

OLG's role includes providing significant assistance to councils. For example, OLG develops guidance material for councils for regulatory areas for which it has responsibility.[155] In 2012/13, OLG's role included providing assistance to councils in relation to swimming pools and companion animals regulation (see the following Box).

153 Warringah Council submission, July 2014.

154 OLG, *About us,* available at: http://www.olg.nsw.gov.au/about-us accessed on 8 September 2014.

155 For example, see recent guidance material for pool owners, including pool inspection checklists. NSW Government, *Pool inspection self-assessment checklists*, available at: http://www.swimmingpoolregister.nsw.gov.au/checklists accessed on 15 October 2014.

Box 2.6 OLG (formerly DLG) achievements in 2012-2013

- **Implementing Destination 2036:** DLG implemented activities outlined in the Destination 2036 Action Plan. DLG also supported the Independent Local Government Review Panel's work by providing information, data and administrative support.
- **Reviewing:** DLG supported the Local Government Acts Taskforce in its comprehensive review of the *Local Government Act 1993* and *City of Sydney Act 1988*.
- **Improving backyard pool safety:** Backyard swimming pool safety increased through measures DLG developed. These measures included:
  - Establishing the NSW Swimming Pool Register where pool owners register their pool online for free, and assess whether their pool barrier complies with legislation.
  - Supporting councils in developing a locally-appropriate and affordable inspection program by October 2013.
  - Ensuring pools associated with tourist sites, visitor accommodation and properties about to be leased or sold must have a compliance certificate from April 2014.
- **Addressing council conduct:** DLG developed and released a new Model Code of Conduct for local councils. DLG also developed proposals for the government's consideration to tackle council dysfunction, establishing a new approach for addressing dysfunction and poor performance in local councils.
- **Encouraging responsible pet ownership:** As part of the NSW 2021 commitment to involve the community in decision making, DLG supported the consultation on the government's response to the Companion Animals Taskforce reports. DLG also developed and launched the new Responsible Pet Ownership Education Program website, which is part of the $2.1 million program.
- **Assisting local government elections:** DLG provided assistance and advice to 14 councils that ran their own local government ordinary elections. DLG held 30 councillor induction workshops across NSW to provide information and advice to over 700 new and returning councillors. DLG also facilitated the amendment of legislation to enable councils to run their own elections.
- **Monitoring council performance:** DLG undertook 17 Promoting Better Practice reviews to strengthen the local government sector by assessing performance and promoting a culture of continuous improvement. DLG provided all NSW councils with guidance and advice while they reviewed their long term Community Strategic Plans and Delivery Programs.

Source: OLG, *Annual Report 2012-2013*, p 26, available at: http://www.olg.nsw.gov.au/sites/default/files/DPC-AR-2012-2013.pdf accessed on 12 September 2014.

Given the significance of the regulatory areas for which OLG provides support to councils, we recommend it adopts relevant elements of the Partnership Model, as discussed below in section 2.5.6.

We also make specific recommendations in our report in relation to the specific regulatory areas of swimming pools (Chapter 9) and companion animals (Chapter 11).

2.5.4 Office of Liquor Gaming and Racing

We received one submission from the Office of NSW Small Business Commissioner (OSBC) suggesting that a formal Partnership Model be considered with the Office of Liquor, Gaming and Racing (OLGR).[156]

We understand that local councils have an important role in the operation of liquor regulation.[157] For example, the determination of development approvals under planning laws for licensed venues and the provision of submissions by councils to the Independent Liquor & Gaming Authority affect the outcome of liquor licensing applications.[158]

The OLGR provides assistance to councils in relation to the administration of NSW's liquor legislation. OLGR's interactions with councils have included[159]:

- working across 145 local liquor accords across NSW[160]
- seeking submissions from councils in relation to disturbance complaints[161]
- working with local councils on locality specific issues, such as alcohol related violence (eg, the Byron Bay Alcohol Action Plan)
- participating in joint compliance operations with police and the City of Sydney Council in the Sydney CBD, Darlinghurst and Surry Hills areas
- working with the City of Sydney Council on implementation of the Sydney CBD Entertainment Precinct Plan of Management measures[162]
- working with the City of Sydney Council and Newcastle City Council on the Environmental Venue and Assessment Tool trial.

156 OSBC submission, July 2014.

157 OLGR, *Local councils*, available at: http://www.olgr.nsw.gov.au/liquor_govt_council.asp accessed on 8 September 2014.

158 Ibid.

159 Personal communication, email from OLGR, 18 September 2014.

160 A liquor accord is an agreement by licensees and other stakeholders to take certain actions in local communities which aim to improve safety in entertainment areas and reduce alcohol-related anti-social behaviour, offences and violence. OLGR, *Accords,* available at: http://www.olgr.nsw.gov.au/accords_about.asp accessed on 18 September 2014.

161 Disturbance complaints may be made under section 79 of the *Liquor Act 2007* (NSW). These complaints relate to noise or other disturbances due to (i) the manner in which licensed premises are conducted or (ii) the behaviour of persons leaving licensed premises (including the incidence of anti-social behaviour or alcohol-related violence).

162 OLGR, *Plan of Management for the Sydney CBD Entertainment precinct*, available at: http://www.olgr.nsw.gov.au/liquor_SydneyCBD_precinct.asp accessed on 18 September 2014.

It is clearly important for OLGR and councils to work effectively together. However, the scale of activities with local government may not be sufficient to justify the costs of establishing the full Partnership Model.

We recommend OLGR adopt relevant elements of the Partnership Model, as discussed below in section 2.5.6.

2.5.5 Roads and Maritime Services

The OSBC also suggested that a formal Partnership Model be considered with Roads and Maritime Services (RMS).[163]

In relation to the issues that have been raised in the course of our review, we consider our recommendation in Chapter 10 would provide an appropriate solution. In Chapter 10, we recommend the NSW Government funds an interim unit in RMS to provide assistance to local government with Heavy Vehicle access decisions and related matters.

We also recommend that RMS adopt relevant elements of the Partnership Model, as discussed below in section 2.5.6.

Box 2.7 CIE's analysis of this recommendation

CIE has not quantified the impact of this recommendation. This is:

- to avoid double counting of impacts with other targeted recommendations made by IPART that overlap with this recommendation
- because it is currently uncertain which key elements State agencies will adopt as a result of IPART's recommendation and to what extent and level of effectiveness the elements will be implemented.

In some cases, State agencies are currently or have recently adopted key elements of the partnership model.

Source: CIE Report, Chapter 5.

[163] OSBC submission, July 2014.

2.5.6 Our final recommendation

We strongly encourage all State agencies to review the Partnership Model and adopt relevant 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 NSW Health in 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 costs to councils, businesses and individuals.

Recommendation

3 State agencies administering legislation with regulatory responsibilities for local government, such as the NSW Ministry of Health, NSW Office of Liquor, Gaming and Racing, Office of Local Government, and Roads and Maritime Services, should adopt relevant elements of the Partnership Model.

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. In the United Kingdom, this was the role of the former Local Better Regulation Office (LBRO).

We note that the LBRO was dissolved as a public body in 2012 and reconstituted as the Better Regulation Delivery Office within the UK Department for Business, Innovation and Skills.[164]

2.6.1 A Local Better Regulation Office (LBRO)

The LBRO was established under the *Regulatory Enforcement and Sanctions Act 2008* (UK). The role of LBRO was 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 for local government.[165]

In 2012, the functions of the LBRO were transferred to the Better Regulation Delivery Office.

As outlined in Chapter 3, we have recommended that the former NSW Better Regulation Office's (BRO) *Guide to Better Regulation*[166] 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.

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164 A review of the LBRO, carried out as part of the Public Bodies Review in 2010, concluded that the existing non-departmental public body model was not the best option for delivery of LBRO's functions. It was concluded that other options could lead to greater accountability, flexibility and efficiency. UK Department for Business, Innovation & Skills, *Impact Assessment*, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197615/11-1417-dissolution-of-lbro-transfer-functions-to-bis-impact-assessment.pdf accessed on 11 September 2014.

165 Productivity Commission Performance Benchmarking Report, p 71.

166 Better Regulation Office, *Guide to Better Regulation*, November 2009, available at: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf accessed on 21 October 2013 (Better Regulation Guide).

Primary Authority Scheme

One of the biggest initiatives of the former LBRO and current Better Regulation Delivery Office has been the Primary Authority Scheme. The UK scheme is aimed at providing more regulatory consistency and certainty for businesses that operate across a number of local authority areas. Under the 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).[167]

The Victorian Competition and Efficiency Commission (VCEC) examined the advantages and disadvantages of the UK scheme. 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.[168]

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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[167] Productivity Commission Performance Benchmarking Report, p 75.

[168] Victorian Competition and Efficiency Commission, *Local Government for a Better Victoria: An Inquiry into Streamlining Local Government Regulation – Final Report*, August 2010, p 311, available at: http://www.vcec.vic.gov.au/Inquiries/Completed-inquiries/Local-government-regulation accessed on 14 October 2014.

Box 2.8 The UK's Primary Authority Scheme

Key features of the Primary Authority Scheme 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.

Source: Productivity Commission Performance Benchmarking Report, p 75.

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 DPC, the NSW Ombudsman and OLG undertaking some overarching initiatives (eg, see Chapter 3 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 FRP is also strongly supported by stakeholders and the results of its reviews.

3 Improving the regulatory framework at the State level

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 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.[169] These functions emanate from 67 State Acts, which are administered by 8 Departments or Ministries and 23 Agencies.[170]

Substantial benefits can be achieved by managing the number of regulations and preventing new regulations from imposing unnecessary costs on the community. In 2011, the NSW Government introduced a "one on, two off" policy for all new principal legislation.[171] Under that policy, each calendar year the Government aims to ensure that:

- the number of principal legislative instruments (ie, principal Acts and principal Regulations) repealed is at least twice the number of new principal legislative instruments introduced (a 'numeric test')
- the regulatory burden imposed by new principal legislative instruments within each portfolio is less than the regulatory burden removed by the repeal of principal legislative instruments from the same portfolio (a 'regulatory burden constraint').

As the State develops new 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.

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169 Stenning & Associates, *Register of regulatory functions undertaken by Local Government in NSW, October 2012*, available at: http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Local_Government/Local_Government_Compliance_and_Enforcement accessed on 14 October 2014 (Stenning Report).

170 Ibid.

171 DPC, *Red Tape Reduction*, available at: http://www.dpc.nsw.gov.au/programs_and_services/better_regulation/red_tape_reduction accessed on 14 October 2014.

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.

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

- revising the *Guide to Better Regulation*[172] (Better Regulation 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
- establishing better regulation principles with a statutory basis
- managing the stock of local government regulation by maintaining the Stenning register of local government regulatory functions
- introducing a regulators' 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 new model enforcement policy to support the implementation of the regulators' code and assist local government to undertake their regulatory roles and responsibilities effectively
- abolishing Local Orders Policies
- providing greater guidance to councils in developing their regulatory policies and instruments and increasing transparency for local government fees and charges to ensure efficient fees and charges.

[172] Better Regulation Office, *Guide to Better Regulation*, November 2009, available at: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf accessed on 21 October 2013 (Better Regulation Guide).

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 DPC as the regulatory gatekeeper in NSW. It then discusses stakeholder submissions and recommends specific improvements to this framework.

3.1.1 Department of Premier and Cabinet

The role of the former Better Regulation Office 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 Better Regulation Guide.
- Providing ongoing advice and practical tools to agencies to assist in meeting the better regulation requirements.[173]

The Better Regulation Office worked with State regulators on various initiatives. For instance, it had a regulators group and was developing guidance on risk-based enforcement and measuring regulatory outcomes.[174]

As a result of DPC being restructured, the Better Regulation Office no longer exists as a separate office within DPC. The functions of the former Better Regulation Office are now managed in DPC's State Productivity Branch.[175]

3.1.2 Stakeholder concerns

Stakeholders raised a number of concerns relating to the regulation-making process and State and local government interactions in responses to our Issues Paper.

These concerns are summarised below and presented in Box 3.1.

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[173] For example, see: Better Regulation Office, *Measuring the Costs of Regulation*, June 2008, available at: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0003/23979/02_Measuring_the_Costs_of_Regulation.pdf accessed on 15 October 2014.

[174] This is part of the NSW Government's Quality Regulatory Services initiative. See: Media Release, *NSW Government takes action to drive economic growth*, 13 December 2012, available at: http://www.business.nsw.gov.au/__data/assets/pdf_file/0016/26233/rel_stoner_20121213_iap_policy.pdf accessed on 22 March 2013.

[175] Personal communication, email from DPC, 7 October 2014.

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[176]
- State 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))[177]
- a desire for greater partnership with State Government.[178]

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[179]
- delays as a result of the lack of co-ordination between State and local government (eg, planning approval concurrences and referrals)[180]
- 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.[181]

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)[182]
- 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.[183]

176 Albury City Council submission, October 2012.
177 For example, see submissions from Sutherland Shire Council and Lismore City Council, November 2012.
178 Campbelltown City Council submission, October 2012.
179 For example, see submissions from Caltex, OSBC and NSW Business Chamber, October/November 2012.
180 Urban Taskforce Australia submission, November 2012.
181 For example, see submissions from HIA, NSW Business Chamber and Caltex, October/November 2012.
182 Banyard, D submission, October 2012.
183 Personal communication, email from Wentworth Shire Council, 26 February 2013.

Box 3.1 Concerns with local government capacity and capability and interactions with the State

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.

NSW Office of the Small Business Commissioner (OSBC)

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 two tiers is therefore vitally important. Unfortunately, there are far too many instances where the sharing of knowledge and basic interaction between the two tiers is sorely lacking.

Source: Submissions from councils, OSBC and NSW Business Chamber, 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[184]
- greater consultation, communication and coordination between State and local government[185]
- consideration of the capacity and capability of councils prior to delegating regulatory roles to local government[186]
- enhancement of regulatory capacity and capability of councils through the development of standardised systems and processes to be used across all councils.[187]

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 (eg, Wentworth Shire Council, with a population of 6,000, does not employ a dedicated enforcement officer[188] and Liverpool Plains Shire Council does not undertake regular inspections of on-site sewage systems or developments[189]).

3.1.3 Current regulatory framework

There are intergovernmental agreements between Federal, State and local governments aimed at preventing cost shifting to local government from the Federal and State Governments.

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

These are outlined below.

184 Business Council of Australia submission, October 2012.
185 For example, see submissions from Caltex, Ashfield Council and Lake Macquarie City Council, October/November 2012.
186 For example, see submissions from Caltex, NSW Business Chamber and Randwick City Council, October/November 2012.
187 For example, see submissions from OSBC, Warringah Council and NSW Business Chamber, October/November 2012.
188 Wentworth Shire Council submission, October 2012.
189 Liverpool Plains Shire Council submission, October 2012.

Inter-governmental agreements

The *Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters* 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.[190] 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.[191] More recently this has been replaced with the *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships* (the NSW Intergovernmental Agreement), which was signed on 8 April 2013.[192]

The intergovernmental agreements 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 Intergovernmental Agreement, there is agreement that prior to a responsibility (ie, service or function) being devolved to councils, local government be consulted and the financial impact be considered within the context of the capacity of local government.[193]

Regulatory Impact Analysis (RIA) processes

In NSW, RIA relating to the regulatory design process is implemented largely through administrative requirements imposed via the Better Regulation 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.[194]

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190 Local Government Association of South Australia, *Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters,* April 2006 available at: http://www.lga.sa.gov.au/webdata/resources/files/IGA_on_cost_shifting_-_signed.pdf accessed on 14 October 2014.

191 OLG, *Intergovernmental Agreement between the NSW State Government and the Local Government and Shires Associations of NSW on behalf of NSW Councils*, 25 October 2010, available at: http://www.dlg.nsw.gov.au/dlg/dlgHome/documents/information/Intergovernmental%20Agreement%20between%20the%20NSW%20Government%20and%20the%20Local%20Government%20and%20Shires%20Associations%20of%20NSW.pdf accessed on 14 October 2014.

192 OLG, *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships*, 8 April 2013, available at: http://www.olg.nsw.gov.au/news/intergovernmental-agreement-guide-nsw-state-local-government-relations-strategic-partnerships-8 accessed on 14 October 2014.

193 Ibid, clause 5.

194 *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 Better Regulation Guide or the SL Act. This is not consistent with the principles agreed under the Inter-Governmental Agreements.

Review of the Better Regulation Guide and SL Act

In September 2011, the Better Regulation Office commenced a review of the Better Regulation Guide and SL Act to determine if changes were necessary to enhance existing arrangements. The Better Regulation Office noted in its issues paper overlap and inconsistency in the requirements of the Better Regulation Guide and the SL Act, and a lack of transparency in current RIA processes.[195]

The Productivity Commission's recent findings on RIA processes

In 2011, the Productivity Commission benchmarked RIA processes in Australia.[196] 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.[197]

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.[198]

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195 Better Regulation Office, Issues Paper: *Review of NSW Regulatory Gatekeeping and Impact Assessment Processes*, September 2011.

196 Productivity Commission, *Research Report, Identifying and Evaluating Regulation Reforms*, December 2011, available at http://www.pc.gov.au/ accessed on 14 October 2014.

197 Ibid.

198 Productivity Commission, *Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator*, July 2012, p 21, Leading Practice 2.1, available at: http://www.pc.gov.au/projects/study/regulation-benchmarking accessed on 14 October 2014 (Productivity Commission Performance Benchmarking Report).

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.[199] 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.

The Independent Local Government Review Panel (ILGRP) considered this issue. It recommended that regional boundaries for the new Joint Organisations it proposes (discussed further in Chapter 4) align as far as possible with key State and Federal agencies for strategic planning purposes.[200]

We note that the NSW Government recently supported-in-principle the ILGRP's recommendations in relation to Joint Organisations.[201] The NSW Government has supported this recommendation to reduce the costs of working across different boundaries.[202]

3.1.4 Our draft recommendation

In our view, to be effective, the intergovernmental agreements 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 intergovernmental agreements are implemented is to move them clearly into the sphere of State agencies via the RIA process.

We recommended in our Draft Report that 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.

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199 See comments from Councillor Bob Wheeldon, Wentworth Shire Council, *Transcript - Local Government Compliance and Enforcement* (Public Roundtable), 4 December 2012, p 96.

200 ILGRP, *Revitalising Local Government*, October 2013, pp 80-81, available at: http://www.localgovernmentreview.nsw.gov.au/accessed on 14 October 2014 (ILGRP Final Report).

201 OLG, *Fit for the Future - NSW Government Response*, September 2014, p 13 (recommendation 35), available at: http://www.fitforthefuture.nsw.gov.au/ accessed on 14 October 2014 (Fit for the Future Response).

202 Ibid, p 13 (Recommendation 35).

This is consistent with the Productivity Commission's leading practice[203] and would address widespread stakeholder concerns. It would implement a similar process to the one 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.)

Where regulatory proposals involve responsibilities for local government, the State agency should also prepare an implementation and compliance plan (see Box below).

Box 3.2 Implementation and compliance plans

Each implementation and compliance plan should:

- 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 two 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.

[203] Productivity Commission Performance Benchmarking Report, pp 21, 26, Leading Practices 2.1 and 4.1.

3.1.5 Stakeholder feedback

Stakeholders, particularly councils, generally supported our recommendation to revise the Better Regulation Guide.[204] Some of the comments we received from stakeholders included that:

- this is a key recommendation that influences many of the other recommendations made in this review[205]
- a long term concern for councils has been the development and implementation of legislative requirements without consideration or appreciation of the impacts on local government[206]
- any revisions would be helpful.[207]

Some stakeholders commented that the use of implementation and compliance plans should be mandatory.[208] We note that our recommendation already incorporates the use of such plans.

The OSBC considered that State agencies should also be required to identify how variations in the capacity and capability of councils to administer new regulations will impact upon the success of implementation and enforcement.[209] The OSBC noted that variations may arise as a result of whether a council is metropolitan, regional or rural. Our intention is that this should be addressed by State agencies when considering council capacity and undertaking cost benefit analysis of the new regulation under the Better Regulation Guide.

The Australian Logistics Council supported the requirement for State agencies to consider whether additional documents (eg, standardised guides, forms, inspection checklists, graduated compliance or enforcement policies or templates for orders, directions and notices) should be developed to encourage efficient and consistent decision-making.[210]

[204] For example, see submissions from Australian Logistics Council, Environmental Health Australia, Eurobodalla Shire Council, Holroyd City Council, Marrickville Council, OSBC and Shellharbour City Council, June/July 2014.
[205] Penrith City Council submission, July 2014.
[206] Albury City Council submission, July 2014.
[207] Shellharbour City Council submission, July 2014.
[208] For example, see submissions from Camden Council and OSBC, July 2014.
[209] OSBC submission, July 2014.
[210] Australian Logistics Council submission, July 2014.

Stakeholders made a number of comments on further revisions that should be made to the Better Regulation Guide, including that the guide should:

- require collaboration rather than consultation with local government on new regulatory proposals[211]
- include requirements for State agencies to assess whether the administration of the regulation could be streamlined with other pre-existing regulation[212]
- include consideration of the cumulative impacts of regulations.[213]

A significant number of councils expressed concerns relating to cost recovery and council resources.[214] Stakeholders noted that the shifting of regulatory responsibilities to local government places significant pressure on council resources.[215]

3.1.6 Our final recommendation

We consider there is merit in the suggestion that the Better Regulation Guide require collaboration and not merely consultation with local government. Requiring collaboration signals a genuine partnership approach. We have revised our final recommendation accordingly. In our view, the other stakeholder suggestions for revisions to the guide are not necessary, as they are already matters that must be considered under the existing guide.

We consider that proper collaboration and consideration of impacts on local government should result in the following benefits:

- provide a mechanism for implementing the NSW Intergovernmental Agreement and addressing cost shifting
- enhanced capacity and capability of local government to undertake compliance and enforcement activities through the creation of ongoing collaboration, 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.

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211 For example, see submissions from Environmental Health Australia and Central NSW Councils, July 2014.
212 OSBC submission, July 2014.
213 OSBC submission, July 2014.
214 For example, see submissions from Coffs Harbour City Council, Willoughby City Council, Mosman Municipal Council, Blacktown City Council, Ku-ring-gai Council, City of Ryde Council, Warringah Council, North Sydney Council, The Hills Shire Council, Fairfield City Council, Penrith City Council and City of Sydney Council, June/July 2014.
215 Blacktown City Council submission, July 2014.

Recommendation

4 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
- collaboration with local government to inform development of the regulatory proposal
- if establishing a jointly provided service or function, agreement with local government as to the objectives, design, standards and shared funding arrangements
- development of an implementation and compliance plan.

3.2 Establishing better regulation principles with a statutory basis

Changes to the Better Regulation Guide 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 introduced significant new or expanded regulatory responsibilities for local government.

In our Draft Report, we recommended that better regulation principles be enshrined in legislation, to ensure that the benefits of proposed changes to the guide in relation to local government are realised.

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.[216]

[216] Our Terms of Reference require us to consider the leading practices identified in the Productivity Commission Performance Benchmarking Report.

We consider that this should 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 one set of clear and cohesive requirements, rather than the current overlapping and inconsistent framework.

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

Stakeholders generally supported our draft recommendation.[217] For example, City of Sydney Council commented that establishing better regulation principles with a statutory basis is seen as a positive step towards achieving consistency.[218]

However, DPE was not supportive and believes a broader review of the SL Act and better regulation principles is necessary, in order to ensure regulation-making arrangements are most effective.[219]

We have maintained our recommendation.

Recommendation

5 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
   - giving statutory force to the NSW *Guide to Better Regulation* (November 2009) and enshrining principles in legislation.

[217] For example, see submissions from Blacktown City Council, City of Canada Bay Council, City of Ryde Council, Environmental Health Australia, Eurobodalla Shire Council, Holroyd City Council, Marrickville Council, Mosman Municipal Council, OSBC, Penrith City Council and Willoughby City Council, June/July 2014.

[218] City of Sydney Council submission, July 2014.

[219] Personal communication, email from DPE, 13 October 2014.

Box 3.3 CIE's analysis of these recommendations

CIE found that, as benefits accumulate over time, recommendations 4 and 5 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 4 and 5 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: CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014, Chapter 4 (CIE Report).

3.3 Register of local government regulatory functions

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.[220]

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 local government regulatory functions is State legislation
- assisting with the analysis of these functions and understanding some of the overlapping or duplicating regulations (eg, manufactured homes are regulated by councils under the LG Act[221] and EP&A Act[222]).

[220] Productivity Commission Performance Benchmarking Report, p 22, Leading Practice 3.1.
[221] *Local Government Act 1993* (NSW), section 68(3), Part A1.
[222] *Environmental Planning and Assessment Act 1979* (NSW), section 121(B).

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.[223]

3.3.1 Stakeholder feedback on the Stenning 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.[224]

Feedback from business stakeholders was mixed:

- Caltex and the OSBC believed the register could be useful, but that its value would be determined through use.
- Others (eg, HIA, 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.[225]

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.[226]

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. For example, Local Government Legal, the legal services division of Hunter Councils Inc, has developed 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

223 Stenning Report, pp 45-47.
224 For example, see submissions from Liverpool City Council, Liverpool Plains Shire Council, Orange City Council and Randwick City Council, October/November 2012.
225 For example, see submissions from Banyard, R and Jewell, M, October 2012.
226 Pittwater Council submission, October 2012.

hyperlinks to the provisions of the legislation (see Box below).[227] The database is intended to be used in association with an adopted legislative compliance policy and standard operating procedure.[228] The database allows each piece of legislation to be assigned to a position within a local council and to enter information regarding how a council addresses the responsibilities under each piece of legislation, such as council plans and policies.[229]

Box 3.4 Local Government Legal (Hunter Councils Inc) – Legislative Compliance Database (LCD)

What does the LCD do?

The LCD lists, in alphabetical order, the most relevant State and Commonwealth Acts which govern the exercise of a council's functions or which impose obligations on a council or require certain actions by a council. Corresponding Regulations made under these Acts are also noted where they include provisions relevant to local councils.

It is important to note that the LCD:

- only identifies a council's legislative compliance obligations, and a council may have other sources of compliance obligations that apply to a specific council, for example:
  - Permits, licences or other forms of authorisation;
  - Orders issued by regulatory agencies, or Ministerial Directives;
  - Judgments / orders of Courts or Administrative Tribunals;
  - Contractual obligations.
- should only be used as a guide to legislation, and the actual section(s) of an Act or clause(s) of a corresponding regulation(s) must be relied upon by Council;
- is not exhaustive and may not include all legislation that Council must comply with (including but not limited to obligations of councils as land owners);
- where an Act or Regulation is listed, the entire Act or Regulation may be relevant to Council
- enables a council to assign legislation to Position/s within Council and input information in relation to any council policies applicable to the legislation and
- does not constitute legal advice.

Source: Personal communication, email from Local Government Legal, 11 August 2014 and Local Government Legal, *User Guide for a "Compliance Policy Author": Legislative Compliance Database*, 19 June 2014, pp 4-5.

227 Personal communication, email from Local Government Legal, 23 January 2013.

228 Personal communication, email from Local Government Legal, 11 August 2014 and Local Government Legal, *User Guide for a "Compliance Policy Author": Legislative Compliance Database*, 19 June 2014, pp 4-5.

229 Personal communication, email from Local Government Legal, 9 October 2014.

We have found that the focus of existing compliance registers is generally 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 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.

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.[230]

3.3.2 Our draft recommendation

In our Draft Report, we recommended that IPART or another body continue to maintain the Stenning register. The register would be 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 by State agencies 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[231]
- manage the cumulative impact of regulation, which is a key concern of stakeholders, including councils.

Consideration could be given to including service functions, as well as regulatory functions, in the register to provide a more complete picture of the total responsibilities of councils.

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[230] Productivity Commission Performance Benchmarking Report, pp 81-82, Leading Practice 3.1.

[231] DPC, *Red Tape Reduction*, available at: http://www.dpc.nsw.gov.au/programs_and_services/better_regulation/red_tape_reduction accessed on 14 October 2014.

3.3.3 Stakeholder feedback

Stakeholders generally supported our recommendation to maintain the Stenning register and identified a number of benefits.[232] For instance, the OSBC commented that:[233]

> The register would:
>
> - assist State agencies in determining the capacity of local government to take on new regulatory responsibilities when developing and/or reviewing regulation
> - ensure regulatory activities are coordinated and consistent between State and Local government
> - assist in understanding the cumulative burden of regulations on both local government and business
> - assist local councils to allocate appropriate resources to regulatory functions so as to reduce delays and costs to business.

Ku-ring-gai Council commented that the register would provide cost savings for each council.[234] Willoughby City Council commented that the ability for councils to cross-check their own registers with a State agency would be desirable.[235]

Concerns raised by stakeholders included that:

- the cost of maintaining the register should be borne by the State government[236]
- the register must be regularly updated[237]
- some aspects of councils' regulatory functions have not been included (eg, noxious weeds, local land services and impounding).[238]

We note that the Stenning register was created by IPART's consultants in October 2012 and is not currently up-to-date.

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232 For example, see submissions from Blacktown City Council, Central NSW Councils, City of Canada Bay Council, Coffs Harbour City Council, Environmental Health Australia, Holroyd City Council, Marrickville Council, Mosman Municipal Council, Penrith City Council, The Hills Shire Council and Warringah Council, June/July 2014.

233 OSBC submission, July 2014.

234 Ku-ring-gai Council submission, July 2014.

235 Willoughby City Council submission, July 2014.

236 For example, see submissions from Tweed Shire Council, Ku-ring-gai Council, Albury City Council, Fairfield City Council and City of Sydney Council, June/July 2014.

237 Eurobodalla Shire Council submission, July 2014.

238 Bega Valley Shire Council submission, July 2014.

3.3.4 Our final recommendation

We have maintained our recommendation. In our view, IPART would be a suitable body to update and maintain the register. If the register is maintained by the NSW Government, the register could also be referred to in the Guide to Better Regulation (or other suitable reference material) to ensure State agencies consult the register in the development of new regulations to avoid creating regulatory duplications or overlaps.[239]

Recommendation

6 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.

Box 3.5 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: CIE Report, Chapter 5.

[239] Personal communication, email from DPC, 7 October 2014.

3.4 Supporting better implementation of regulation

According to the NSW Business Chamber's *Annual Red Tape Survey 2013*, 51% of businesses believe they are overregulated and the overall impact of regulation is negative.[240] Around 41% of respondents indicated that dealing with local government was either extremely or very complex. The most common concerns were that rules are overly complex and poorly explained.

Similar concerns were expressed in the NSW Business Chamber's *Annual Red Tape Survey 2012*.[241] According to that 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.

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.

We consider that the State Government could 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.

3.4.1 Current framework

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)[242]

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240 NSW Business Chamber, *Annual Red Tape Survey 2013*, 2013 available at http://www.nswbusinesschamber.com.au/Advocacy/Business-Conditions-Survey accessed on 14 October 2014.

241 NSW Business Chamber, *Annual Red Tape Survey 2012*, 2012 available at http://www.nswbusinesschamber.com.au/Advocacy/Business-Conditions-Survey accessed on 14 October 2014.

242 *Local Government Act 1993* (NSW), sections 158 and 159 respectively.

- Development Control Plans (DCPs)[243] and Local Environmental Plans (LEPs)[244] 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.

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.

3.4.2 Stakeholder concerns

Council stakeholders gave support to various initiatives including:

- Greater use of the NSW Ombudsman's *Enforcement Guidelines for Councils*[245] 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.[246]

- 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.[247]

- 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.[248]

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243 *Environmental Planning and Assessment Act 1979* (NSW)), Part 3, Division 6.

244 *Environmental Planning and Assessment Act 1979* (NSW), Part 3, Division 4.

245 NSW Ombudsman, *Enforcement Guidelines for Councils,* June 2002, available at: http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0009/4212/Enforcement-guidelines-for-councils.pdf accessed on 14 October 2014.

246 Lismore City Council submission, November 2012.

247 For example, see submissions from NSW Business Chamber, Liverpool City Council, Pittwater Council, Strathfield Council, Sutherland Shire Council and Wollongong City Council, October/November 2012.

248 Campbelltown City Council submission, October 2012.

Councils are currently having difficulties in adopting reasonable policies or statutory instruments that are supported by cost benefit analysis. For example, DCPs, consent conditions, awnings and parking policies.[249] 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.

Box 3.6 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: NSW Business Chamber submission, October 2012.

3.4.3 Our draft recommendation

In our Draft Report, we considered 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. We recommended that DPC:

- develop a code for local government regulators, based on the UK's new Regulators' 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
- extend its current regulators group with State regulators to include local government regulators

[249] For example, see submissions from HIA, Urban Taskforce Australia and NSW Business Chamber, October/November 2012.

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

Regulators' Code

In our view, a regulators' code, based on the new Regulators' Code in the United Kingdom, should be developed for local government in NSW. The code should provide high level principles to improve the quality and consistency of local government regulatory enforcement and inspection activities. It would also minimise any unnecessary burdens of these activities on businesses. The regulators' code could even be applied more broadly to all State regulators.

We note that the Productivity Commission supported the use of the former Regulators' Compliance Code (UK) as leading practice.[250]

Some information about the new Regulators' Code (UK) is extracted below.

Box 3.7 Regulators' Code (UK)

The Regulators' Code came into statutory effect on 6 April 2014 under the Legislative and *Regulatory Reform Act 2006*, replacing the Regulators' Compliance Code.

It provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.

Nearly all non-economic regulators, including local authorities and fire and rescue authorities, must have regard to it when developing policies and procedures that guide their regulatory activities.

Source: Better Regulation Delivery Office, *Regulators' Code,* April 2014 available at: https://www.gov.uk/government/publications/regulators-code accessed on 10 September 2014.

The key principles of the new Regulators' Code (UK) are extracted in the Box below.

[250] Productivity Commission Performance Benchmarking Report, pp 169-170.

Box 3.8 Regulators' Code (UK)

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
- Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
- Regulators should base their regulatory activities on risk.
- Regulators should share information about compliance and risk.
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
- Regulators should ensure that their approach to their regulatory activities is transparent.

Source: Better Regulation Delivery Office, *Regulators' Code*, April 2014, available at: https://www.gov.uk/government/publications/regulators-code accessed on 10 September 2014.

On the replacement of the former Regulators' Compliance Code with the new Regulators' Code, the Minister of State for Business and Enterprise (UK) commented that:

> Our expectation is that by clarifying the provisions contained in the previous Regulators' Compliance Code, in a shorter and accessible format, regulators and those they regulate will have a clear understanding of the services that can be expected and will feel able to challenge if these are not being fulfilled.[251]

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

- keep the content of the code simple
- there is a need for clearer requirements and expectations of regulators
- regulators should be required to publish clear and detailed service standards, including a compliance and enforcement policy
- use of the code should hold regulators to account for their activities
- there must be visibility and understanding of the code amongst businesses and some front line regulatory officers.[252]

[251] Better Regulation Delivery Office, *Regulators' Code*, April 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf accessed on 16 October 2014.

[252] Personal communication, email from Better Regulation Delivery Office, 23 February 2013. See also: UK Department for Business Innovation and Skills (UK), *Consultation Paper – Amending the Regulators' Compliance Code*, March 2013, p 9, available at: http://ico.org.uk/about_us/consultations/~/media/documents/consultation_responses/BIS-Amending-the-Regulators-Compliance-Code-20130308.pdf accessed on 14 October 2014.

DPC's regulators group

DPC has carriage of the Innovation and Improvement in Regulatory Services regulators group.[253] That group consists of representatives from various NSW regulators.[254] The group is currently an informal forum for State regulators to share information, discuss best regulatory practice and provide regulatory advice.

In our view, extending DPC's regulators group to include 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. We note that it may be not be appropriate for local government representatives to attend all meetings.[255] DPC has suggested that council representatives be invited to attend meetings where issues relevant to local government are being discussed. DPC has also noted the benefits of State regulators having a better understanding of the impacts of sharing or devolving regulatory responsibility to local government.[256]

Simplified guidance for councils

In our view, providing simplified guidance materials and other policy development guidance (eg, risk-based regulation) will assist councils to make statutory instruments, and enforce such instruments, in a manner that does not impose unnecessary regulatory burdens. Simplified cost benefit analysis guidance material will assist councils to undertake proportional assessments of the costs and benefits of regulatory actions or policies, including consideration of alternatives.

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 Box 3.6 above.

The provision of simplified guidance material 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.[257]

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253 The former Better Regulation Office was previously responsible for the group.

254 The following regulators are currently represented in the group: WorkCover NSW, OEH, OLGR, Fair Trading, Food Authority, EPA, RMS, Transport for NSW, Office of Water and NSW Fisheries: Personal communication, email from DPC, 18 September 2014.

255 Personal communication, email from DPC, 7 October 2014.

256 Ibid.

257 Productivity Commission Performance Benchmarking Report, Leading Practices 3.7, 3.8 and 4.5.

We note that, in Victoria, the Department of Transport, Planning and Local Infrastructure developed guidance for councils in developing local laws or policies (*Guidelines for Local Laws Manual*).[258] These guidelines are considered leading practice by the Productivity Commission.[259] They provide information on preparing, creating, implementing and enforcing, reviewing and amending local laws.

The former Better Regulation Office produced a range of materials for assisting State agencies to undertake cost benefit analysis and policy development, and risk-based compliance. We note that DPC has recently provided additional guidance materials to State agencies on implementing outcomes and risk-based regulation as part of its Quality Regulatory Services Initiative (QRS Initiative) (discussed further in Chapter 6). Guidance for councils could be based on this existing material, in particular:

- Better Regulation Guide, in particular, Appendix C[260]
- *Measuring the Costs of Regulation*[261]
- *Risk Based Compliance Guide*[262]
- *Regulatory Impact Assessment Checklist*[263]
- *QRS Outcomes and Risk-based Regulation Guidelines*[264]
- *Diagnostic tool*.[265]

Whilst councils can draw on these existing materials for their own use, we see value in having this material drawn together in a resource kit, or modified and adapted to apply to council instruments and made easier for councils to use. The materials or resource kit should include examples and applications relevant to local government.

3.4.4 Stakeholder feedback

We received mixed submissions from stakeholders in relation to developing a regulators' code, including local government regulators in DPC's regulators group and developing simplified guidance material for councils.

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258 Victorian Department of Transport, Planning and Local Infrastructure, *Guidelines for Local Laws Manual,* February 2010, available at: http://www.dtpli.vic.gov.au/ accessed on 15 October 2014.

259 Productivity Commission Performance Benchmarking Report, p 27, Leading Practice 4.5.

260 Better Regulation Guide, p 37.

261 Better Regulation Office, *Measuring the Costs of Regulation*, June 2008, available at: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0003/23979/02_Measuring_the_Costs_of_Regulation.pdf accessed on 15 October 2014.

262 Better Regulation Office, *Risk Based Compliance Guide*, September 2008.

263 DPC, *Better Regulation*, available at: www.dpc.nsw.gov.au/programs_and_services/better_regulation accessed on 15 October 2015.

264 Ibid.

265 Ibid.

Regulators' code

Stakeholders generally supported our recommendation to develop a regulators' code for NSW.[266] For instance, Albury City Council commented:

> The development of a 'Regulators Compliance Code' … is encouraged and would be a welcome addition. A consistent approach, interpretation and application will assist in regulation, enforcement and cooperation across the State. This will avoid local interpretation and confusion for clients, customers and the community about the rules and regulations that apply in different locations. This is certainly evident in a cross border location such as Albury but also occurs across NSW Local Government boundaries and this leads to confusion, frustration and noncompliance in the community and business sectors.[267]

The OSBC noted:

> The key benefits of a compliance code would be the ability to embed a risk-based enforcement approach and to guide councils on practical ways to reduce red tape for business.[268]

Some stakeholders addressed proposed content of the code. For example, stakeholder comments included that:

- the code must be simple and require councils to develop and publish service standards[269]
- "small business friendly" elements should be included in the code as a means of encouraging councils to work more collaboratively with small business[270]
- the code should be in a format that can be subject to compliance or performance audit.[271]

A number of stakeholders raised the importance of consultation in developing a Regulators' Code and commented that proper consultation with local government, including sufficient time to provide effective input, would be critical.[272]

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266 For example, see submissions from Coffs Harbour City Council, Eurobodalla Shire Council, Holroyd City Council, Marrickville Council and Warringah Council, June/July 2014.
267 Albury City Council submission, July 2014.
268 OSBC submission, July 2014.
269 Ibid.
270 Ibid.
271 Newcastle City Council submission, June 2014.
272 Fairfield City Council submission, July 2014.

A number of councils raised concerns about the need for councils to retain flexibility.[273] For example, Blacktown City Council commented that each local government area has its own socioeconomic, environmental and social characteristics and that any guidelines would need to give consideration to these characteristics.[274]

We note that some stakeholders did not support the development of a Regulators' Code.[275] The main concern raised was that regulators' responsibilities should be clearly defined and articulated in relevant legislation.[276] Ku-ring-gai Council commented that a code would undo efforts to simplify regulatory policy and reduce duplication.[277]

City of Sydney Council raised concerns that the creation of one overarching policy to cover the multitude of legislation enforced by local government would make a generic document less meaningful.[278] It submitted that the development of any guides should be driven be the relevant state agency and tailored to the legislation (eg, Food Authority Enforcement Policy).

In our view, the development of a Regulators' Code would embed a risk-based enforcement approach and efforts to reduce red tape for business and the community in councils. The code would be a high level document that enshrines risk-based regulation, greater transparency and clearer information to support those being regulated. Given the high level of the code, it would not cut across legislation or detract from councils' abilities to respond to local circumstances.

DPC's regulators group

Stakeholders supported the inclusion of local government regulators in DPC's regulators group,[279] although Central NSW Councils commented that DPC is currently under-resourced.[280]

[273] For example, see submissions from Shellharbour City Council, Mosman Municipal Council, Blacktown City Council, Ku-ring-gai Council and Lismore City Council, July 2014.
[274] Blacktown City Council submission, July 2014.
[275] For example, see submissions from Willoughby City Council, Mosman Municipal Council, Ku-ring-gai Council, City of Ryde Council and The Hills Shire Council, June/July 2014.
[276] The Hills Shire Council submission, July 2014.
[277] Ku-ring-gai Council submission, July 2014.
[278] City of Sydney Council submission, July 2014.
[279] For example, see submissions from Willoughby City Council, Mosman Municipal Council, City of Ryde Council and City of Sydney Council, June/July 2014.
[280] Central NSW Councils submission, July 2014.

Simplified guidance materials

Stakeholders generally supported the creation of simplified guidance materials, including cost benefit analysis guidance material and guidance for the development of local government policies and statutory instruments, for councils.[281]

Some stakeholders raised concerns. Willoughby City Council did not support the creation of guidance material for a simplified cost benefit analysis as it was concerned that:

- specialist skills would be required for analysis and interpretation
- this would be an unfunded additional task.[282]

Mosman Municipal Council cautioned that the development of guidance materials should not promote a lowest common denominator approach.[283]

We consider that the development of simplified cost benefit analysis and other materials to councils will help councils to develop instruments, and enforce such instruments, in a manner that does not impose unnecessary regulatory burdens.

3.4.5 Our final recommendation

We have revised our recommendation to refer to the new Regulators' Code (UK) and DPC's regulators group.

We have also revised our recommendations in relation to simplified cost benefit analysis, policy development and risk-based regulation guidance materials. We consider that there are already useful materials in existence that could be revised or drawn together in a resource kit to be more user-friendly for councils. IPART could assist DPC to develop such materials.

Recommendation

7 The Department of Premier and Cabinet should:

- Develop a Regulators' 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 Department of Premier and Cabinet's regulators group.

[281] For example, see submissions from Blacktown City Council, Ku-ring-gai Council, Holroyd City Council, City of Canada Bay Council, Tumbarumba Shire Council, City of Ryde Council, Marrickville Council, Central NSW Councils, Warringah Council, Parramatta City Council and Penrith City Council, June/July 2014.

[282] Willoughby City Council submission, July 2014.

[283] Mosman Municipal Council submission, July 2014.

- Develop simplified cost benefit analysis guidance material or a resource kit 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, and on risk-based compliance.

Box 3.9 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. CIE notes that the introduction of the former 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 to $15 million per year. $7.5 million is the mid point of this range.

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

Source: CIE Report, Chapter 5.

3.5 An enforcement policy for local government

In order to effectively implement a Regulators' 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.

3.5.1 Background

The NSW Ombudsman developed the *Enforcement Guidelines for Councils* in June 2002, which includes a model enforcement policy.[284] 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.[285]

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

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

Box 3.10 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':

- **Standards:** setting clear standards.
- **Openness:** clear and open provision of information.
- **Helpfulness:** helping business by advising on and assisting with compliance.
- **Complaints about service:** having a clear complaints procedure.
- **Proportionality:** ensuring that enforcement action is proportionate to the risks involved.
- **Consistency:** ensuring consistent enforcement practices.

Source: UK Government, *Enforcement Concordat: Good Practice Guide for England and Wales*, 1998, p 7.

[284] NSW Ombudsman, *Enforcement Guidelines for Councils*, June 2002, available at: http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0009/4212/Enforcement-guidelines-for-councils.pdf accessed on 27 March 2013.

[285] For example, see submissions from Lismore City Council and Wollongong City Council, November 2012.

Other enforcement policies

Enforcement policies and guidance materials have 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.[286] 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'[287] which provides useful guidance to regulators and incorporates risk-based, as well as complaints based, enforcement.

3.5.2 Our draft recommendation

In our Draft Report, we recommended that the NSW Ombudsman 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.

We consider the NSW Ombudsman to be 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)
- be updated to include risk-based enforcement, consistent with the NSW Government's Quality Regulatory Services Initiative (see Chapter 6, Box 6.3 for further discussion of this initiative)
- draw on the existing work in this area, including any relevant government policy or guidelines.

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[286] The Compliance Assurance Policy and associated guidelines are available at: http://www.hccrems.com.au/RESOURCES/Library/Compliance/Guideline--Compliance-Inspection-and-Monitoring.aspx accessed on 25 June 2013.

[287] Queensland Ombudsman, *Tips and Traps for Regulators*, 2nd Edition, October 2009.

The development and maintenance of this enforcement policy should be given to the NSW Ombudsman as a standing responsibility under statute.

We recommended that all councils adopt the new model enforcement policy. This would provide a consistent risk-based enforcement framework and a clear basis for councils to exercise discretion in undertaking their enforcement activities.

We considered that the Ombudsman should provide fee-based training associated with the model policy, and consider working with other training providers such as HCCREMS.

3.5.3 Stakeholder feedback

Stakeholders generally supported our recommendation.[288] For example:

- Wyong Shire Council noted that it adopted the NSW Ombudsman's model enforcement policy in November 2013 and that further refinement to the policy and associated guidelines would greatly assist staff with on-the-ground enforcement activities.[289]
- Bega Valley Shire Council commented that it has used the existing model enforcement policy for many years and that this has improved council compliance and enforcement outcomes.[290]
- Marrickville Council noted that it has a Customer Request Investigation Guideline based on the NSW Ombudsman's guideline.[291]
- Tweed Shire Council submitted that it would be appropriate for the NSW Ombudsman to develop and maintain a detailed model enforcement policy and guidelines similar to OLG's model code of conduct.[292]

The OSBC commented that the development of a model enforcement policy would have many benefits:[293]

> The key benefit of the model policy will be to:
>
> - provide for a consistent risk-based enforcement framework which will help standardise the enforcement policies across councils
> - eliminate the costs to councils of having to develop their own enforcement policy, and
> - reduce cost to business and community from improvements in consistency of enforcement across and within councils.

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288 For example, see submissions from Bankstown City Council, City of Canada Bay Council, Environmental Health Australia, Eurobodalla Shire Council, Holroyd City Council, NSW Business Chamber, Outdoor Recreation Industry of NSW, The Hills Shire Council and Willoughby City Council, June/July 2014.

289 Wyong Shire Council submission, July 2014.

290 Bega Valley Shire Council submission, July 2014.

291 Marrickville Council submission, July 2014.

292 Tweed Shire Council submission, June 2014.

293 OSBC submission, July 2014.

A number of stakeholders commented on the need for councils to retain discretion and flexibility.[294] Stakeholder comments included that:

- the policy should be a guideline[295]
- the policy should have in-built flexibility to take into account the needs of councils facing different circumstances[296]
- historically a 'one-size-fits-all' approach at State Government level has imposed many costly and ineffective practices on small rural local government[297]
- local councils need to exercise discretion in undertaking their enforcement activities and responding to local circumstances.[298]

A number of stakeholders commented on implementation and training. Stakeholder comments included that:

- training funding should be allocated as part of implementation[299]
- fee based training should not be mandatory[300]
- training should be made available in regional areas at a reasonable cost or the benefits will not be sufficiently realised across all councils[301]
- the Ombudsman's Office should provide ongoing support.[302]

294 For example, see submissions from Blacktown City Council, Tumbarumba Shire Council, OSBC, Central NSW Councils, Warringah Council, Parramatta City Council, Albury City Council and Penrith City Council, July 2014.
295 Newcastle City Council submission, June 2014.
296 Tumbarumba Shire Council submission, July 2014.
297 Ibid.
298 OSBC, July 2014.
299 Coffs Harbour City Council submission, June 2014.
300 For example, see submissions from Mosman Municipal Council and City of Ryde Council, June/July 2014.
301 Coffs Harbour City Council submission, June 2014.
302 Blacktown City Council submission, July 2014.

3.5.4 Our final recommendation

We consider that 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 (ie, joint inspection and training programs that included workshops in different languages) to increase compliance (rather than increase the use of fines and prosecutions).[303] The OSBC noted that:

> A model policy could also guide councils on how they can partner with businesses operated by people with a non-English speaking background to increase compliance (rather than increase the use of fines and prosecution). This has been an integral part of the framework the Food Authority has implemented and has led to strong collaboration between local councils and multicultural communities and improved compliance.[304]

We have maintained our recommendation. We note that the Local Government Acts Taskforce (LG Acts Taskforce) made a similar recommendation that councils should be required to adopt an Enforcement Policy, and that the factors to be considered under the policy should be consistent across all councils.[305] The NSW Government has broadly supported the recommendations of the LG Acts Taskforce.[306]

Our recommendation is intended to be consistent with the Regulators' Code. However, even if the new Regulators' Code does not proceed, the Ombudsman should still develop a model enforcement policy based on existing best practice.

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[303] 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 with Food Authority, 25 October 2012; email from Food Authority, 17 July 2013.

[304] OSBC submission, July 2014.

[305] LG Acts Taskforce, *A New Local Government Act for NSW and Review of the City of Sydney Act 1988*, October 2013, pp 47-48, available at: http://www.olg.nsw.gov.au/content/local-government-acts-taskforce accessed on 14 October 2014 (LG Acts Taskforce Final Report).

[306] Fit for the Future Response, p 2.

Recommendation

8 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' 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 3.11 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: CIE Report, Chapter 5.

3.6 Local Orders Policies

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 who create hazards, environmental damage or fail to comply with standards or approvals issued under the LG Act.[307] 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).[308]

[307] *Local Government Act 1993* (NSW), sections 124 and 159.

[308] 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.

Like Local Approvals Policies (LAPs), LOPs are subject to a public consultation and feedback period.[309] They also automatically lapse or 'sunset' within 12 months of a council election.[310] 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 findings of the LG Acts Taskforce. The LG Acts Taskforce noted that few councils appear to have considered it necessary to adopt LOPs to deal with issues of local significance and questioned whether the ability of councils to make LOPs should be retained. They also noted that some councils specify their process for making orders through their compliance and enforcement policies.[311]

3.6.1 Our draft recommendation

In our Draft Report, we recommended that the LG Act be amended to abolish LOPs. 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 issue orders, as well as take other types of enforcement action, within a context of graduated and risk-based enforcement.

309 *Local Government Act 1993* (NSW), section 160.
310 *Local Government Act 1993* (NSW), section 165(4).
311 LG Acts Taskforce Final Report, p 56.

The LG Acts Taskforce recommended that councils should be required to adopt an enforcement policy. It also commented that this may replace LOPs.[312] The NSW Government has broadly supported the recommendations of the LG Acts Taskforce.[313]

3.6.2 Stakeholder feedback

Stakeholders generally agreed with our recommendation.[314] For example:

- Marrickville Council commented that it does not have any LOPs.[315]
- Albury City Council agreed that abolishing LOPs would result in consistency across councils.[316]

Some councils commented on the importance of the new model enforcement policy and councils' own individual enforcement policies. For example:

- Penrith City Council supported the abolition of LOPs provided that they are captured in the model enforcement policy.[317]
- Tumbarumba Shire Council commented that the effectiveness of abolishing LOPs would depend on the quality of the model enforcement policy.[318]
- Warringah Council commented that councils should be required to include policies on orders within their individual enforcement policies.[319]
- City of Sydney Council agreed with the abolition of LOPs provided that enforcement policies developed by State agencies provide enough guidance on the circumstances in which notices and orders are to be used.[320]

Some stakeholders raised the importance of council discretion and local preferences.[321] For example:

- Tweed Shire Council noted that the new model enforcement policy would provide a consistent risk-based enforcement framework, but must enable councils to exercise discretion in undertaking their enforcement activities.[322]

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312 LG Acts Taskforce Final Report, pp 47-48.
313 Fit for the Future Response, p 2.
314 For example, see submissions from Albury City Council, Bankstown City Council, Blacktown City Council, City of Canada Bay Council, City of Ryde Council, City of Sydney Council, Environmental Health Australia, Eurobodalla Shire Council, Holroyd City Council, Ku-ring-gai Council, Marrickville Council, Mosman Municipal Council and Willoughby City Council, June/July 2014.
315 Marrickville Council submission, July 2014.
316 Albury City Council submission, July 2014.
317 Penrith City Council submission, July 2014.
318 Tumbarumba Shire Council submission, July 2014.
319 Warringah Council submission, July 2014.
320 City of Sydney Council submission, July 2014.
321 For example, see submissions from Tweed Shire Council, Coffs Harbour City Council, Central NSW Councils, Parramatta City Council and Bankstown City Council, June/July 2014.
322 Tweed Shire Council submission, June 2014.

- Coffs Harbour City Council submitted that the new model enforcement policy would need to have sufficient scope to deal with the broad range of compliance and enforcement issues that are required to be dealt with by local governments.[323] It commented that it would be important for the new model enforcement policy to be risk based and identify a number of low risk activities that councils may elect not to regulate in the event that adequate resources are not available.
- Parramatta City Council submitted that there needs to be some scope to allow inclusion of additional elements to deal with specific local issues.[324]

3.6.3 Our final recommendation

We note the various stakeholder submissions and agree that the need to retain LOPs will partially depend on the resulting model enforcement policy. However, we consider that a model policy can adequately deal with the issues currently addressed in some LOPs, but in a more principled and consistent manner. It should provide sufficient guidance on the circumstances in which notices and orders are to be used. It will provide guidance on the consistent and appropriate exercise of discretion, without removing discretion.

We have maintained our recommendation.

Recommendation

9 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 3.12 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: CIE Report, Chapter 5.

[323] Coffs Harbour City Council submission, June 2014.
[324] Parramatta City Council submission, July 2014.

3.7 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.

3.7.1 Stakeholder concerns

Stakeholders 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.[325]
- For example, the HIA 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.[326]
- 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.[327]
- Fees capped at levels below cost recovery by legislation (eg, development control fees).[328]
- 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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325 For example, see submissions from HIA, NSW Business Chamber, Vescio J, Advanced Building Certifiers and OSBC, September/October/November 2012.

326 HIA submission, November 2012.

327 Association of Accredited Certifiers submission, November 2012.

328 For example, see submissions from Lismore City Council, Newcastle City Council, Orange City Council, Sutherland Shire Council, Wollongong City Council and Rolfe H, October/November 2012.

Box 3.13 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 Council, Randwick City Council) to up to $825 for a day (eg, Manly Council).

OSBC

In the Eastern Suburbs of Sydney, two 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, 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 Act[329], the POEO Act[330] and the new Public Health Act[331]
- more transparency in relation to how councils set fees and charges[332]
- more consistency in councils' approaches to setting fees and charges (eg, standard methodologies and/or fees)[333]
- 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.

329 *Food Act 2003* (NSW), sections 32(3), (4) and section 49.
330 *Protection of the Environment Operations Act 1997* (NSW), section 104.
331 *Public Health Act 2010* (NSW), sections 17(2), 20(2) and 23(4). See also: Newcastle City Council submission, November 2012.
332 Jewell M submission, October 2012.
333 HIA submission, November 2012.

3.7.2 Council regulatory fees and charges

Under the LG Act, a council may charge an approved fee for any service it provides, other than a service provided on an annual basis for which it is authorised to make an annual charge (ie, waste management, water supply, sewerage and drainage services, and any services prescribed by the regulations).[334]

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 Office of Local Government (OLG)
- the importance of the service to the community, and other factors.[335]

The cost to the council of providing a service need not be the only basis for determining the approved fee for that service.

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 also specifies that the amount of the charge is limited to cost recovery[336] and we understand that OLG requests audits of councils' waste management charges periodically to check whether they are cost reflective.[337] OLG has provided some guidance on fees in the *Council Rating and Revenue Raising Manual*.[338] This essentially captures the information provided in section 608 and section 610 of the LG Act.

The NSW Government published its policy statement on the application of National Competition Policy to local government[339] 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

334 *Local Government Act 1993* (NSW), section 608.
335 *Local Government Act 1993* (NSW), section 610D.
336 *Local Government Act 1993* (NSW), section 496.
337 OLG (formerly DLG), Local Government Code of Accounting Practice and Financial Reporting, Update 10, June 2012.
338 OLG (formerly DLG), *Council Rating and Revenue Raising Manual*, 2007, section 21, pp 94-97.
339 NSW Government, *NSW Government Policy Statement on the Application of National Competition Policy to Local Government*, available at: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0014/11471/localgov.pdf accessed on 22 October 2013.

arrangements.[340] 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).[341] Councils can also charge for other regulatory activities if specified in other pieces of legislation. For example, the *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 *Public Health Act 2010* (NSW) (which commenced in September 2012) have increased councils' ability to recover costs for inspections and other enforcement actions.[342]

In some cases, statutory restrictions apply to the fees that councils can charge (eg, DA fees under the *Environmental Planning and Assessment Regulation 2000* (NSW)).[343] Some councils 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.[344]

The Box below provides examples of statutory fees for councils set by the State under various Acts.

[340] NSW Government, *Pricing & Costing for Council Businesses: A Guide to Competitive Neutrality*, July 1997, available at: http://www.dlg.nsw.gov.au/dlg/dlghome/documents/information/neut.pdf accessed on 24 October 2014.

[341] *Environmental Planning and Assessment Act 1979* (NSW), section 137.

[342] *Public Health Act 2010* (NSW), sections 17(2), 20(2) and 23(4).

[343] *Environmental Planning and Assessment Regulation 2000* (NSW), Part 15, Division 1, Division 1AA.

[344] For example, see submissions from Leichhardt Municipal Council, Lismore City Council and Newcastle City Council, November 2012.

Box 3.14 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).

ILGRP review

We note that the ILGRP considered the issues of fiscal responsibility and strengthening revenues in its review.

In relation to fiscal responsibility, it noted that the Local Government NSW annual survey of cost-shifting attributed cost shifting to five causes, including:

> costs of processing development applications and other approvals or inspections which cannot be recovered due to State controls on the fees councils may charge.[345]

The ILGRP concluded "it is particularly difficult to justify the State's actions in setting-up regulatory regimes without allowing councils to recover the full cost of operating them."[346] The NSW Government recently supported the ILGRP's recommendations relating to fiscal responsibility.[347]

[345] ILGRP Final Report, p 36.
[346] Ibid, p 37.
[347] Fit for the Future Response, pp 3-4.

The ILGRP made a number of recommendations in relation to strengthening local government revenues. For instance, the ILGRP recommended the following:

> 10. Encourage councils to make increased use of fees and charges and remove restrictions on fees for statutory approvals and inspections, subject to monitoring and benchmarking by IPART.[348]

The NSW Government partially supported the ILGRP's recommendation. It commented that:

> The Government encourages councils, in consultation with their community, to make appropriate use of fees and charges, in particular to ensure cost recovery, to enhance financial sustainability.
>
> The Government remains committed however to consistency and affordability in council fees, to minimise red tape, protect service users and avoid significant local variation. It does not therefore support removing restrictions on fees.[349]

Guidance for councils on regulatory fees and charges

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 material should aim to ensure that councils' regulatory fees and charges:

- reflect efficient costs – unless there are cases for exemptions (eg, 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.

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[348] ILGRP Final Report, pp 47-48.
[349] Fit for the Future Response, p 6.

Examples of appropriate guidelines include the Victorian Treasury's *Cost Recovery Guidelines*[350] or the Productivity Commission's leading practice example from New Zealand.[351]

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.[352] 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 one-page document outlining fees and charges applicable to a number of common development application types.
- Mosman Municipal 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 (ie, 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).[353]

3.7.3 Our draft recommendation

We acknowledge that there is some high level guidance available to councils on the principles of setting regulatory fees and charges provided by OLG 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.

In our Draft Report, we considered that 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.

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350 Victorian Department of Treasury and Finance, *Cost Recovery Guidelines*, May 2010.

351 Controller and Auditor-General of New Zealand, *Charging fees for public sector goods and services*, June 2008, referred to in Productivity Commission Performance Benchmarking Report, p 146, Leading Practice 4.2.

352 *Local Government Act 1993* (NSW), sections 608 and 610F.

353 OLG, *Local Government Code of Accounting Practice and Financial Reporting*, Update 22, June 2014, available at: http://www.olg.nsw.gov.au/strengthening-local-government/supporting-and-advising-councils/accounting-practice accessed on 16 October 2014.

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 Charges*.[354] 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.

Whilst any decrease in regulatory fees and charges would be considered a red tape reduction,[355] 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 (ie, 'beneficiary pays' principle).[356]
- 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.[357]
- Enhanced capacity: providing councils with a source of revenue, which helps councils to maintain an acceptable quality of service and financial viability.

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354 NSW Treasury, *Guidelines for Pricing of User Charges*, June 2001, available at: http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0018/3843/tpp01-2.pdf accessed on 22 October 2013.

355 Better Regulation Office, *Guidelines for Estimating Savings under the Red Tape Reduction Target*, February 2012.

356 Productivity Commission, *Cost Recovery by Government Agencies, Inquiry Report, Report No 15*, 16 August 2001, pp 14-16, available at http://www.pc.gov.au/ accessed on 14 October 2014.

357 Ibid, p 15.

3.7.4 Stakeholder feedback

Most stakeholders supported the provision of further guidance materials to councils.[358] Some of the comments we received from stakeholders included:

- that guidance material for setting regulatory fees and charges would benefit both State and local government, particularly where fees have remained unchanged for many years[359]
- that guidance material in relation to community service obligations could be useful.[360]

Most stakeholders also supported councils publishing a rationale for fees and charges. For instance, stakeholders noted:

- that there should be a consistent methodology established to justify the fees and charges that are imposed for transparency and consistency[361]
- that this would be beneficial for the general public.[362]

The OSBC commented:

> A key objective of this guidance material should be the development of a more consistent approach to the setting of fees and charges across council boundaries. This would create greater certainty for businesses operating across local boundaries and ensure businesses are fully informed when making decisions.[363]
>
> In addition, there needs to be guidance on how councils publish their fees and charges so that there is greater ability for users to be able to accurately compare these across council boundaries. This would lead to greater accountability for councils and would highlight where major discrepancies across local council boundaries exist.

A number of councils emphasised the need for councils to retain the ability to exercise discretion and flexibility. For example:

- Shoalhaven City Council noted that guidance material would be a worthy resource for councils but should not become mandatory so that council discretion in setting fees and charges is maintained.[364]
- Tweed Shire Council submitted that the councils should have the ability to reflect their own preferences in setting fees and charges, in particular in applying the principles of efficient cost recovery.[365]

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358 For example, see submissions from Bankstown City Council, Blacktown City Council, Central NSW Councils, City of Canada Bay Council, Eurobodalla Shire Council and Holroyd City Council, June/July 2014.
359 Fairfield City Council submission, July 2014.
360 Tumbarumba Shire Council submission, July 2014.
361 Shellharbour City Council submission, July 2014.
362 Tweed Shire Council submission, June 2014.
363 OSBC submission, July 2014.
364 Shoalhaven City Council submission, July 2014.
365 Tweed Shire Council submission, June 2014.

Stakeholders highlighted the importance of consultation:

- Warringah Council commented that there should be consultation with councils prior to finalisation of guidance materials.[366]
- Marrickville Council noted that councils should be able to have some input into State mandated fees and charges before they are set.[367]

The main concern raised by stakeholders was cost recovery. For example:

- Mosman Municipal Council commented that this area of activity requires a significant amount of work and that statutory fees should be based on full cost recovery.[368]
- Coffs Harbour City Council commented that the fees set by State agencies should be realistic and that history has indicated that where such fees have been set by the State they are seldom full cost recovery fees.[369]
- Willoughby City Council submitted that there should be full cost recovery of services including full recovery of legal expenses and CPI or indexed adjustment of any statutory fees.[370]
- Ku-ring-gai Council also noted that legal costs associated with regulatory activities are largely unrecoverable.[371]
- City of Ryde Council recommended a full review of the local government funding model.[372]
- Environmental Health Australia and Camden Council commented that fees should not be pegged or, if they are, that a reasonable increase should be prescribed in any regulations drafted to accompany the necessary changes.[373] Both stakeholders also commented that there should be flexibility built into fees for areas where councils compete with private industry.

3.7.5 Our final recommendation

In implementing our recommendation, it will be important to closely consult with local government and relevant State agencies. The guidance material is intended to be a resource that represents best practice to assist councils and State agencies in setting fees, rather than a prescriptive document. In addition to providing guidance on estimating and recovering efficient costs, we recommend that guidance is also provided on considering affordability issues. We have maintained our recommendation, subject to this small amendment.

366 Warringah Council submission, July 2014.
367 Marrickville Council submission, July 2014.
368 Mosman Municipal Council submission, July 2014.
369 Coffs Harbour City Council submission, June 2014.
370 Willoughby City Council submission, July 2014.
371 Ku-ring-gai Council submission, July 2014.
372 City of Ryde Council submission, June 2014.
373 For example, see submissions from Environmental Health Australia and Camden Council, July 2014.

Recommendation

10 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)
- 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. The guidance material should also include ways to address affordability issues through hardship provisions, if required.

Box 3.15 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 (the former Better Regulation Office's guidance material indicates that fee reductions equate to red tape reductions).

Similarly, the budgetary impacts of this recommendation are uncertain.

Source: CIE Report, Chapter 6.

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 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[374] and Australia.[375]

[374] Dollery and de Souza, *Shared Services in Australian Local Government: The Brighton Common Service Model*, 23 August 2011, p 9. See also: Local Better Regulation Office (UK), *Shared Learning Seminar: Reflections on Presentations*, 18 May 2011.

[375] Australian Centre of Excellence for Local Government, *Legal and Governance Models for Shared Services in Local Government - Interim report,* May 2012 (ACELG Interim Report), pp 8, 10-12, available at: http://www.acelg.org.au/ accessed on 14 October 2014. See also: Institute of Public Affairs, *Strategic Collaboration in Local Government: A Review of International Examples,* January 2012, pp 6-7, available at: http://www.ipa.ie/pdf/StrategicCollaboration.pdf accessed on 14 October 2014.

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

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 backlogs[376]
- financial sustainability and/or management concerns[377]
- increasing expectations of service delivery by communities[378]
- demographic pressures, including an ageing population[379]
- workforce or skills shortages in crucial areas.[380]

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).[381]

The ILGRP sees stronger regional cooperation as a "central plank of local government reform".[382] According to the Panel, this will "enhance the role of councils and facilitate more productive State-local relations, especially in strategic planning, economic development, infrastructure provision and service delivery".[383]

The ILGRP released its Final Report, *Revitalising Local Government,* in October 2013.[384] It makes a number of recommendations to improve council capacity and collaboration, including creating larger units of local government through amalgamations and creating stronger regional organisations. Section 4.3 provides further detail on the ILGRP's final recommendations and the NSW Government's response to these recommendations.

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376 ILGRP, *Better, Stronger Local Government: The Case for Sustainable Change*, November 2012, p 20, available at: http://www.localgovernmentreview.nsw.gov.au/ accessed on 14 October 2014 (ILGRP Change Paper).
377 ILGRP Change Paper, pp 18-19.
378 Ibid, p 19.
379 Ibid, pp 12-14.
380 Ibid, p 21.
381 Ibid, pp 13, 23.
382 ILGRP, *Revitalising Local Government*, October 2013, p 79, available at: http://www.localgovernmentreview.nsw.gov.au/accessed on 14 October 2014 (ILGRP Final Report).
383 Ibid.
384 ILGRP Final Report, p 3.

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".[385] Only 49% of NSW councils surveyed by the Productivity Commission considered their resources were sufficient to undertake their regulatory roles.[386] As demonstrated in the table below, the perception of poor capacity is especially evident in Queensland and NSW.[387]

Table 4.1 Local governments who consider they have insufficient resources to undertake their regulatory responsibilities

By jurisdiction	%
Queensland	50
New South Wales	49
Victoria	40
South Australia	32
Western Australia	18
Tasmania	17
Northern Territory	0

Note: 'Resources' is defined as finances and sufficiently qualified employees.
Source: Productivity Commission Performance Benchmarking Report, p 134.

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
- overly cautious or conservative approaches to implementing regulation.

Specific stakeholder views are presented in the following Box.

[385] Productivity Commission, *Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator*, July 2012, p 132, available at: http://www.pc.gov.au/projects/study/regulation-benchmarking accessed on 14 October 2014 (Productivity Commission Performance Benchmarking Report).
[386] Productivity Commission Performance Benchmarking Report, p 134.
[387] Ibid.

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 Office of the NSW Small Business Commissioner (OSBC) 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, 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)

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

Source: Various submissions, November 2012.

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 OSBC 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, November 2012.

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.[388]
- **Sister cities** agreements, which involve a partnership between two councils on specific issues of concern – although the main focus seems to be cultural and educational exchange.[389] Both Holroyd City and Sutherland Shire Councils have sister city arrangements in place.[390] Sutherland Shire Council noted that sister city arrangements allow bilateral sharing of staff to address areas of concern.[391] They are usually between councils which are geographically distant from one another (ie, 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.[392]
- **County Councils**, which can be created by the Minister of Local Government to undertake specific functions under the LG Act.[393] 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 four 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.[394] Eight of 14 County Councils are focused solely on eradication of noxious weeds.[395]

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388 For example, Dungog Shire Council and Port Stephens Council for companion animals. Cited as best practice in OLG, *Collaboration and Partnerships between Councils: A Guidance Paper*, 2007, p 63, available at: http://www.olg.nsw.gov.au/content/collaboration-and-partnerships-between-councils accessed on 14 October 2014 (OLG Guidance Paper).

389 Based on analysis of information on currently existing NSW local council Sister City partnerships available at council websites. For example, The Hills Shire Council, *Sister Cities,* available at: http://www.thehills.nsw.gov.au/Sister-Cities.html accessed on 11 August 2014.

390 Holroyd City Council submission, November 2012.

391 Sutherland Shire Council submission, November 2012.

392 OLG Guidance Paper, p 59.

393 *Local Government Act 1993* (NSW), sections 387-394.

394 ACELG Interim Report, as referred to in Gooding Davies Consultancy, *Options to Enhance Regional Collaborations amongst Councils in NSW: the Role of ROCs,* November 2012 (Gooding Davies Report), p 27, available at: http://www.localgovernmentreview.nsw.gov.au/ accessed on 14 October 2014.

395 Ibid.

- **Reciprocal arrangements** include informal checks and reviews, such as the arrangement between Liverpool Plains Shire Council and Gunnedah Shire Council 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 one council, and then forwarded to the other council for adoption.[396]
- **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 Act,[397] with 139 of 152 councils currently a member of one of the 18 ROCs.[398] 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)

Research indicates ROCs are generally more successful in their advocacy capacity,[399] than delivering shared services (particularly *regulatory* services). However, there are several examples of ROCs undertaking regulatory services or activities. For instance, the Southern Sydney ROC (SSROC) Regulatory Management Group meets quarterly to review issues around parking, ranger activity, health and building issues.[400] 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.[401]

396 Ibid, pp 59-60. See also: OLG (formerly DLG), *Collaborative Arrangements between Councils – Survey Report,* June 2011, p 263.
397 *Local Government Act 1993* (NSW), section 355.
398 Gooding Davies Report, p 10.
399 Ibid.
400 Sutherland Shire Council submission, November 2012.
401 OLG Guidance Paper, pp 12-13.

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.[b] Local Government Legal 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 OLG estimating cost savings of over $1 million. Further, staff traineeships were provided at cost neutrality, with a final value of $230,000.

[a] Savings were during financial year 2005-06: OLG Guidance Paper.

[b] See the Local Government Legal website available at: http://www.lglegal.com.au/ accessed on 11 August 2014.

Source: OLG Guidance Paper, pp 12-13.

4.2.2 Stakeholder concerns

Stakeholder views on current methods of council collaboration and cooperation are presented in the following Box. 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, OSBC, NSW Business Chamber, Business Council of Australia, Property Council of Australia, Urban Taskforce, HIA).

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 Council 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, November 2012.

4.3 Different models to increase strategic capacity

The ILGRP has been considering the issue of governance, structural and boundary reforms to improve the effectiveness of local government.[402] It has made it clear that different options for reform will be appropriate for different parts of the State.[403] The ILGRP has therefore proposed an expanded set of local government structures that can be used in different ways in response to the varying needs of communities and regions.[404] It views amalgamations and stronger regional collaboration and resource sharing as essential elements of this wider package of reforms.[405]

The ILGRP's Final Report outlined its preferred solutions for enhancing council capacity and collaboration, as follows:[406]

- Establishing regional 'Joint Organisations' – mandatory, statutory groupings of local councils to undertake a range of 'high-level' functions on behalf of their members.

402 ILGRP Final Report, p 9.
403 ILGRP Final Report, pp 13 and 70.
404 ILGRP Final Report, p 71.
405 ILGRP Final Report, pp 32, 72 and 79.
406 ILGRP Final Report, pp 71, 78, 103 and 119.

- Local councils operating along existing lines, except for the referral of some regional functions to the new Joint Organisations.
- Creating optional 'Rural Councils', with reduced legislative and compliance responsibilities and a lower cost base more appropriate to rural-remote areas with small populations, to work as part of a Joint Organisation.
- Creating optional 'Community Boards' to carry out a range of representational, planning and service delivery functions delegated by the council for small communities and to ensure local identity and representation in very large urban councils.
- Proposed amalgamations of smaller rural councils, some councils in the Lower Hunter and Central Coast regions, and in the Sydney basin, to be considered and determined by a reconstituted and more independent Boundaries Commission.
- Promoting the establishment of a Metropolitan Council of Mayors.
- Encouraging voluntary mergers of councils through measures to lower barriers and provide professional and financial support.
- Establishing an umbrella Far West Regional Authority to provide a new governance and service delivery system for the far west of NSW.

The ILGRP considered that a more robust statutory framework was required for effective regional collaboration and that this could be better achieved through newly created 'Joint Organisations' than through existing Regional Organisations of Councils (ROCs). It argued:

> …the embedded culture of ROCs is one of voluntarism, either in membership or participation in joint activities or both. Their scope of operation and effectiveness varies too much from time to time and region to region. Without stronger, statutory regional bodies whose role and functions are fixed over the medium-long term, it is difficult to see local government as a whole being able to present itself as a reliable and capable partner of State agencies.[407]

We note that under the ILGRP's recommendations, regional collaborative models are a central plank of the local government reforms, and will remain relevant even where amalgamations and/or boundary changes are implemented.

The NSW Government has responded to the ILGRP's final recommendations, supporting voluntary mergers of councils and the creation of Joint Organisations and other structures to support regional planning and service delivery.

[407] ILGRP Final Report, p 79.

It has committed $5.3 million in funding to support the creation of 15 Joint Organisations outside of Greater Sydney and the Central Coast and will work with up to four pilot regions to develop and test the new collaborative models. It has also recognised the need for different structures to provide flexibility for rural councils to represent and serve diverse local communities.[408]

To support councils to voluntarily merge, the NSW Government will provide $22.5 million in funding for new councils in Greater Sydney, the Central Coast and Newcastle/Lake Macquarie and up to $13.5 million in funding for new councils in regional areas. In addition the NSW Government will establish a $4 million grant program to assist small rural councils with populations below 10,000 that are 'fit for the future' to improve service delivery and governance through better use of technology and innovative approaches.[409]

4.4 Improving collaborative arrangements

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, particularly in relation to regulatory activities and services. As noted by the ILGRP, "regional cooperation has been mostly voluntary, and its performance in delivering shared services has been patchy and variable over time".[410]

Notably, we have identified several factors that may impede development of council collaborative arrangements, which have also been identified in the reviews of the ILGRP and the LG Acts Taskforce. 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.

[408] OLG, *Fit for the Future - NSW Government Response*, September 2014, available at: http://www.fitforthefuture.nsw.gov.au/accessed on 14 October 2014 (Fit for the Future Response).
[409] Ibid.
[410] ILGRP Final Report, p 73.

4.4.1 Stakeholder concerns

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 HIA 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 OLG. This would enable councils to share information and best practices amongst each other.
- Ashfield 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, November 2012.

Some stakeholders also identified specific opportunities for greater regulatory collaboration amongst councils. Examples given include rangers or parking officers working across local government areas[411] and shared swimming pool inspection service[412] (consistent with our Recommendation 30).

Urban Taskforce Australia identified that:[413]

> …development assessment quality and assessment times would be vastly improved with enhanced regulatory collaboration amongst councils…Shared regulatory services could also assist in the improvement of consistency and quality of advice provided to applicants within a region.

Some stakeholders suggested that the partnership model we recommended in Chapter 2, between DPE and local government and the EPA and local government, should improve collaboration between councils and reduce the need for other forms of shared regulatory services.[414] We consider both are necessary. The partnership model will improve collaboration between State agencies and local government, whereas shared regulatory services will improve collaboration between councils, to achieve better regulatory outcomes. We note that the NSW Government recognised, in its response to the ILGRP's recommendations, that:

> Close working relationships between Joint Organisations and State agencies will be crucial to the success of this model of collaboration.[415]

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)[416]
- 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 services bodies and ROCs.[417]

Each of these impediments is considered in greater detail below.

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411 Bankstown City Council submission, July 2014.
412 Sutherland Shire Council submission, August 2014.
413 Urban Taskforce Australia submission, July 2014.
414 For example, see submissions from Environmental Health Australia and Camden Council, July 2014.
415 Fit for the Future Response, p 14.
416 NSW Business Chamber submission, 29 October 2012.
417 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. See: Gooding Davies Report, pp 19-20.

The ILGRP's consultant's report on ROCs notes many of these issues and supports amendment of the LG Act to facilitate council collaboration.[418]

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. Stakeholders generally favour a higher level of guidance around acceptable governance and structural arrangements.[419] They also highlight the need to retain flexibility to adjust the model as necessary.[420]

The Local Government Acts Taskforce (LG Acts Taskforce) noted that there are limited and inadequate provisions in the existing LG Act to support regional collaborations. It recommended the new Act include a mechanism enabling councils to form statutory entities to undertake regional collaborative activities, in place of ROCs and similar to that developed by the Hunter Councils Council of Mayors. It also noted that the ILGRP was considering models that could be adopted for this purpose.[421]

As discussed earlier, the ILGRP has recommended a mandatory, statutory structure to address current impediments to council collaboration, but retain flexibility. Joint Organisations would be established by individual proclamations that would specify their area and functions, as well as various aspects of governance and operation. The governing body would comprise the mayor of each member council, but also could include additional council representatives. The scope of any shared service arrangements entered into would be detailed in the proclamation. The ILGRP envisages that a number of shared services could be handled by one or more member councils becoming a 'centre of excellence' for the region in a specific area of operation (eg, IT, HR, waste management, etc). Shared services would be conducted by subsidiaries of the Joint Organisation.[422]

As discussed earlier, the NSW Government has responded to support the creation of Joint Organisations.

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.

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418 Ibid.

419 Wollongong City Council submission, November 2012.

420 Wollongong City Council submission, November 2012. See also: Gooding Davies Report, p 19.

421 LG Acts Taskforce, *A New Local Government Act for NSW and Review of the City of Sydney Act 1988*, October 2013, pp 37-38, available at: http://www.olg.nsw.gov.au/content/local-government-acts-taskforce accessed on 14 October 2014 (LG Acts Taskforce Final Report).

422 ILGRP Final Report, pp 81-84.

As noted by the LG Acts Taskforce, the Act provides for councils acting as individual entities rather than in collaboration with a broader local government system.[423] The LG Acts Taskforce recommends that the delegations section of the LG Act should be reviewed to facilitate councils entering into collaborative procurement arrangements.[424]

We support this recommendation to facilitate sharing of services.

The NSW Government's response to the LG Acts Taskforce recommendations commits to amending the LG Act in the short term to remove the restriction on the delegation of the acceptance of tenders to support regional procurement.[425]

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.

The LG Acts Taskforce has recommended that the current restriction to delegate a regulatory function to another council or shared services body should be removed in the new Act.[426] Currently, councils are prevented from working collaboratively, for example by outsourcing regulatory functions to an adjoining council.[427]

The NSW Government has broadly supported the recommendations of the LG Acts Taskforce, but has not included removal of this restriction in the short term amendments to the LG Act.[428]

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.

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423 LG Acts Taskforce, *A New Local Government Act for NSW – Discussion Paper*, April 2013, p 44, available at: http://www.olg.nsw.gov.au/content/local-government-acts-taskforce accessed on 14 October 2014 (LG Acts Taskforce Discussion Paper).
424 LG Acts Taskforce Final Report, pp 39-40 and 42-43.
425 Fit for the Future Response, p 21.
426 LG Acts Taskforce Final Report, pp 39-40.
427 Ibid, p 40.
428 Fit for the Future Response, pp 20-21.

The LG Acts 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.[429] It notes that:

- 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
- Ministerial consent has been granted for approximately 85% of these requests.

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

- a corporation or other entity formed by council is not subject to the legislative checks and public scrutiny and accountability as the council itself
- employees of a council corporation will not be covered by the same employment conditions as employees of councils.[430]

Stakeholder feedback on this issue to our review and the LG Acts 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 *perceived* difficulty of gaining Ministerial consent.

The LG Acts Taskforce has concluded that the provisions of the LG Act relating to the formation of corporations and other entities should continue.[431] We agree that these provisions 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 Office of Local Government (OLG) as to the process for obtaining Ministerial approval and the matters that will be considered by the Minister. The LG Acts Taskforce noted that OLG (formerly DLG) issued a circular providing guidance about the 'public interest' considerations.[432]

[429] LG Acts Taskforce Discussion Paper, pp 39-40.
[430] LG Acts Taskforce Discussion Paper, p 40 and LG Acts Taskforce Final Report, p 38.
[431] LG Acts Taskforce Final Report, p 38.
[432] 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 services capabilities adequately. Limits include, for example, financial caps on revenue, the need for Ministerial approval of a body and onerous ongoing reporting requirements.[433]
- More detailed guidance material is needed from OLG on what constitutes acceptable governance and financial management frameworks. Whilst OLG currently provides a *Supplementary Checklist*[434] 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.[435]
- Research on past collaboration failures consistently demonstrates that fear of "loss of control"[436] by individual members of such bodies can lead to "parochialism"[437] and in-fighting. For example, industrial relations concerns have undermined effective implementation and maintenance of inter-council collaborative models.[438]

[433] Gooding Davies Report, p 18. See also: OLG Guidance Paper, p 27.

[434] OLG, *Supplementary Checklist – Review of Collaborative Arrangements,* available at: http://www.olg.nsw.gov.au/content/pbp-review-collaborative-arrangements-supplementary-checklist accessed on 14 October 2014.

[435] Australian Institute of Management, *Shared Services in the Public Sector: A Triumph of Hope over Experience?,* August 2012, p 1, available at: http://www.aim-nsw-act.com.au/ accessed on 14 October 2014.

[436] Ibid.

[437] University of New England Centre for Local Government, W*orking Paper Series: An Analysis of New England Strategic Alliance Model*, May 2009, p 16, available at: http://www.une.edu.au/__data/assets/pdf_file/0017/21194/05-2009.pdf accessed on 14 October 2014.

[438] Ibid.

4.4.4 Lack of incentives

The Productivity Commission points out that there may be insufficient incentives 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 gains from addressing regulatory efficiency objectives are not necessarily felt directly by LGs [local governments]. This is because LGs' net expenditure on regulatory areas and functions constitute a small proportion of their total net expenditure. Consequently, regulatory efficiency objectives may be overlooked, despite the potential for businesses and others in the community to gain substantially from LG regulatory reform. In such cases, there may be a case for strengthening incentives for LGs to voluntarily coordinate or consolidate.[439]

4.4.5 Our draft recommendations

Our draft recommendations were aimed at removing impediments to, and providing incentives for, council regulatory collaboration. These steps are important in achieving greater collaboration amongst councils.

We recommended the LG Act be amended to remove any impediments to, or facilitate the easier use of, shared regulatory services by:

- 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),[440] including to shared services bodies
- amending section 377, which prohibits any delegation by a council of the acceptance of tenders.

We also recommended that whichever forms of council collaboration are used in future, consideration should be given to whether the LG Act should specify how and in what form the collaborative arrangements should be established (including whether management frameworks should be prescribed).

Funding can be particularly important to overcome concerns about start-up costs.[441] We also recommended the NSW Government encourage and develop incentives to form collaborative arrangements in relation to *regulatory* functions.

We recommended 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

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439 Productivity Commission Performance Benchmarking Report, p 199.
440 *Local Government Act 1993* (NSW), section 381.
441 For example, North Sydney Council submission, July 2014.

costs. We suggested OLG's *Supplementary Checklist*[442] 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.

We also considered there was scope for OLG to provide more substantial guidance material to councils on collaborative arrangements. OLG's *Supplementary Checklist* template[443] provides a basic outline of documents and evidence that councils can use to assess actual or proposed collaborative arrangements. However, we suggested OLG could 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. It could also consider providing guidance on governance options for collaboration between councils (including a list of different models of incorporation).

We recommended that OLG should review and consider current leading practice collaborative arrangements – such as Hunter Councils Inc - in reviewing its guidance material and providing assistance to councils.

4.4.6 Stakeholder feedback

Stakeholders responding to our Draft Report were generally supportive of greater regulatory collaboration amongst councils.[444]

Ku-ring-gai Council notes that:

> Enhanced council collaboration has the potential to realise economies of scale, enhance consistency and provide a level playing field for businesses across local government areas.[445]

Our draft recommendation to provide incentives to form collaborative arrangements in relation to regulatory functions was also supported by a number of stakeholders.[446] North Sydney Council recognised that there are costs associated with establishing these collaborative arrangements.[447]

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442 OLG, *Supplementary Checklist – Review of Collaborative Arrangements,* available at: http://www.olg.nsw.gov.au/content/pbp-review-collaborative-arrangements-supplementary-checklist accessed on 14 October 2014.

443 OLG, *Supplementary Checklist – Review of Collaborative Arrangements,* available at: http://www.olg.nsw.gov.au/content/pbp-review-collaborative-arrangements-supplementary-checklist accessed on 14 October 2014.

444 For example, see submissions from Ku-ring-gai Council, Bankstown City Council, Albury City Council and Marrickville Council, July 2014.

445 Ku-ring-gai Council submission, July 2014.

446 For example, see submissions from Sutherland Shire Council and Ku-ring-gai Council, July/August 2014.

447 North Sydney Council submission, July 2014.

4.4.7 Our final recommendations

As discussed earlier, the NSW Government has responded to the ILGRP's final recommendations, supporting voluntary mergers of councils and the creation of Joint Organisations and other collaborative structures to support regional planning and service delivery. It will commence work with up to four pilot regions to develop and test the new collaborative models. It has also recognised the need for different structures for rural councils.[448]

We note that the NSW Government intends to identify appropriate core functions and the necessary legislative model to enable these functions to be carried out, as part of its work with the pilot regions.[449]

We also note that the ILGRP recommended regional collaboration in the form of mandatory Joint Organisations. We support the voluntary participation of councils in any collaborative models to ensure strong 'buy-in' and accountability of individual councils for the activities of collaborative entities.

The ILGRP recommended the establishment of a State-borrowing facility which would reduce the level of interest rates payable by councils.[450] We note that the NSW Government has now indicated that it will establish a State borrowing facility, managed by Treasury Corporation. This facility will provide 'fit for the future' councils with access to low cost loans.[451] This facility could be used by councils to obtain loans to assist with the set-up costs of collaborative structures.

In light of these recent developments, we have modified our recommendation to more broadly refer to a low interest repayable funding mechanism to encourage the formation of shared regulatory services.

Recommendations

11 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.

Whichever forms of council collaboration are used in future, consideration should be given to whether the Act should specify how and in what form the collaborative arrangements should be established (including whether management frameworks should be prescribed).

448 Fit for the Future Response, pp 11-12.
449 Ibid.
450 ILGRP Final Report, pp 46-48.
451 Fit for the Future Response, p 5.

12 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 availability of repayable funding arrangements 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, or Joint Organisations, as recommended by the ILGRP, 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

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

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: CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014, Chapter 8 (CIE Report).

5 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, 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 systems and skip bins
- activities on community land, including busking, community events and business activities (eg, fitness trainers and 'boot camps')
- 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.[452]

Local Approvals Policies (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.[453] LAPs are discussed further at section 5.3.

Analysis indicates there were 320,400 section 68 approvals in force in NSW on 30 June 2012.[454] 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.[455]

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[452] *Local Government Act 1993* (NSW), section 68.

[453] *Local Government Act 1993* (NSW), section 158.

[454] IPART, *Regulation Review – Licence Rationale and Design Draft Report*, October 2013 available at: http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design accessed on 16 October 2014.

[455] CIE Report, p 45.

Table 5.1 Section 68 approvals issued by NSW councils

Approval to:	New	Renewed	In force
Install Disconnect or Remove a Meter Connected to a Service Pipe	6,922	1,616	110,188
Operate a System of Sewage Management	25,580	24,645	93,275
Connect a Private Drain or Sewer with a Public Drain or Sewer	4,313	-	91,511
Install Construct or Alter a Waste Treatment Device or a Human Waste Storage Facility or a Drain Connected to any such Device or Facility	3,482	1,092	9,758
Dispose of Waste into a Sewer of Council	2,827	1,344	5,970
Carry Out Sewerage Work	3,997	-	1,605
Carry Out Stormwater Drainage Work	3,972	-	1543
Engage in a Trade or Business	750	101	1527
Use a Vehicle Stall or Stand to Sell any Article in a Public Place	4,807	781	1194
Carry Out Water Supply Work	1,429	-	940
Operate a Caravan Park or Camping Ground	292	285	422
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	3,203	-	400
Install a Manufactured Home Moveable Dwelling or Associated Structure on Land	516	13	317
Install a Domestic Oil or Solid Fuel Heating Appliance other than a Portable Appliance	622	-	263
Set Up Operate or Use a Loudspeaker or Sound Amplifying Device	1,369	196	261
Draw or Sell Water from a Council Water Supply or a Standpipe	219	52	250
Domestic Greywater Diversion	21	35	233
Direct or Procure a Theatrical Musical or other Entertainment for the Public	448	2	203
Place a Waste Storage Container in a Public Place	1,472	43	150
Play a Musical Instrument or Sing for Fee or Reward	2,150	36	121
Deliver a Public Address or Hold a Religious Service or Public Meeting	172	3	107
Install or Operate Amusement Devices	548	46	77
Transport Waste Over or Under a Public Place	23	26	48
Operate a Manufactured Home Estate	29	16	24
Operate Public Car Park	17	4	10
Construct a Temporary Enclosure for the Purpose of Entertainment	182	2	4
Place Waste in a Public Place	44,225	-	-
Total	**113,586**	**30,338**	**320,400**

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' 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, *Regulation Review – Licence Rationale and Design Draft Report*, October 2013 available at: http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design accessed on 16 October 2014.

5.1.2 Stakeholder concerns

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.[456]

Stakeholders also highlighted the following issues with section 68 approvals:

- businesses operating across council boundaries need to obtain multiple approvals[457]
- 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)[458]
- there are inconsistent section 68 conditions imposed by councils.[459]

Another issue raised was the inconsistent application of regulation to particular activities.[460] Blue Mountains City Council notes that busking on community land is the only form of busking which requires a section 68 approval.[461] 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.[462] Some stakeholders support removing duplication where section 68 activities are also regulated by other Acts.[463] Others support removing section 68 approvals or providing greater exemptions for low risk or low cost activities.[464]

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456 Adam Gilligan, Newcastle City Council, *Public Roundtable for IPART's Review of Local Government Compliance and Enforcement* (Public Roundtable), Transcript, p 108.

457 For example, see submissions from Australian Institute of Building Surveyors and OSBC, November 2012.

458 For example, see submissions from Advanced Building Certifiers, HIA and Great Lakes Council, October/November 2012. Personal communications, telephone conversation with Blue Mountains City Council, January 2013; telephone conversation with Sutherland Shire Council, January 2013.

459 Fitness Australia submission to IPART's Regulation Review - Licence Rationale and Design Issues Paper, December 2012.

460 Personal communication, telephone conversation with Blue Mountains City Council, 21 November 2012.

461 Ibid.

462 For example, see submissions 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, OSBC and Tamworth Business Chamber, October/November 2012 and January 2013.

463 For example, see submissions from HIA, Great Lakes Council and Randwick City Council, October/November 2012. Personal communication, telephone conversation with Sutherland Shire Council, January 2013.

464 For example, see submissions from Wollongong City Council and Liverpool City Council, October/November 2012. Personal communication, telephone conversation with Blue Mountains City Council, January 2013.

Our draft recommendation included removing certain low-risk activities from the list of activities requiring approval under section 68. These activities were: 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. Some stakeholders did not support this aspect of our draft recommendation.

These stakeholders noted that community expectations about regulation of activities requiring section 68 approvals may vary across local government areas so that:

- activities that may be considered low risk in one area may be high risk in another
- a community may prefer to have an activity managed proactively rather than reactively.[465]

Other stakeholders noted that activities that may be considered low risk can have significant amenity impacts, pose a public risk requiring individuals to hold public liability insurance, or have the potential to damage public land.[466] These impacts may vary according to the scale of an activity. For example, amplified music may have a greater impact than unamplified music; and small public meetings may have less impact than large public meetings.

5.1.3 Options for streamlining section 68 approvals

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 duplication or overlap with other legislation
- providing longer duration approvals and automatic renewals
- providing standardised, minimum requirements or exemptions for activities in the regulations[467]
- providing for mutual recognition of approvals for businesses operating across councils (discussed further at section 5.2)
- providing more council-specific exemptions through LAPs (discussed further at section 5.3).

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[465] For example, see submissions from Mosman Municipal Council, Fairfield City Council, Willoughby City Council and North Sydney Council, July 2014.

[466] For example, see submissions from Parramatta City Council, City of Ryde Council, Hornsby Shire Council, Bega Valley Shire Council and Sutherland Shire Council, June/July/August 2014.

[467] These are regulations under the *Local Government Act 1993* (NSW).

In the sections below we explain what activities we consider are amenable to these streamlining options. These are generally low risk activities. However, changes to duration and automatic renewal of approvals will be particularly useful to reduce the red tape burden of high risk, longer term 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.[468],[469]

We acknowledge stakeholder concerns about removing approvals for low risk activities and have changed this aspect of our recommendation. The low-risk activities identified in our Draft Report (busking, use of a loudspeaker or amplifier, public address, meeting or religious service) are performed across a spectrum involving very different impacts on the community. We consider:

- there is scope to provide exemptions or standard requirements in the regulations for those activities that have a low impact on the community and involve low risk, and
- that providing exemptions for these activities is a better approach than removing approvals altogether.

This is discussed further at section 5.1.6.

We note that the Local Government Acts Taskforce (LG Acts Taskforce) has also considered section 68 approvals.[470] The LG Acts Taskforce has recently recommended that the prescriptive processes of approvals be streamlined and, subject to risk assessment, be placed into regulations where possible. It has also recommended removal of as many approvals as possible or placing in specialist legislation where repeal is not possible.[471] The NSW Government has recently indicated its broad support for the recommendations of the LG Acts Taskforce.[472]

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468 Personal communications, telephone conversation with Sutherland Shire Council, January 2013; telephone conversation with Blue Mountains City Council, January 2013; telephone conversation with Port Macquarie-Hastings Council, 8 January 2013.

469 We undertook an analysis of 33 Local Approvals Policies available online. This included a review of several council websites.

470 LG Acts Taskforce, *A New Local Government Act for NSW – Discussion Paper*, April 2013, available at: http://www.olg.nsw.gov.au/content/local-government-acts-taskforce accessed on 14 October 2014 (LG Acts Taskforce Discussion Paper). See also: LG Acts Taskforce, *A New Local Government Act for NSW and Review of the City of Sydney Act 1988*, October 2013, available at: http://www.olg.nsw.gov.au/content/local-government-acts-taskforce accessed on 14 October 2014 (LG Acts Taskforce Final Report).

471 LG Acts Taskforce Final Report, pp 47-48.

472 OLG, *Fit for the Future - NSW Government Response*, September 2014, available at: http://www.fitforthefuture.nsw.gov.au/ accessed on 14 October 2014 (Fit for the Future Response).

5.1.4 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[473]
- installation of amusement devices – Work Health and Safety Regulation and LG Act[474]
- installation and operation of manufactured homes – EP&A Act and LG Act[475]
- stormwater drainage approvals – EP&A Regulation and LG Act.[476]

In our assessment, each of these areas should be closely examined to determine whether separate approval is required under section 68. If not, businesses would still be required to obtain approvals under the other legislation.

Stakeholder submissions to our Draft Report broadly supported our recommendation to remove duplication of section 68 approvals with other legislative requirements.[477] Some stakeholders also identified that approvals should be reviewed in more detail and with targeted consultation.[478]

The LG 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.[479]

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[473] See Roads Act, section 125; EP&A Act, section 76A; LG Act, sections 46 and 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 either section 46 of the LG Act to issue a lease or licence, or section 125 of the Roads Act. Whether section 68 is to be used for footpath dining permits could be clarified in legislation, if need be.

[474] *Work Health and Safety Regulation 2011* (NSW), Part 5.2, Division 4.

[475] EP&A Act, sections 118A and 121B.

[476] EP&A Regulation 2011 (NSW), Part 2, Division 3, subdivision 2.

[477] For example, see submissions from Coffs Harbour City Council, Wyong Shire Council, Shellharbour City Council, Bega Valley Shire Council and OSBC, June/July 2014.

[478] For example, see submissions from Hornsby Shire Council and North Sydney Council, June/July 2014.

[479] 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.

5.1.5 Changes to the duration and renewal of approvals to reduce the burden of approvals

In addition to removing regulatory overlap or duplication, it may be possible to reduce the current burden of approvals through:

- longer duration
- automatic renewal.

Under the LG Act, approvals lapse every five years,[480] with scope for councils to lengthen or shorten this period.[481] However, many councils currently require annual approvals for activities.[482] 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 five 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.

Other activities where it has been suggested that there may be merit in providing longer duration approvals is for concrete pumping and delivery of construction materials. Currently a number of approvals for these activities may be required over the course of a building project.[483]

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.[484]

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.

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480 *Local Government Act 1993* (NSW), section 103(1)(a).

481 *Local Government Act 1993* (NSW), sections 103(1)(b) and 103(2).

482 For example, for certain approvals to operate a system of sewage management. Personal communications, telephone conversation with Blue Mountains City Council, January 2013 and telephone conversation with Port Macquarie-Hastings Council, 8 January 2013.

483 Personal communication, meeting with DPC, 13 August 2014. These activities require an approval to "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".

484 *Local Government Act 1993* (NSW), section 107A(3).

A number of councils responding to our Draft Report support the availability of longer duration and automatic renewal of approvals, subject to the following mechanisms being available:

- revoking approvals for non-compliance[485]
- reviewing conditions of approval[486]
- continuing requirements on approval holders to maintain appropriate insurance or meet other ongoing requirements.[487]

We consider these mechanisms are already available, as all these matters can be addressed through conditions of approval.

Stakeholders responding to the Draft Report also argue that longer duration and automatic renewal of approvals should be available at a council's discretion, based on the merit of an application and in addition to short term, one-off approvals.[488]

We are recommending longer duration and automatic renewal in relation to approvals for longer-term activities. Red tape benefits will be substantially reduced if this is only available at a council's discretion. Councils will still retain flexibility to revoke, enforce or amend approvals and conditions of approvals. There may also be value in giving councils a general discretion to provide longer duration and automatic renewal for any section 68 approval, which could be exercised based on the merits of a particular case.

5.1.6 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 LG 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.[489] 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
- skip bins

485 For example, see submissions from Coffs Harbour City Council, Parramatta City Council and Mosman Municipal Council, June/July 2014.
486 Fairfield City Council submission, July 2014.
487 Ibid.
488 For example, see submissions from Willoughby City Council and City of Ryde Council, June/July 2014.
489 LG Acts Taskforce Discussion Paper, p 56.

- domestic oil or solid fuel heaters
- busking
- set up, operation or use of a loudspeaker or sound amplifying device
- deliver a public address or hold a religious service or public meeting.

These activities are detailed further below.

Submissions to the Draft Report noted that exemptions can be used effectively to "nudge" users towards preferred behaviour or alternatives. Environmental Health Australia and Camden Council give an example of how exemptions might affect consumer behaviour in relation to domestic solid fuel heaters. If an exemption was available for installation of low-polluting heaters but an approval was required for higher-polluting heaters, this would encourage consumers to buy low-polluting heaters.[490] This approach may also apply to other approval areas.

Other stakeholders do not support the use of exemptions for these activities, arguing that councils should approve these activities to address local concerns.[491]

Footpath restaurants

If approval for footpath dining is not required under section 68 of the LG Act, footpath restaurants still require approval from the council under section 125 of the Roads Act.[492]

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.[493]

Instead of requiring individual approvals, consideration should be given to introducing standard minimum requirements in regulations for footpath restaurants.

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[490] For example, see submissions from Environmental Health Australia and Camden Council, July 2014.

[491] For example, see submissions from Parramatta City Council, Mosman Municipal Council and City of Ryde Council, June/July 2014.

[492] We note that an additional overlap with the EP&A Act was removed in early 2014. Under an amendment to the *State Environmental Planning Policy (Exempt and Complying Codes) 2008*, footpath restaurants are exempt from requiring a development approval provided they are not associated with a pub or small bar and they comply with an approval granted under section 125 of the Roads Act and any approval granted under section 68 of the LG Act: *State Environmental Planning Policy (Exempt and Complying Codes) 2008*, clause 2.40B.

[493] For example, Ballina Shire Council LAP (2009) and Hurstville City Council LAP (2012).

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.

Consideration should also be given to the suggestion of Environmental Health Australia and Camden Council that exemptions might be used effectively to alter consumer behaviour if one was available for installation of low-polluting heaters but approval was required for higher-polluting heaters.[494]

A-frames or sandwich boards

A number of existing council LAPs provide exemptions in this area.[495]

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 for anchoring).

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).[496]

494 For example, see submissions from Environmental Health Australia and Camden Council, July 2014.
495 For example, Blue Mountains City Council LAP (2012).
496 Ibid.

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,[497] 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).[498]

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.[499]

We consider there is scope for the Office of Local Government (OLG) 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 OLG, 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.[500]

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497 Personal communication, telephone conversation with HIA, January 2013.

498 Fitness Australia submission, December 2012.

499 Personal communications, telephone conversation with Blue Mountains City Council, January 2013, and telephone conversation with City of Sydney Council, January 2013.

500 OLG, *Local Government Filming Protocol 2009*, 2009 available at: http://www.olg.nsw.gov.au/content/local-government-filming-protocol-2009 accessed on 14 October 2014.

Busking; set up, operation or use of a loudspeaker or sound amplifying device; deliver a public address or hold a religious service or public meeting

The range and scale of these activities can vary greatly. We consider there is scope to provide exemptions or standard minimum requirements for these activities when conducted on a small scale.

Any exemptions or minimum requirements for these activities could be combined with the publication by each council of areas where specified activities are allowed (or not allowed), in order to accommodate local preferences. We note that councils may also rely on their general reactive powers to manage these activities, such as public nuisance and noise control powers under various legislation.[501]

5.1.7 Our final recommendation

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, 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 amendments to the LG Act following on from the review by the LG Acts Taskforce.[502]

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

[501] For example, POEO Act, sections 95-100 and LG Act, sections 124-125.

[502] The NSW Government has recently indicated that the new LG Act is to take account of the findings of this report and that it will commence work, in consultation with the sector and key stakeholders, to develop the new Act: Fit for the Future Response, p 20.

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.[503]

Recommendation

13 The *Local Government Act 1993* (NSW) should be reviewed and amended in consultation with councils 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; installation of amusement devices; installation and operation of manufactured homes; stormwater drainage approvals
- allow for longer duration and automatic renewal of approvals
- provide more standard exemptions or minimum requirements from section 68 approvals, where possible, in areas such as: footpath restaurants; A-frames or sandwich boards; skip bins; domestic oil or solid fuel heaters; 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.

Table 5.2 CIE's analysis of the potential impact of our recommendations

Particular exemption	Avoided approvals	Avoided costs				
		Time	Admin	Other	Fees	Total
	No./year	$000/ year	$000/ year	$000/ year	$000/ year	$000/ year
No approval for A-frames and sandwich boards	1,232	21	2	2,094	131	2,248
No approval if domestic oil/solid fuel heaters are installed by accredited operator	622	43	1	0	47	91
All busking activities exempt	2,150	6	4	0	11	21
Skip bins exempt	34,273	297	57	0	857	1,211
Stormwater works exempted for single lot residential dwellings or if repairs to existing works	1,986	34	3	0	248	286
Remove requirement for approval to operate a loudspeaker or sound amplifying device	1,369	18	2	0	0	20
Remove or exempt approval to deliver a public address	172	2	0	0	0	3
Remove or exempt approval for amusement devices	548	10	1	0	41	51
Remove or exempt approval for manufactured homes where DA required	0	0	0	0	0	0

[503] CIE Report, p 47.

Particular exemption	Avoided approvals	Avoided costs				
		Time	Admin	Other	Fees	Total
	No./year	$000/ year	$000/ year	$000/ year	$000/ year	$000/ year
Remove or exempt s68 footpath dining approval	0	0	0	0	0	0
Remove or exempt s68 mobile vendors approval	0	0	0	0	0	0

Note: We have allowed for no change in council net costs on the basis that councils cost recover section 68 approvals.

Source: CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014, p 46 (CIE Report).

5.2 Mutual recognition of section 68 approvals

The following sections provide further background on mutual recognition of section 68 approvals, stakeholder concerns and suggestions in this area and our recommendation.

5.2.1 Background on 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.[504]

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.

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.

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.

504 *Local Government Act 1993* (NSW), section 107(3).

5.2.2 Stakeholder concerns

A number of councils and the Office of the NSW Small Business Commissioner (OSBC) recognised and supported the use of mutual recognition for various section 68 approvals.[505] For example, Randwick City Council noted that such schemes are a good application of the 'precautionary principle', whereby regulators don't regulate if it is not necessary (ie, the section 68 activity is low risk).[506] It advocates for mutual recognition across councils for new business models (eg, mobile food vendors).

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.[507] Conversely, Sutherland Shire Council argued that mutual recognition is likely to add further confusion and the use of technology is a more efficient approach.[508]

Stakeholders responding to the Draft Report also argued that if mutual recognition of section 68 approvals is enabled, councils need to be able to recover the local compliance costs associated with an approval granted by another council.[509] In relation to mobile food vendors, stakeholders noted the need for councils to retain the ability to specify exclusion areas so that mobile food vendors do not unfairly compete with fixed premises.[510]

5.2.3 Our final recommendation

We consider that red tape savings from mutual recognition of section 68 approvals are significant for affected businesses. It is possible to have mutual recognition that accommodates local differences and allows councils to recover compliance costs.

We agree with the comments of some stakeholders that councils should be able to choose which types of section 68 approvals they will recognise. They could, for example, recognise specific section 68 approvals on a regional basis, subject to published local requirements and the recovery of compliance costs for approvals granted by another council. Examples of how this could operate are provided below in relation to mobile vendors and skip bins.

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505 For example, see submissions from Newcastle City Council and Port Stephens Council, October/ November 2012. See also: submissions from Albury City Council, City of Sydney, Parramatta City Council, Willoughby City Council, Marrickville Council, Eurobodalla Shire Council and OSBC, July 2014.

506 Randwick City Council submission, November 2012.

507 Pittwater Council submission, October 2012.

508 Sutherland Shire Council submission, November 2012.

509 For example, see submissions from Coffs Harbour City Council, Warringah Council, North Sydney Council, City of Ryde Council, Environmental Health Australia and Camden Council, June/July 2014.

510 For example, see submissions from Environmental Health Australia, City of Canada Bay Council and Camden Council, July 2014.

We also agree with stakeholder comments that councils should be able to:

- recover the local compliance costs associated with an approval granted by another council
- recognise section 68 approvals granted by other councils subject to compliance with local requirements.

Our final recommendation on mutual recognition of section 68 approvals has been amended to include compliance with local requirements and cost recovery for compliance activities.

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 and subject to recovery of associated compliance costs. 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 in section 5.1.6, of prescribing minimum requirements 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' and recovery of any associated compliance costs of other councils.

Recommendation

14 The *Local Government Act 1993* (NSW) should be amended to enable councils to recognise section 68 approvals issued by another council (ie, mutual recognition of section 68 approvals), subject to published local requirements, for example with mobile food vendors and skip bins. Councils should be able to recover the costs of compliance associated with approvals granted by another council.

5.3 Local Approvals Policies

The following sections provide further background on LAPs, stakeholder concerns and suggestions in this area.

5.3.1 Background on 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.[511] 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
- provide guidance to regulated entities as to how councils will exercise their discretion in determining section 68 approval applications.

Our research indicates that little more than 20% of councils currently utilise LAPs[512] and LAPs are not being used extensively to provide exemptions.[513] As a result, the red-tape reduction currently achieved through LAPs is not significant.

5.3.2 Stakeholder concerns

Stakeholder views on LAPs vary widely. We received some support for making exemptions to section 68 approvals more widely available through LAPs.[514] Wollongong City Council, the OSBC and the NSW Business Chamber support a simplified LAP framework for such exemptions.[515]

Some stakeholders support the development of a model LAP.[516] Others support a central electronic register of LAPs to help improve consistency and streamlined consultation and autonomy for councils in the making of LAPs.[517]

511 *Local Government Act 1993* (NSW), section 158.
512 Our research indicates there are 33 LAPs available online, the majority of which appear to have lapsed due to automatic expiry provisions under the legislation.
513 Out of the 33 LAPs we reviewed, 16 contained exemptions and specified criteria for exemptions.
514 For example, see submissions from Advanced Building Certifiers, Tamworth Business Chamber, Caltex Australia and HIA, November 2012.
515 For example, see submissions from Wollongong City Council, NSW Business Chamber and OSBC, November 2012.
516 For example, see submissions from Eurobodalla Shire Council and Shellharbour City Council, July 2014.
517 Blacktown City Council submission, July 2014.

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,[518] using LAPs is at best a localised solution which may lead to inconsistency across local government areas.[519] 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.[520]

5.3.3 Our position on reform options - Local Approvals Policies (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.[521]
- 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 four years).[522] 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.[523]
- A lack of guidance by the State on the use of LAPs.[524]
- 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.[525]

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.

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518 City of Sydney Council submission, December 2012.
519 Ibid.
520 NSW Business Chamber submission, November 2012.
521 Personal communication, telephone conversation with Blue Mountains City Council, 21 November 2012.
522 *Local Government Act 1993* (NSW), section 165(4).
523 Ibid.
524 Strathfield Council submission, October 2012.
525 Sutherland Shire Council submission, November 2012.

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 OLG that such conditions are generally invalid.[526]

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.[527] 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[528]
- 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 OLG'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 OLG, in consultation with councils,[529] which incorporates the elements set out in the following Box.

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[526] OLG notes that 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 Council does this in its Companion Animals LOP. However, OLG 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: OLG, *Companion Animals – Frequently Asked Questions,* 29 October 2007, p 16.

[527] Wollongong City Council submission, November 2012.

[528] OSBC submission, November 2012.

[529] For example, see submissions from Wollongong City Council, Upper Hunter Shire Council, Strathfield Council, Newcastle City Council and Campbelltown City Council, October/November 2012 and Shellharbour City Council, July 2014.

Box 5.1 What to include in a model LAP

Basic elements for a model LAP:

Provided and promoted by OLG, 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 (eg, as per Bathurst Regional Council LAP) setting out:

- whether council approval is required for section 68 activities (ie, 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, eg:

- Part B - water supply, sewerage and stormwater drainage, the model LAP could set out the considerations for approval under clause 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 clause 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 clause 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 OLG to circulate a memorandum to councils advising them when updates are made to the model LAP.

We note that the LG Acts Taskforce has concluded that there is practical utility in retaining the ability for councils to make LAPs, while streamlining of the current processes is appropriate.[530] The NSW Government has recently indicated broad support for the recommendations of the LG Acts Taskforce.[531]

We consider that streamlining of section 68 approvals to achieve greater consistency and standardisation can realise greater benefit for the community than from improvements to current processes for making LAPs. We therefore prefer removing LAPs from the LG Act.[532]

Recommendation

15 The *Local Government Act 1993* (NSW) should be amended to 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 the Office of Local Government's (OLG) website; consolidate activities within one LAP per council; and OLG to provide a model LAP in consultation with councils.

5.4 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.

5.4.1 Stakeholder concerns

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.[533] 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.[534]

530 LG Acts Taskforce Final Report, p 47.
531 Fit for the Future Response, p 2.
532 The NSW Government has also indicated that the new LG Act is to take account of the findings of this report. See: Fit for the Future Response, p 20.
533 For example, see submissions from OSBC, Central NSW Councils, Urban Taskforce Australia and Caltex Australia, November 2012.
534 For example, see submissions from Lismore City Council, Wollongong City Council and NSW Ombudsman, November 2012.

Councils raised the issue that enforcement and compliance is often "reactive"[535] or "blinkered", rather than proactive, due to issues with resources.[536] 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.[537]

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.[538]

Stakeholders responding to our Draft Report broadly supported amendment of the LG Act to improve local government enforcement powers.[539] Blacktown City Council notes:[540]

> This is a high priority for reform. Confusing enforcement powers and changes to legislation can result in wasted resources in investigation and court proceedings. Training of officers and trying to provide consistent enforcement protocols across numerous pieces of legislation is enormously taxing and leaves councils exposed to litigation where incorrect procedures may have been followed or use of discretion questioned.

535 City of Sydney Council submission, January 2013.

536 For example, see submissions from City of Sydney Council, Leichhardt Council and Wollongong City Council, November 2012/January 2013.

537 For example, see submissions from Warringah Council, December 2012 and an anonymous stakeholder, October 2012.

538 Personal communication, email from DPC, 24 September 2013.

539 For example, see submissions from Ku-ring-gai Council, Blacktown City Council, City of Sydney and Penrith City Council, July 2014.

540 Blacktown City Council submission, July 2014.

5.4.2 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.[541] 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.[542] 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.[543] 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 that they find these powers more efficient and effective to use, and use them in preference to powers under the LG Act where possible.[544]

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[541] Stenning & Associates, *Register of regulatory functions undertaken by Local Government in NSW – Final Report,* October 2012, available at: http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Local_Government/Local_Government_Compliance_and_Enforcement accessed on 14 October 2014.

[542] 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.

[543] 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.

[544] Personal communication, telephone conversation with Blue Mountains City Council, 21 November 2012.

Other jurisdictions

In the United Kingdom (UK), as part of the reforms creating the Local Better Regulation Office (LBRO),[545] the *Regulatory Enforcement and Sanctions Act 2008* (UK) (RES Act) was passed.[546] 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.[547] This was to address what had been identified as a "compliance deficit" in some regulatory areas; whereby regulators could not respond to breaches with *appropriate and proportionate* responses, and therefore did not respond at all.[548] 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).[549]

Research indicates that the anticipated savings from implementation of the 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.[550] 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.[551]

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545 As noted in Chapter 2, the former LBRO is now incorporated into the Better Regulation Delivery Office within the UK Department for Business, Innovation & Skills.

546 UK Government, *Regulatory Enforcement and Sanctions Act 2008* (UK), available at: http://www.legislation.gov.uk/ukpga/2008/13/pdfs/ukpga_20080013_en.pdf accessed on 20 August 2014.

547 Norton Rose Fulbright, *Regulatory Enforcement and Sanctions Act 2008* (UK) - *Environmental Offences Summary Note*, January 2011, available at: http://www.nortonrosefulbright.com/ accessed on 14 October 2014.

548 Norrie J and Phillips J, *The Law of Regulatory Enforcement and Sanctions: A Practical Guide*, 2011, Introduction, p vii.

549 UK Government, *Regulatory Enforcement and Sanctions Act 2008*, Section 3, available at: http://www.legislation.gov.uk/ukpga/2008/13/pdfs/ukpga_20080013_en.pdf accessed on 20 August 2014.

550 UK Department of Business Enterprise and Regulatory Reform, *Consultation on Draft Regulatory Enforcement and Sanctions Bill: Implementing the Hampton Vision*, May 2007, p 39, available at: http://www.berr.gov.uk accessed on 27 March 2013.

551 Norton Rose Fulbright, *Regulatory Enforcement and Sanctions Act 2008 - Environmental Offences Summary Note*, January 2011, available at: http://www.nortonrosefulbright.com/ accessed on 14 October 2014.

5.4.3 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.[552] 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.[553] If the costs are not paid, it is an offence.[554] Also under the POEO Act, the costs of monitoring compliance with a clean-up or prevention notice is recoverable from the offender.[555] Where the notice is not complied with, there is also ability to recover these costs.[556] 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.[557]

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. We note the Independent Local Government Review Panel (ILGRP) concluded in its review that the State should not set up regulatory regimes without allowing councils to recover the full cost of operating them.[558] It recommended any current State restrictions on fees for approvals or inspections be removed (subject to monitoring and benchmarking by IPART), and for councils to be encouraged to make increased use of cost recovery mechanisms.[559]

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552 For example, see submissions from Food Authority and City of Sydney Council, November 2012/January 2013.
553 *Protection of the Environment Operations Act 1997* (NSW), section 94.
554 Ibid.
555 Ibid, section 104(1), (2) and (3).
556 Ibid, section 104(4).
557 Ibid, sections 105-107.
558 ILGRP, *Revitalising Local Government*, October 2013, p 37, available at: http://www.localgovernmentreview.nsw.gov.au/accessed on 14 October 2014 (ILGRP Final Report).
559 ILGRP Final Report, pp 47-48.

The NSW Government has responded to this recommendation to support the appropriate use of fees and charges by councils to ensure cost recovery and enhance financial sustainability. However, it has also expressly not supported removing restrictions on fees, in order to ensure consistency and affordability in council fees and protect service users.[560]

5.4.4 Our final recommendation

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. We note the LG Acts Taskforce has made some discrete recommendations in this area. It has recommended increasing maximum penalties, increasing the time limit for commencing summary proceedings and aligning council powers of entry with contemporary legislative standards.[561] We note the broad support of the NSW Government for the recommendations of the LG Acts Taskforce.

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 (eg, 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.

Stakeholders widely supported our draft recommendation to amend the LG Act to provide a modern, consolidated, effective suite of compliance and enforcement powers for councils, with effective cost recovery mechanisms. As it is also consistent with the LG Acts Taskforce's discrete recommendations in this area, we have maintained the recommendation.

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[560] Fit for the Future Response, p 6.
[561] LG Acts Taskforce Final Report, pp 47-48.

Recommendation

16 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: CIE Report, pp 31-32, 36.

5.5 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.

5.5.1 Current issue with discretionary analysis

According to the OSBC:

- 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.[562]

These sentiments were echoed in a number of other business and individual submissions.[563]

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.[564]

Further, the NSW Business Chamber was particularly supportive of greater use by local government of informal dispute resolution mechanisms to reduce business costs.[565]

5.5.2 Internal Review Mechanisms

The Productivity Commission highlighted the potential to reduce costs for businesses and individuals by augmenting appeal paths with internal review mechanisms.[566] 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.[567] They also note most Ombudsmen will make preliminary investigations with the local council in question, as part of their assessment.[568]

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562 OSBC submission, November 2012.

563 For example, see submissions from HIA, Sutherland Shire Council and Wollongong City Council, November 2012.

564 Sydney Morning Herald, *Push for More Internal Ombudsmen to Deal with Complaints*, 27 November 2012, p 13, available at http://www.smh.com.au accessed on 14 October 2014.

565 NSW Business Chamber submission, October 2012.

566 Productivity Commission, *Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator*, July 2012, pp 120-122, Leading Practice 3.14, available at: http://www.pc.gov.au/projects/study/regulation-benchmarking accessed on 14 October 2014 (Productivity Commission Performance Benchmarking Report).

567 Ibid.

568 Ibid.

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 one or two 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).

Sutherland Shire Council uses an 'internal ombudsman'.[569] 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.[570] One of the stated aims of the program is also to provide guidance and education for staff and councillors within Sutherland Shire Council.[571]

Other councils have acknowledged the value of internal ombudsmen for councils of sufficient size and capacity to provide an efficient, streamlined response to complaints.[572]

The benefits of 'internal reviews' can also be achieved through robust internal complaints handling procedures being implemented by councils.

The NSW Ombudsman has developed *Effective complaint handling guidelines*[573] that provide a model approach to complaint handling or dispute resolution and set out the essential features of a complaint system in the public sector. This model approach consists of three tiers:

- Tier 1 – frontline complaint handling
- Tier 2 – internal review, ADR or investigation
- Tier 3 – independent review.

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569 Sutherland Shire Council submission, November 2012. Although we note that the title 'internal ombudsman' may be a misuse of terminology as 'ombudsman' means an independent third party.

570 Ibid.

571 Ibid.

572 For example, Ku-ring-gai Council submission, July 2014.

573 NSW Ombudsman, *Effective complaint handling guidelines – 2nd edition*, December 2010, available at: http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0012/3612/GL_EffectiveComplaintHand_Dec10_0914.pdf accessed on 20 August 2014.

We note that some councils have complaints handling systems that are based on or incorporate the NSW Ombudsman's guidelines.[574]

Some councils suggest that there should be limits or thresholds for eligibility for internal review. This is because of potential for reviews of relatively minor matters to be a significant resource drain for minimal gain[575] and potential for an internal review mechanism to be abused by select members of the community.[576]

Other councils note the cost of providing review mechanisms, particularly for smaller councils.[577] Various forms of resource sharing or collaboration to provide timely review were also suggested that may address these cost concerns, such as peer review by other councils[578] and review panels established by Joint Organisations.[579]

5.5.3 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.[580]

The use of external investigators or Alternative Dispute Resolution (ADR) experts (such as the OSBC) to assist parties with the resolution of a dispute may also be very valuable.[581] Importantly, the perception of independence in this process is an additional benefit.[582]

The use of the OSBC 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'.[583]

NSW Parliament passed the *Small Business Commissioner Act 2013* (NSW) in May 2013. This Act expands the informal and formal roles of the OSBC.[584]

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574 For example, see City of Ryde Council, *Customer Feedback Policy*, available at: http://www.ryde.nsw.gov.au/_Documents/Policies/Customer+Feedback+Policy.pdf accessed on 20 August 2014.
575 For example, see submissions from Mosman Municipal Council and Fairfield City Council, July 2014.
576 Albury City Council submission, July 2014.
577 Eurobodalla Shire Council submission, July 2014.
578 Lismore City Council submission, July 2014.
579 Tumbarumba Shire Council submission, July 2014.
580 OSBC submission, November 2012.
581 Productivity Commission Performance Benchmarking Report, p 119, Leading Practice 3.15.
582 Ibid.
583 Ibid.
584 The *Small Business Commissioner Act 2013* (NSW) commenced on 18 September 2013.

The OSBC 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 OSBC's alternative dispute resolution services. The OSBC 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.[585]

The major benefits of these MoUs include:

- increased access to the small business expertise of the OSBC, 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.[586]

5.5.4 Our final recommendation

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 consistent with the NSW Government's Quality Regulatory Services Initiative to provide transparent appeal mechanisms (this initiative is further discussed in Chapter 6, Box 6.3).

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585 Personal communication, email from OSBC, 30 May 2013. A 'Small Business Friendly Councils' program has been launched. Further information can be found at OSBC, *Small business friendly councils program*, available at: http://www.smallbusiness.nsw.gov.au/small-business-advocacy/small-business-friendly-councils-pilot-program accessed on 22 October 2013.

586 Personal communication, telephone conversation with Marrickville Council, April 2013.

Stakeholder comments on our draft recommendation on alternative and internal review mechanisms note the different needs of councils and their communities and businesses. The NSW Ombudsman's complaint handling guidelines are a valuable resource for councils to use to ensure their complaints handling and review mechanisms are appropriate for their local government area. These mechanisms may vary from council to council. For example, an internal ombudsman may be appropriate for large councils but not smaller ones. As some councils have noted, there may also be opportunities for councils to share resources or collaborate to provide internal and external review processes.

Review mechanisms can also provide a valuable educative function and help to improve internal processes. 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 and have maintained this recommendation.

Recommendation

17 Councils should support the use of alternative and internal review mechanisms (for example, the NSW Ombudsman, Office of the NSW Small Business Commissioner, and private providers of alternative dispute resolution 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 OSBC is estimated to be less than $1,000.

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 (eg, 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
- 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: CIE Report, 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 Initiative (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 recommendations 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 practice findings' for consideration and potential wider adoption by councils. These were identified from submissions and have been well supported by stakeholders. 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 for assessing regulatory performance, the NSW Government's QRS Initiative, recent developments and our recommendation.

6.1.1 Stakeholder concerns

Several stakeholders supported councils' requirements to report elements of their regulatory performance.[587] For instance, 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.[588]

However, smaller councils noted the drain on council resources to prepare such reports. For example:

- Coolamon Shire Council states it is required to submit about 50 reports a year to various state agencies.[589]
- Liverpool Plains Shire Council noted performance benchmarking should not create unrealistic administrative costs or community/government expectations.[590]
- 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.[591]

6.1.2 Current programs for assessing regulatory performance

Current programs for assessing the regulatory performance of councils include reporting requirements under various State legislation and programs put in place by State agencies that are relevant to local government regulatory performance.

Councils are currently required to report under the *Local Government Act 1993* (NSW) (LG Act), for the Integrated Planning and Reporting framework (IPR framework).

Information relevant to local government regulatory performance is collected by the following State agencies:

- the Office of Local Government (OLG), relating to the IPR framework and Promoting Better Practice (PBP) program
- the Department of Planning and Environment (DPE), relating to the Local Development Performance Monitor
- the State Debt Recovery Office (SDRO), relating to penalty notices
- the Ombudsman, relating to complaints.

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587 For example, see submissions from City of Sydney Council, Holroyd City Council and Sutherland Shire Council, November 2012/January 2013.
588 Sutherland Shire Council submission, November 2012.
589 Coolamon Shire Council submission, October 2012.
590 Liverpool Plains Shire Council submission, October 2012.
591 Wentworth Shire Council submission, October 2012.

Office of Local Government

IPR framework

OLG 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.[592]

The IPR framework was introduced to the *Local Government Act 1993* (NSW) (LG Act) in 2009[593] to improve long-term strategic planning and resource management by local councils.

Implementation of the IPR framework was staged with all councils working within the framework from 1 July 2012.[594] Under the IPR framework, councils are required to prepare, maintain and implement a range of strategies, plans and reports, including:[595]

- 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)
- 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 four-year term).

Section 6.1.4 below discusses some recent reviews of the IPR framework.

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592 OLG, *Integrated Planning and Reporting Framework – Frequently asked questions and their answers*, August 2009, p 6, available at: http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Integrated%20planning%20and%20reporting%20Framework%20-%20FAQ.pdf accessed on 15 October 2014.

593 *Local Government Amendment (Planning and Reporting) Act 2009* (NSW).

594 OLG, *Integrated Planning and Reporting Manual for local government in NSW*, March 2013, p 8, available at: http://www.olg.nsw.gov.au/news/integrated-planning-and-reporting-manual-march-2013pdf-18-march-2013pdf accessed on 15 October 2014 (OLG Reporting Manual).

595 OLG Reporting Manual, pp 5-8.

Promoting Better Practice (PBP) program

The PBP program aims to improve the viability and sustainability of councils (See Box below).

Box 6.1 Promoting Better Practice in local government

The Promoting Better Practice program aims to assist in strengthening the local government sector by assessing council performance, promoting continuous improvement, facilitating self-assessment and sharing better practice.

Promoting better practice includes:

- Working with councils to identify, share and promote better practice with an emphasis on:
  - strategic community planning
  - efficient and effective service delivery
  - quality governance and ethical conduct
  - financial sustainability.
- Working cooperatively with councils to promote strong relationships within the sector.
- Providing councils with feedback on areas requiring improvement or further development, and assisting them in developing solutions.
- Identifying trends and issues arising from council reviews to support policy and legislative changes for the local government sector.
- Encouraging and facilitating innovation by responding creatively to identified trends and issues.

Source: OLG, *Promoting Better Practice in local government,* available at http://www.olg.nsw.gov.au/strengthening-local-government/supporting-and-advising-councils/promoting-better-practice-review accessed on 8 September 2014.

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, OLG 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 6.2.14 also discusses the PBP program, as part of our best practice findings on regulatory approaches.

Department of Planning and Environment

The *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) has no statutory reporting requirements for councils, but DPE 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.[596]

Councils have provided DPE with detailed information since 2006.[597] An extract from the Local Development Performance Monitoring Report 2012/13 is presented in the Box below.

Box 6.2 Local Development Performance Monitoring Report 2012/2013

The 2012/13 Local Development Performance Monitoring report provides an overview of development trends in NSW for 2012/13.

It includes information on council performance in assessing local development and indications of the overall performance of the NSW planning system. The report also examines the activities of state government referral agencies, joint regional planning panels, and accredited (private and council) certifiers.

To produce the report, information was compiled from all 152 NSW councils on development applications, section 96 modifications, complying development certificates and post-development consent certificates (building and subdivision) determined during 2012/13.

The data provided in the report was reported by councils and state government referral agencies.

Source: Local Development Performance Monitoring Report 2012/2013, p 7.

There has been criticism by stakeholders that DPE does not currently use the data it has to properly assess, assist or incentivise poor performing councils.

State Debt Recovery Office

The SDRO, under the *Fines Act 1996* (NSW), collects data on all penalty notices issued by all councils (and other regulatory authorities).[598]

This data is not currently used to assess or compare council performance. One council questioned whether data collected and sent to the SDRO was ever reviewed.[599]

[596] DPE, *Performance Monitoring*, available at: http://www.planning.nsw.gov.au/en-us/developmentproposals/performancemonitoring.aspx accessed on 17 October 2014.

[597] DPE, *Local Development Performance Monitoring 2012-2013,* March 2014 (Local Development Performance Monitoring Report 2012/2013), available at: http://www.planning.nsw.gov.au/Portals/0/Development/LDPM_2012_March2014_part1.pdf accessed on 14 October 2014.

[598] *Fines Act 1996* (NSW), sections 114(2)(d) and 118.

[599] Albury City Council submission, October 2012.

This data could provide a picture of council enforcement activity in relation to the number and type of fines being issued (eg, parking and other fines).

NSW Ombudsman

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.[600]

We note that OLG collects complaints data and has a Memorandum of Understanding with the NSW Ombudsman to share complaints data.[601] Councils also collect their own complaints data.[602]

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 OLG and the Ombudsman could routinely be analysed to identify sector-wide trends or issues.

6.1.3 Quality Regulatory Services Initiative (QRS Initiative)

The QRS Initiative was announced in the NSW Government's response to the Industry Action Plans proposed by the Digital Economy, International Education and Research, Manufacturing and Professional Services Industry Taskforces.[603] 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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[600] NSW Ombudsman, *Local Government*, available at: http://www.ombo.nsw.gov.au/what-we-do/our-work/local-government accessed on 22 March 2013.

[601] NSW Ombudsman, *Memorandum of Understanding between the NSW Ombudsman and the Division of Local Government*, 2013 available at: https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0003/4971/MOU-between-NSW-Ombudsman-and-Department-of-Local-Government.pdf accessed on 14 October 2014.

[602] For example, see Warringah Council, *Internal Ombudsman*, available at: http://www.warringah.nsw.gov.au/council_now/ombudsman_int.aspx accessed on 5 July 2013.

[603] Media Release: *NSW Government takes action to drive economic growth,* 13 December 2012, available at: http://www.business.nsw.gov.au/__data/assets/pdf_file/0016/26233/rel_stoner_20121213_iap_policy.pdf accessed on 15 October 2014.

Box 6.3 Quality Regulatory Services Initiative

1. ***Enable electronic transactions***. Regulators will need to allow for electronic transactions with business including enabling business to lodge or renew applications and update their details electronically, accept electronic payments and access reporting templates, and lodge reports electronically.
2. ***Provide clarity in processing times***. Regulators will need to set, communicate and report on maximum timeframes for the processing of all licence, authorisation and permit applications.
3. ***Provide transparent appeal mechanisms***. Regulators will need to ensure they provide transparent appeal mechanisms and provide information about them when communicating with business about licensing, compliance and enforcement decisions.
4. ***Promote a risk-based approach to compliance and enforcement***. Regulators will need to promote a risk-based approach to compliance and enforcement so that businesses will not be inconvenienced by unnecessary compliance requirements.
5. ***Require a greater focus on regulatory outcomes.*** Regulators will need to have clearly defined outcomes, commence reviewing their outcome monitoring mechanisms as part of regular legislative reviews and commence reporting regularly on their outcomes.

Timeframe for implementation

As agreed by the Government all NSW regulators were required to implement reforms 1 to 3 by the end of 2013, and to implement reforms 4 and 5 by the end of 2014.

Source: DPC, *Quality Regulatory Services Initiative* available at, http://www.dpc.nsw.gov.au/programs_and_services/better_regulation/quality_regulatory_services_initiative accessed on 14 August 2014.

We note that DPC has recently provided some simplified guidance materials to regulators on implementing outcomes and risk-based regulation as part of its Quality Regulatory Services Initiative (QRS Initiative).[604] That guidance material includes *QRS Outcomes and Risk Based Regulation Guidelines* and a diagnostic tool. We note that the guidance material was developed by DPC for State agencies, but it is publicly available and could also be useful for councils.[605]

We consider that any State agencies who share responsibilities for enforcing various laws should work with councils to define regulatory outcomes and monitor requirements.

[604] DPC, *Better Regulation*, available at: www.dpc.nsw.gov.au/programs_and_services/better_regulation accessed on 15 October 2015.
[605] Personal communication, email from DPC, 7 October 2014.

6.1.4 Recent developments

Many of the current programs for assessing the regulatory performance of councils have been considered as part of recent or ongoing reviews by:

- the NSW planning system review
- the NSW Auditor-General
- the Independent Local Government Review Panel (ILGRP)
- the Local Government Acts Taskforce (LG Acts Taskforce)
- the Office of Local Government (OLG).

These reviews have all identified improvements that should be made to the current arrangements.

Planning system review

As discussed earlier in our report, the NSW Government is currently considering options on the best means to implement its planning reform program as set out in the Planning White Paper.[606] The Planning White Paper proposed a streamlined assessment system that would require consent authorities to assess applications quickly and effectively within set timeframes.[607] DPE 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).[608] A Performance Monitoring Guide is to be prepared that will provide the methodology, planning performance indicators and targets for monitoring the implementation of the planning system reforms.[609]

DPE's ePlanning program is also expected to open up new opportunities for automated and more frequent performance reporting.[610] The NSW Government has allocated $21.5 million over the 2014/15 financial year towards an ePlanning program to improve the delivery of services in the NSW planning system.[611] This funding complements $8.5 million assigned to the ePlanning program in 2013/14, bringing the total value of the project to $30 million. Funds are being used to develop and enhance technology-based tools and services in collaboration with key stakeholders.

606 Planning White Paper, p 119.
607 Ibid.
608 Planning White Paper, p 41.
609 Planning White Paper, p 40.
610 Local Development Performance Monitoring Report 2012/2013, p 9.
611 DPE, *Frequently Asked Questions*, available at: http://www.planning.nsw.gov.au/portals/0/buildinginnsw/eplanning/ePlanning_Frequently_Asked_Questions_June_2014.pdf accessed on 11 September 2014.

NSW Auditor-General

In September 2012, the NSW Auditor-General released a report calling for better oversight and scrutiny of local councils. The Auditor-General found that while councils provide OLG 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 OLG establish non-financial performance indicators for councils to assess service delivery.[612]

Independent Local Government Review Panel

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 a Victorian initiative to develop consistent state-wide data collection and performance indicators as a logical further development of the IPR framework.[613]

The ILGRP made a number of recommendations relating to Improvement, Productivity and Accountability. These are presented in the following Box.

Box 6.4 ILGRP final recommendations

- **Recommendation 18:** Adopt a uniform core set of performance indicators for councils, linked to IPR requirements, and ensure ongoing performance monitoring is adequately resourced.
- **Recommendation 20:** Establish a new sector-wide program to promote, capture and disseminate innovation and best practice.
- **Recommendation 21:** Amend IPR Guidelines to require councils to incorporate regular service reviews in their Delivery Programs.
- **Recommendation 22:** Strengthen requirements for internal and performance auditing as proposed in Box 17.

Source: ILGRP Final Report, p 54.

612 NSW Auditor-General, *Monitoring local government – performance audit*, September 2012, p 10, available at: http://www.audit.nsw.gov.au/ArticleDocuments/249/01_Monitoring_Local_Government_Full_Report_3.pdf.aspx?Embed=Y accessed on 14 October 2014.

613 ILGRP, *Revitalising Local Government*, October 2013, p 54, available at: http://www.localgovernmentreview.nsw.gov.au/accessed on 14 October 2014 (ILGRP Final Report).

The NSW Government recently supported or supported-in-principle all of ILGRP's recommendations above.[614]

Local Government Acts Taskforce

The LG Acts Taskforce observed that the IPR framework is not well integrated through the current Act and that there is an apparent disconnect between IPR and councils' other statutory functions, such as land management and environmental planning.[615] It recommended that a performance system is developed that is linked to IPR which, amongst other elements, includes:

- a standard series of measures that can compare the performance of councils across the State
- an analysis of the performance measures results so that councils can identify the actions required to elevate performance.[616]

The NSW Government recently indicated its broad support for the recommendations of the LG Acts Taskforce. It will commence work, in consultation with the sector and key stakeholders, to develop a new Local Government Act, with the aim of phasing it in from 2016/17.[617]

Office of Local Government

In November 2013, OLG released a Discussion Paper seeking feedback on developing a new framework for measuring council performance.[618] Under the new framework a set of core, comparable measures of council performance will be developed, as a means of linking council performance to community outcomes on a state-wide basis. This framework is in response to the concerns raised by the Auditor-General and ILGRP. The framework is being refined during 2014/2015 and will be progressively implemented from July 2015.[619]

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614 OLG, *Fit for the Future - NSW Government Response*, September 2014, available at: http://www.fitforthefuture.nsw.gov.au/ accessed on 14 October 2014 (Fit for the Future Response).

615 LG Acts Taskforce, *A New Local Government Act for NSW – Discussion Paper*, April 2013, p 29, available at: http://www.olg.nsw.gov.au/content/local-government-acts-taskforce accessed on 14 October 2014 (LG Acts Taskforce Discussion Paper).

616 LG Acts Taskforce, *A New Local Government Act for NSW and Review of the City of Sydney Act 1988*, October 2013, p 33, available at: http://www.olg.nsw.gov.au/content/local-government-acts-taskforce accessed on 14 October 2014 (LG Acts Taskforce Final Report).

617 Fit for the Future Response, p 20.

618 OLG, *Strengthening councils and communities - Building a new framework for measuring Local Government performance: Discussion Paper*, November 2013, available at: http://www.olg.nsw.gov.au/news/strengthening-councils-and-communities-building-new-local-government-performance-framework accessed on 14 October 2014.

619 Personal communication, email from OLG, 7 October 2014.

In the NSW Government's recent response to the ILGRP recommendations, it noted that:

> The OLG has, in consultation with the sector, commenced work on developing a performance measurement framework, including financial sustainability indicators. Once these indicators are defined and piloted, work will commence to identify appropriate benchmarks and council comparison groupings.[620]

It also noted that the performance measurement framework would further strengthen public accountability.[621]

6.1.5 Our final 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 regulators 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 and reforms outlined above provide a framework for ongoing monitoring and assessment of council performance.

However, none of these programs or reforms have had a particular focus on the regulatory performance of councils ie, how well they undertake their compliance and enforcement functions. In our view, the current performance monitoring framework for councils largely overlooks this area.

In our Draft Report, in addition to the suggested improvements of other reviews, we considered that the evaluation of councils' regulatory performance could be further assisted under the NSW Government's QRS Initiative.

This could be achieved if, when developing their risk based approaches and regulatory outcomes and monitoring, State agencies specifically consider:

- those aspects of regulation for which councils are responsible
- councils' contribution to achieving regulatory outcomes.[622]

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620 Fit for the Future Response, p 3.

621 Ibid, p 4.

622 This will not be necessary where a State agency has sole responsibility for the regulation and there is no council involvement.

Including local government in this initiative will extend the reach and overall red tape savings identified by the QRS process.

Stakeholders generally supported our recommendation.[623] Some of the stakeholder comments we received are set out in the Box below.

Box 6.5 Stakeholder support

OSBC

The OSBC agrees that in order to achieve regulatory reform there needs to be widespread, ongoing performance monitoring and assessment of regulators to ensure reforms are targeted and appropriate.

City of Sydney Council

The City agrees that State agencies devolving regulatory responsibilities to Council should properly consider Councils ability to fulfil the regulatory responsibilities when drafting legislation and then set in place reporting/monitoring mechanisms to assess and assist Councils performance. This should be done in consultation with local government.

Ku-ring-gai Council

This recommendation is supported, however, the parameters of any statistical reporting required by state agencies need to be established prior to commencement of the reporting period in co-operation with local government, having due regard for the resources available to councils.

Shellharbour City Council

State Agencies should consider councils' responsibilities and how they will be affected prior to implementing any change. There should be a more collaborative approach which will benefit all parties involved; this should include the ability for councils to make submissions prior to new legislation being introduced.

Wyong Shire Council

This recommendation is supported as it provides justification for the need to devolve any additional requirements to Local Government and the appropriate reporting mechanism to determine Council's performance. This information is useful when it comes to explaining the need for increased regulatory burden to the community.

Source: Various submissions, June/July 2014.

In implementing this recommendation, 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.

[623] For example, see submissions from Mosman Municipal Council, Gosford City Council, Holroyd City Council, City of Ryde Council, Marrickville Council, Bankstown City Council, June/July 2014.

The main concerns raised by stakeholders in responding to our Draft Report related to councils' capacity, resources and ability to report back to State agencies.[624] Stakeholders commented that there should be careful consideration of the type and frequency of data collected and that the burden should not be unreasonable.[625]

We note that reporting requirements for councils could be implemented by extending the existing reporting and assessment frameworks, such as the IPR framework and PBP program to more explicitly include councils' regulatory functions and performance. In developing the new framework for measuring council performance, OLG should take into consideration any reporting by councils on regulatory outcomes developed as part of our recommended extension of the QRS Initiative to local government.

Council reporting requirements should focus on outcomes[626] rather than inputs.[627] Blacktown City Council cautioned that regulatory outcomes are not always able to be qualitatively measured (eg, that timeliness and responsiveness do not take into account the qualitative results of investigations and mediation processes).[628] We consider that consultation with councils should enable the NSW Government to identify the best way to measure regulatory outcomes and use the data obtained to assess and assist council performance.

Information provided by councils should be used by the relevant 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 two-way flow of information from councils to the NSW Government regulator.

Some other comments that we received by stakeholders included that:

- there should be a full cost recovery of any process to be adhered to when devolving responsibilities[629]
- State agencies should provide significant support and training through partnership arrangements[630]

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624 For example, see submissions from Shoalhaven City Council, Coffs Harbour City Council, Willoughby City Council, Environmental Health Australia, City of Canada Bay Council, Warringah Council, North Sydney Council, Albury City Council, June/July 2014.

625 For example, see submissions from Environmental Health Australia and Camden Council, July 2014.

626 For example, outputs include the number of complaints in a particular area, time taken to assess DAs, incidence of foodborne illness, environmental damage or pollutant discharges, etc.

627 For example, inputs include the human, physical or financial resources used to perform activities.

628 Blacktown City Council submission, July 2014.

629 Willougby City Council submission, July 2014.

630 Coffs Harbour City Council submission, June 2014.

- NSW Government agencies should work with software providers to realise savings through common applications and economies of scale.[631]

We have maintained our recommendation. We have revised the timing for consultation with councils from end of 2014 to end of 2015.[632]

Recommendation

18 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 2015.

631 Lismore City Council submission, July 2014.

632 In our Draft Report, we recommended that consultation with councils commence by the end of 2014. See also: submissions from Fairfield City Council and Penrith City Council, July 2014.

Box 6.6 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 does 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: CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014, Chapter 10 (CIE Report).

6.2 Best practice findings

During our review, many stakeholders provided examples or suggestions of specific 'best practice' regulatory approaches. The following sections set out some of these practices. We consider that, where appropriate, 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 Portable technology

Finding

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.

Stakeholders generally supported our finding about the use of portable technology.[633] 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.[634] Effective use of technology has enhanced the council's ability to undertake these assessments efficiently and reduced the regulatory burden for the community. Sutherland Shire Council officers now use iPads for a range of council activities, including inspection checklists (eg, food businesses, swimming pools, sewage management systems), complaints management and on-the-field access to legislation and electronic materials.[635]

Some of the comments we received from stakeholders in support of this finding are set out in the Box below.

[633] For example, see submissions from Coffs Harbour City Council, OSBC, Blacktown City Council, Lismore City Council, City of Canada Bay Council, Tumbarumba Shire Council, Warringah Council, The Hills Shire Council, United Services Union, Bankstown City Council, Sutherland Shire Council and Penrith City Council, June/July/August 2014.

[634] Sutherland Shire Council submission, November 2012.

[635] Personal communication, email from Sutherland Shire Council, 15 August 2014.

Box 6.7 Stakeholder comments

Blacktown City Council

Council has a longstanding commitment to explore electronic field technology for officers. Council will be implementing a new corporate business system which includes sophisticated mobile technology options. Council is currently considering a business case for implementation of tablets or other similar technology for swimming pool inspections.

Tumbarumba Shire Council

Council has tablet applications to assess flood damage and utilises tablet applications for road assessment. Could be better communication of best practice applications across the state.

Bankstown City Council

Bankstown has made significant progress on improving our mobile technology in recent times.

Penrith City Council

Great if it interfaces with our operating systems. In consultation with Councils, the State Government could work on one system for the state and it will streamline activities.

Source: Various submissions, June/July 2014.

Some concerns raised by stakeholders included that:

- any changes to practices or the introduction of new technology should be accompanied with sufficient staff consultation and training[636]
- the use of portable technology could result in potential costs to councils.[637]

We agree that the introduction of new technology should be accompanied by staff consultation and training.

We acknowledge that there are upfront costs involved for councils. However, in our view greater use of technology 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
- enhance a council's capacity.

636 United Services Union submission, July 2014.
637 Lismore City Council submission, July 2014.

6.2.2 AELERT and HCCREMS

Finding

2 Greater use of existing networks such as the Australasian Environmental Law Enforcement and Regulators neTwork and Hunter & Central Coast Regional Environmental Management Strategy provide greater resources, consistency of approach and build expertise or capability in undertaking council environmental compliance activities.

The Australasian Environmental Law Enforcement and Regulators neTwork (AELERT) and Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS) were highlighted as best practice in stakeholder submissions to our Issues Paper.[638]

Stakeholders generally supported our finding about greater use of existing networks.[639] For example, The Hills Shire Council commented that greater use of existing networks would assist smaller, poorly resourced councils.[640]

AELERT

AELERT is a collective of environmental regulatory agencies from Australian and New Zealand governments at local, state and federal levels.

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 the EPA), provides links to other websites or tools (eg, EPA's new illegal dumping online resource), and has online discussion forums.

Currently, 76 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's vision, mission and objectives are set out in the Box below.

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638 For example, see submissions from Campbelltown City Council, Ashfield Council, Wollongong City Council, EPA, October/November 2012.

639 For example, see submissions from Coffs Harbour City Council, Blacktown City Council, City of Canada Bay Council, Tumbarumba Shire Council, Warringah Council, The Hills Shire Council, Bankstown City Council, Sutherland Shire Council and Penrith City Council, June/July/August 2014.

640 The Hills Shire Council submission, July 2014.

Box 6.8 AELERT

AELERT's Vision

AELERT is a respected and internationally relevant network that plays an important role in securing a sustainable Australasia through the advancement of best-practice environmental regulation.

AELERT's Mission

To advance environmental sustainability by helping environmental regulators achieve best practice through promotion of:

- inter-agency cooperation
- cross-pollination of expertise, and
- provision of a cooperative forum to raise professional standards in the administration of environmental law.

AELERT Objectives

The objective of the network is to:

- improve operational effectiveness
- enhance regulatory compliance capacity, and
- promote consistency of approach to operational regulatory reform.

Source: AELERT, *About Us*, available at https://aelert.net/about-us/ accessed on 5 September 2014.

We note that Ku-ring-gai Council commented that it had been unaware of AELERT before it read our Draft Report.[641]

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. In 2005/06, annual savings from HCCREMS were estimated at $3.35 million or $893,000 per council.[642]

Further information about HCCREMS is provided in section 6.2.3.

641 Ku-ring-gai Council submission, July 2014.

642 OLG, *Collaboration and Partnerships between Councils: A Guidance Paper*, 2007, pp 12-13, available at: http://www.olg.nsw.gov.au/content/collaboration-and-partnerships-between-councils accessed on 14 October 2014 (OLG Guidance Paper).

6.2.3 Self-assessment tools

Finding

3 Councils would benefit from the use of the following self-assessment tools:

- the Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS) Practical Systems Review tool for local government to evaluate the capability and performance of compliance systems
- the HCCREMS Electronic Review of Environmental Factors 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 Environmental Protection Agency, to provide a framework for using performance data to achieve better regulatory outcomes
- the NSW Environment Protection Authority's (EPA) online "Illegal Dumping: A Resource for NSW Agencies" tool/guide available through Australasian Environmental Law Enforcement and Regulators network and EPA websites.

The self-assessment tools we have listed were highlighted as best practice by stakeholders in submissions to the Issues Paper.

Stakeholders generally supported our finding about the use of self-assessment tools.[643] Stakeholders noted that:

- self-assessment tools can aid transparency, consistency and efficiency[644]
- the use of consistent templates and standards to provide guidance and clarification is an important element of regulatory reform.[645]

Some of the concerns raised in submissions included that:

- caution should be exercised before adopting tools that have been developed by individual councils and not been subject to wider consultation[646]
- councils who have developed their own working processes should not have to adopt the State process.[647]

[643] For example, see submissions from Coffs Harbour City Council, Blacktown City Council, City of Canada Bay Council, Tumbarumba Shire Council, Warringah Council, The Hills Shire Council, Bankstown City Council, Sutherland Shire Council and Penrith City Council, June/July/August 2014.
[644] Warringah Council submission, July 2014.
[645] Blacktown City Council submission, July 2014.
[646] Warringah Council submission, July 2014.
[647] Penrith City Council submission, July 2014.

HCCREMS Practical Systems Review tool

We consider that the self-assessment tool developed by HCCREMS (within the Hunter ROC) represents leading practice amongst councils.[648]

Our Draft Report referred to HCCREMS former compliance self-assessment workbook for councils. Four councils (Singleton, Port Stephens, Newcastle and Greater Taree) undertook the self-assessment and used the results to guide them in improving their compliance systems.

However, HCCREMS recognised that there were some short-comings in the self-assessment process. HCCREMS then worked with Newcastle City Council to redevelop the self-assessment tool. The new version of the self-assessment, now called the "Practical Systems Review", has reworked the original self-assessment tool into a list of questions that require the assessor to determine if council is either 'compliant' or 'not yet compliant' in a range of discipline areas, including:

- compliance capacity
- systems (including complaint management and response, inspections and monitoring, conduct of investigations, investigation planning, decision making processes, conflict management, camera surveillance, conditions of consent, enforcement options, interviewing, promoting compliance, prosecutions, and emergency response)
- legislative change
- administration
- research
- ethics
- training
- performance
- system performance beyond compliance.

Further information about the new Practical Systems Review tool is set out below.

[648] OLG Guidance Paper, pp 12-13.

Box 6.9 HCCREMS Practical Systems Review tool

The "Practical Systems Review" is primarily designed as a checklist review of systems, capacity and performance of regulatory processes. The basic design of the tool identifies the following review categories:

- *Corporate systems* – reviews the underlying systems and processes used by councils to manage and track compliance activities.
- *Regulatory system structure* – reviews each aspect of Council's compliance systems (dependent on the scope of the Review). Questions are posed on issues such as complaint management, inspections and monitoring, investigations, etc.
- *Legislation change and policy* – reviews councils responsiveness to changes in legislation and internal policy.
- *Administration* – reviews the systems that manage delegations, risk management, document control, record keeping and auditing.
- *Ethics* – reviews the systems council employs to ensure officers behave ethically, to investigate claims of unethical behaviour and to apply natural justice.
- *Training* – reviews councils systems for providing training, and keeping officers' training skills up-to-date.
- *Performance measurement* – reviews systems that measure performance of compliance activities.
- *Research and review* – reviews councils processes of utilising intelligence to drive compliance activities and system improvements.

Assessment questions are arranged under theme headings and, where appropriate, sorted into the following sub-categories:

- *Core Capability Elements* – items considered essential for effective regulation systems.
- *Best Practice Capability Elements* – items considered to exceed minimum standards, but provide added value to regulatory systems.
- *System Health Elements* – items that determine the flexibility, robustness and currency of a regulatory process.

Source: Personal communication, email from HCCREMS, 12 September 2014.

We understand that HCCREMS is continuing to work with councils on the refining of the assessment tool, and to assist councils to utilise the tool to determine where their systems could be improved.[649]

[649] Personal communication, email from HCCREMS, 12 September 2014.

e-REF Template

We consider the HCCREMS electronic Review of Environmental Factors template (e-REF template) to be leading practice.

A Review of Environmental Factors (REF) is the process a council must carry out, under Part 5 of the EP&A Act, before undertaking work that might have an impact on the environment. The REF process helps to predict (before the work is undertaken) whether or not the impacts of the proposed activity will be significant. Undertaking a REF is a difficult and legally complex undertaking.

HCCREMS, with assistance from practitioners in member councils, has developed the e-REF template to assist with preparing a REF.[650] 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. It provides a practical example of the benefits to councils and communities through greater use of technology and council collaboration. Further information about the e-REF template is set out in the box below.

[650] HCCREMS, *e-REF User-Guide*, available at: http://www.hccrems.com.au/hccrems/media/RESOURCES/Sustainability/REF-User-Guide.pdf accessed on 11 September 2014.

Box 6.10 HCCREMS e-REF template

The template has been developed to assist councils to achieve best practise in meeting the environmental assessment and management requirements established under key Commonwealth and NSW Environmental legislation when planning and delivering council activities.

The legislation considered by the REF template includes:

- *Environmental Protection and Biodiversity Conservation Act 1999*
- *Native Title Act 1993*
- *Threatened Species Conservation Act 1995*
- *Water management Act 2000*
- *Fisheries Management Act 1994*
- *Marine Parks Act 1997*
- *Contaminated Lands Management Act 1997*
- *Noxious Weeds Act 1993*
- *Aboriginal Rights Act 1983*
- *Heritage Act 1977*
- *National Parks and Wildlife Act 1974.*

The template prompts officers for answers to a rigorous set of questions and provides a report at the completion of the template which will serve as the formal REF or a guide for further considerations councils need to make prior to any approvals given for works to commence. The template is an MS Access database template to enable tracking and storing of information into a central repository.

The computer-based template steps users through the appropriate assessment process and utilises live web-links to existing federal and state legislative information and tools to maintain currency.

Source: Personal communication, email from HCCREMS, 12 September 2014.

HCCREMS considers that:

> A tool of this nature may significantly reduce the risk of councils not complying with environmental legislation and the potential for significant environmental harm that can arise from superficial or inconsistent environmental assessment procedures.[651]

[651] Personal communication, email from HCCREMS, 12 September 2014.

We understand that HCCREMS is continuing to develop this tool and will soon be releasing v2.15 to member councils.[652] They will then commence development of the e-REF into a web-based system which will enable HCCREMS to more easily update the tool to match legislation and user feedback, and to enable councils outside the region to access the tool. HCCREMS have had initial discussions with the NSW Office of Environment and Heritage about the potential to expand the tool to consider and guide Part 4 EP&A Act assessments, as the e-REF tool currently only considers Part 5 assessments.

Smart Compliance Approach

The Smart Compliance Approach uses performance data to achieve better regulatory outcomes (ie, a feedback loop). The framework is summarised in the following Box.

Box 6.11 Smart Compliance Approach:

- Find and address significant problems – use data to try to determine the non-compliance areas that really matter to us.
- Use data to make strategic decisions.
- 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).
- 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.
- 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).

Sources: Mike Stahl – US EPA, Director for the Office of Compliance (26-27 April 2004); Newcastle City Council submission, November 2012.

Newcastle City Council routinely uses this approach to achieve better regulatory outcomes. For example, it inspects 800 food premises per year. On first inspections, it initially found 70% compliance. Taking this data and applying the Smart Compliance Approach, Newcastle City Council 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.[653] (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 the council.)

[652] Ibid.
[653] Gilligan, A, *Presentation by Newcastle City Council to AELERT*, 24 May 2012.

We view the smart compliance approach as an effective management tool for regulators and an example of leading practice in this area.

Illegal Dumping

In November 2012, the EPA launched a new online resource for public land managers and local councils. *Illegal dumping: A resource for public land managers and councils* contains information to help public land managers and councils plan and implement actions to prevent and clean up the illegal dumping of waste.

The aim of the resource is to help public land managers and councils:

- understand the environmental, social and financial impacts of illegal dumping
- define their roles and responsibilities for managing public land impacted by illegal dumping
- report incidences of illegal dumping to the appropriate authorities
- undertake safe clean-up activities
- put tailor-made measures in place to prevent and deter illegal dumping
- develop partnerships to tackle illegal dumping
- obtain support from neighbouring landholders, peers and senior managers
- plan and implement actions to combat illegal dumping.[654]

We consider the use of this resource by councils to be a best practice.

6.2.4 Publication of instruments

Finding

4 Publication of more significant individual local government regulatory instruments on a central site, funded by the NSW Government, 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, Development Control Plans, Local Approvals Policies and Local Orders Policies).

Stakeholders generally supported our finding about the publication of significant local government regulatory instruments on a central site.[655]

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654 EPA, *Illegal waste dumping: A resource for public land managers and councils,* available at: http://www.epa.nsw.gov.au/waste/OnlineIllDumpRes/IllDumpLandManCounc.htm accessed on 11 September 2014.

655 For example, see submissions from Coffs Harbour City Council, Blacktown City Council, City of Canada Bay Council, Warringah Council, The Hills Shire Council, Bankstown City Council and Sutherland Shire Council, June/July/August 2014.

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 DPE has initiated a roll-out of a standardised LEP, which is well supported by business and the community.[656]

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)[657] 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 should not 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.[658]

Looking ahead, the NSW Government's proposed planning reforms are anticipated to replace existing LEPs with Local Plans, and current DCPs with performance based development guidelines in Local Plans.[659]

Some stakeholders raised concerns, including that:[660]

- the website would need to be well-maintained to ensure accuracy and reliability for users[661]
- a central location for all policies and documents would be a challenge to manage, update and enable information to be conveyed suitably[662]
- policies related to local government made by and approved by councils are best placed on their websites[663]
- the value of the finding was uncertain.[664]

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656 DPE, *Standard Instrument Local Environmental Plan (LEP) Program*, available at: http://www.planning.nsw.gov.au/LocalPlanning/StandardInstrument/tabid/247/language/en-AU/Default.aspx accessed on 15 October 2014.

657 For example, see submissions from Mobile Carriers Forum and Business Council of Australia, October/November 2012.

658 Productivity Commission, *Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator*, July 2012, p 97, available at: http://www.pc.gov.au/projects/study/regulation-benchmarking accessed on 14 October 2014 (Productivity Commission Performance Benchmarking Report).

659 Planning White Paper, pp 90-93.

660 For example, see submissions from The Hills Shire Council, Tumbarumba Shire Council and Penrith City Council, July 2014.

661 The Hills Shire Council submission, July 2014.

662 Penrith City Council submission, July 2014.

663 Ibid.

664 Tumbarumba Shire Council submission, July 2014.

In our Draft Report, we recommended that the central website should be the "NSW legislation" website. We have since formed the view that this may not be the appropriate website. However, we retain our finding that key local government regulatory instruments should be located on a central register maintained by the NSW Government.

Councils should also continue to publish relevant local government regulatory instruments on their own individual websites.

6.2.5 SmartForms

Finding

5 The use of 'SmartForms' by councils reduces costs to businesses and councils by enabling online submission and payment of applications directly to councils.

Stakeholders generally supported our finding about the use of SmartForms.[665]

SmartForms is an online form development service that government agencies can use to make it easier and quicker to deal with business. SmartForms provide an easy and practical way for government agencies to help reduce the regulatory burden on business. More than 160 federal, state, territory and local government agencies are already realising the benefits of using SmartForms for grant applications, licence applications, permit applications, secure payments, contact and enquiry forms, and surveys.[666]

Blacktown City Council noted that it will be implementing a new corporate business system that will provide e-service processes to enable the use of SmartForms.[667]

A number of councils are already using SmartForms.[668]

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665 For example, see submissions from Coffs Harbour City Council, Outdoor Recreation Industry Council NSW, Blacktown City Council, City of Canada Bay Council, Tumbarumba Shire Council, Warringah Council, The Hills Shire Council, Bankstown City Council, Sutherland Shire Council and Penrith City Council, June/July/August 2014.

666 Australian Government, *SmartForms*, available at: http://www.business.gov.au/for-government/smartforms/Pages/default.aspx accessed on 11 September 2014.

667 Blacktown City Council submission, July 2014.

668 For example, SmartForms are hosted by Warringah Council, Pittwater Council and Penrith City Council: Personal communication, email from AusIndustry, 18 September 2014.

Box 6.12 What problem does SmartForms solve?

Many government processes begin with the submission of a form.

However, paper forms can create a lot of red tape for business and a lot of administration for government agencies. In fact, many forms received by government are illegible or inaccurate.

SmartForms helps to significantly reduce the costs and administrative overhead associated with paper forms, including:

- illegible writing
- inaccurate data
- double handling of information
- manual data entry processes, and
- slow service delivery.

Source: Australian Government, *SmartForms*, available at: http://www.business.gov.au/for-government/smartforms/Pages/default.aspx accessed on 11 September 2014.

One concern raised by Bankstown City Council was the cost of developing SmartForms and the entity required to absorb the costs.[669] We note that the funding of IT projects such as use of SmartForms could be assisted by the recommendation of the ILGRP for the State to provide a new loan facility (with concessional interest rate) to local government. We note that the NSW Government has supported the ILGRP's recommendation.[670]

There are many significant benefits to businesses, the community and councils of using SmartForms, including:

- faster turnaround times for completing and processing forms
- enabling the automation and simplification of business processes
- collecting more accurate data at the first point of contact
- reducing the amount of paperwork businesses have to complete and government has to administer.[671]

We consider the use of SmartForms to be best practice in maximising the cost savings and benefits to businesses and the community.

669 Bankstown City Council submission, July 2014.
670 Fit for the Future Response, p 5.
671 Australian Government, *SmartForms*, available at: http://www.business.gov.au/for-government/smartforms/Pages/default.aspx accessed on 11 September 2014.

6.2.6 Business guidance materials

Finding

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 or the Queensland Local Government Toolbox (www.lgtoolbox.qld.gov.au), can reduce the regulatory burden on businesses and the community.

Stakeholders expressed support for our finding about providing guidance material to businesses.[672] No concerns were raised by stakeholders in relation to this finding.

Australian Business Licence and Information Service (ABLIS)

The Australian Business Licence and Information Service (ABLIS) is a national service delivered by a partnership of Australian, State and Territory Governments.

ABLIS helps business operators and people considering starting a business to identify relevant state, territory, local and Australian government licences, permits, approvals, regulations and codes of practice, obtain detailed information and manage compliance obligations.[673] (See Box below.)

[672] For example, see submissions from Coffs Harbour City Council, Blacktown City Council, City of Canada Bay Council, Tumbarumba Shire Council, Warringah Council, The Hills Shire Council, Bankstown City Council and Sutherland Shire Council, June/July/August 2014.

[673] ABLIS, *About Us*, available at: https://ablis.business.gov.au/pages/aboutus.aspx accessed on 11 September 2014.

Box 6.13 ABLIS

ABLIS helps you find the government licences, permits, approvals, registrations, codes of practice, standards and guidelines you need to know about to meet your compliance responsibilities.

If you are starting, operating, growing, or closing a business, ABLIS will reduce the run-around and give you the time to get on with business.

Find out which government licences and registrations apply to your business, and create and download a personalised report containing:

- A summary of state or territory, local and Australian government requirements relevant to your 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.

Source: ABLIS, *Home*, available at: https://ablis.business.gov.au/pages/home.aspx accessed on 11 September 2014.

ABLIS has a 'find a form' function, which was established around the same time that the former Govforms service was discontinued.[674] ABLIS contains forms for every NSW State and local government licence that is contained within the dataset. The level of information provided on council websites can be variable and often councils do not offer all forms in an online format. Accordingly, where a specific form is not available on the administering agency's website, information is provided on how the user of the service can obtain a copy of the form.

The ABLIS dataset contains a total of 8,231 local government forms, with 3,694 being actual forms located from council websites.

[674] Personal communication, email from Stenning & Associates, 17 September 2014.

Table 6.1 ABLIS – NSW local government

Form type	Number of forms in ABLIS (NSW local government)
PDF	3580
Electronic	114
Other	4537
Total	8231

Notes:

The 'PDF' option contains forms that either direct the user to a link that downloads the pdf form, or to a smart form page. It also contains forms that are located on the council website as word documents, which are not supported by the ABLIS system, and have been uploaded to the system as PDF documents. There are currently very few smart forms contained on council websites that are forms for licences that can be submitted online.

The 'electronic' option includes links to a website that contains multiple forms and guideline style documents for a licence.

The 'other' category indicates that while the council is required to issue the permit, they have not made the form available on their website. In these cases, the user of ABLIS is directed to contact the council for further information.

Source: Personal communication, email from Stenning & Associates, 17 September 2014.

Queensland Local Government toolbox

The Queensland Local Government toolbox website (a council knowledge network) is an initiative of South East Queensland Councils and the South East Queensland Council of Mayors. 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 6.14 What the Queensland Local Government 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.

Source: Local Government Toolbox Queensland, *Home*, available at: http://www.lgtoolbox.qld.gov.au/Pages/Home.aspx accessed on 25 March 2013.

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 Queensland Local Government 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 enables the following:

- a level of standardisation to occur in the process of making information available through the website
- comparisons to be made
- assists efforts to harmonise or improve guidance materials and documentation.

6.2.7 Electronic Housing Code

Finding

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.

Stakeholders generally supported our finding about the Electronic Housing Code (EHC).[675]

Penrith City Council commented that such initiatives should be promoted.[676]

[675] For example, see submissions from Coffs Harbour City Council, Blacktown City Council, City of Canada Bay Council, Tumbarumba Shire Council, Warringah Council, The Hills Shire Council, Bankstown City Council, Sutherland Shire Council and Penrith City Council, June/July/August 2014.

[676] Penrith City Council submission, July 2014.

Warringah Council commented that consideration should also be given to providing council portals with template notices, orders, letters and forms to reduce duplication of effort and provide for greater consistency.[677] We note that in our first recommendation, we have recommended the implementation of a password-protected local government online portal as part of the Partnership Model.

The EHC project is focused on the development of an online system for the electronic lodgement of complying development applications under the NSW Housing Code for lots 200m^2 and above. This system will also allow the user to determine if they are able to proceed with their development without further approvals, as an exempt development.[678]

The EHC has been built primarily for local industry professionals, such as project home builders, planners, developers and architects. However, it is also able to be used by the local community within the participating local government areas.[679]

The EHC is a joint initiative between DPE and the former Local Government and Shires Association with initial funding provided from the Federal Government's Housing Affordability Fund.

The former Local Government and Shires Association noted that the EHC has been effective in improving the management and streamlining of the development process.[680] Benefits have included:

- 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).
- 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).

The EHC is currently operational in 59 local government areas and a further 30 councils are expected to soon join the system.

677 Warringah Council submission, July 2014.
678 EHC, *Electronic Housing Code Project*, available at: http://www.ehc.nsw.gov.au/ accessed on 11 September 2014.
679 Ibid.
680 Local Government and Shires Association of NSW submission, October 2012.

Bankstown City Council noted that it also now has an ePlanning development portal.[681] We understand that DPE's ePlanning program is also expected to open up new opportunities for automated and more frequent performance reporting (see section 6.1.4 above).

We note that Coffs Harbour City Council commented that the EHC has had a zero uptake in its area. It stated that for this to work more effectively requires ongoing education and training for key stakeholders.[682]

We consider that the EHC project provides an example of a successful collaborative initiative between the State and local government. 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.

6.2.8 Central registers

Finding

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).

Stakeholders generally supported our finding about the development of central registers.[683]

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. For example, central registers have been developed under:

- *Companion Animals Act 1998* (NSW)
- *Swimming Pools Act 1992* (NSW)
- *Boarding Houses Act 2012* (NSW).[684]

681 Bankstown City Council submission, July 2014.

682 Coffs Harbour City Council submission, June 2014.

683 For example, see submissions from Coffs Harbour City Council, Newcastle City Council, Blacktown City Council, City of Canada Bay Council, Tumbarumba Shire Council, Warringah Council, The Hills Shire Council, Bankstown City Council, Sutherland Shire Council and Penrith City Council, June/July/August 2014.

684 For example, see central registers under section 30A of the *Swimming Pools Act 1992* and section 12 of the *Boarding Houses Act 2012*.

Some stakeholders expressed concerns about these central registers. For example, we received the following comments:

- the Companion Animals register is a poor example as the register is outdated and difficult to use[685]
- delays and teething problems with the Swimming Pools register have caused bottle necks for councils that need to be ironed out.[686]

We acknowledge that there are some issues with data currently collected in the Companion Animals register which makes that register not as effective as it could be (see Chapter 11). We also discuss some of the issues raised about the Swimming Pools and Boarding Houses registers in more detail later in our report (see Chapter 9).

We acknowledge that technology can become dated. It is important to recognise that registers will have a finite lifespan. Data should be easily transferable to new systems. Proper design and learning from previous mistakes can help to minimise future problems.

On balance, this finding still received a high level of support. We maintain our finding that centralised registers, if developed and maintained properly, have the potential to reduce administrative costs for regulated entities - eg, 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 set up and maintenance of 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.

6.2.9 Information sharing

Finding

9 Memoranda 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.

685 Newcastle City Council submission, June 2014.

686 For example, see submissions from Newcastle City Council and Warringah Council, June/July 2014.

Stakeholders generally supported our finding about Memoranda of Understanding (MoUs) between State agencies and councils.[687]

In responses to our Issues Paper, a number of councils raised concerns that it is often difficult to enforce regulation when the information required to prosecute may be held by a State agency rather than the council.[688] Councils are often required to submit requests under the *Government Information (Public Access) Act 2009* (NSW) 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 MoUs with various State agencies such as the EPA, the police and WorkCover.[689]

Some of the comments we received from stakeholders in support of this finding included that:

- model MoUs could be developed to provide a framework that can be negotiated and fine-tuned between agencies and councils at a local level[690]
- MoUs have also been signed with non-regulatory agencies, including Bankstown Airport and TAFE.[691]

Penrith City Council commented that the partnership model we propose would capture the benefits of this finding.[692] However, the model (if implemented) would not apply across the spectrum of agencies that MoUs could usefully be established with.

Coffs Harbour City Council supported our finding, but stated that success would be dependent upon the nature of the MoU and the resourcing and commitment of the agreeing parties.[693]

687 For example, see submissions from Coffs Harbour City Council, Newcastle City Council, City of Canada Bay Council, Warringah Council, The Hills Shire Council, Bankstown City Council and Sutherland Shire Council, June/July/August 2014.
688 For example, see submissions from Sutherland Shire Council, Wollongong City Council and Strathfield Council, October/November 2012.
689 For example, see submissions from Sutherland Shire Council and Wollongong City Council, October/November 2012.
690 Newcastle City Council submission, June 2014.
691 Bankstown City Council submission, July 2014.
692 Penrith City Council submission, July 2014.
693 Coffs Harbour City Council submission, June 2014.

Some stakeholders raised concerns about MoUs. Blacktown City Council commented that formal MoUs require significant resources and are not necessarily required if the two parties have common goals.[694] It suggested that an informal, mutually agreed information exchange protocol would be a better option.[695] Tumbarumba Shire Council noted that it used to attend regional 'Policy Accountability Team meetings' with regional police command in Albury.[696] It commented that these meetings were very helpful, less formal and more flexible than MoUs and provided opportunities for useful dialogue. Tumbarumba Shire Council would prefer this be reinstated rather than implementing MoUs.

Despite these concerns, we are still of the view that MoUs are a best practice approach that should be considered by 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 (eg, waste, asbestos, noise, etc). MoUs have the potential to 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.

6.2.10 Independent panels or consultants

Finding

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

The practice of engaging independent panels to assess development applications for land owned by a council was identified as a leading practice by the Productivity Commission.[697] It noted that this can increase transparency and probity.

Stakeholders generally supported our finding.[698] For example, Bankstown City Council commented that it supports the intention to ensure transparency in decision making.[699]

694 Blacktown City Council submission, July 2014.
695 Ibid.
696 Tumbarumba Shire Council submission, July 2014.
697 Productivity Commission Performance Benchmarking Report, p 463.
698 For example, see submissions from Coffs Harbour City Council, Blacktown City Council, City of Canada Bay Council, Warringah Council, The Hills Shire Council, Bankstown City Council, Sutherland Shire Council and Penrith City Council, June/July/August 2014.
699 Bankstown City Council submission, July 2014.

The NSW Aboriginal Land Council requested that IPART provide further information on how transparency would be improved through the engagement of consultants and the structure of the proposed independent panels.[700] We consider that the use of an independent panel or consultant ensures that the decision-making processes are independent and fair.[701]

Independent panels already exist. Blacktown City Council refers any DAs for its own works greater than $5 million to the NSW Joint Regional Planning Panel.[702]

Blacktown City Council also commented that it has peer reviewed some DAs valued at less than $5 million in the past.[703]

A number of councils considered that the approach should only apply to large developments.[704] Coffs Harbour City Council agreed that the approach would improve transparency and probity but commented that it should only relate to large or sensitive developments (eg, airport land developments, subdivisions, quarries, caravan park developments) as requiring this for all developments would impose a significant cost burden on councils.[705] Tumbarumba Shire Council expressed concerns that this finding is inconsistent with its policy that all DAs relating to land owned or controlled by the council be formally considered by the council.[706] Tumbarumba Shire Council commented that it would agree with this approach for DAs over a significant threshold.

We have decided not to recommend a threshold. We maintain our view that the use of independent panels and consultants should be encouraged as it improves transparency and probity.

6.2.11 Prior notice of conditions

Finding

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 development application to be submitted could reduce unnecessary costs for proponents.

700 NSW Aboriginal Land Council submission, June 2014.
701 Productivity Commission Performance Benchmarking Report, p 452.
702 Blacktown City Council submission, July 2014.
703 Ibid.
704 For example, see submissions from Coffs Harbour City Council, Tumbarumba Shire Council and Blacktown City Council, June/July 2014.
705 Coffs Harbour City Council submission, June 2014.
706 Tumbarumba Shire Council submission, July 2014.

The Mobile Carriers Forum 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.[707]

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.

Stakeholders generally supported our finding.[708] Blacktown City Council commented that it offers a pre-lodgement meeting service, where any proponent proposing infrastructure on council land can go through the proposal and discuss what the likely issues and conditions to be attached to the proposal would be if it was to be supported.[709]

6.2.12 Order powers

Finding

12 Councils can use order powers under the *Environmental Planning & Assessment Act 1979* (NSW) (eg, under section 121O) to allow modifications to developments in appropriate circumstances. This avoids the need for the applicant to obtain additional council approvals or development consents when there are concerns with existing structures (eg, safety concerns).

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.[710]

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707 Mobile Carriers Forum submission, November 2012.

708 For example, see submissions from Coffs Harbour City Council, Blacktown City Council, City of Canada Bay Council, Warringah Council, The Hills Shire Council, Bankstown City Council and Sutherland Shire Council, June/July/August 2014.

709 Blacktown City Council submission, July 2014.

710 *Environmental Planning and Assessment Act 1979* (NSW), section 121O. DPE has advised that these order powers will be reinstated in the new planning legislation, currently being developed to enact the new planning system reforms. Personal communication, email from DPE (formerly DoPI), 5 February 2013.

Campbelltown City Council suggested that councils use order powers as a practical and low cost way to authorise modifications to developments in appropriate circumstances, without the need for the applicant to make a new or modified application request.[711] The council commented 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.[712]

Most stakeholders supported our finding.[713] Bankstown City Council commented that it has also used these powers in the past.[714]

However, some stakeholders raised concerns with the suggestion that orders be used to "circumvent" the need for approval or development consent.[715] Other concerns included:

- there would be no form of approval required[716]
- the service of orders on a development site where consent is in effect could lead to confusion between council's role and that of the certifier[717]
- the onus is put on councils instead of applicants[718]
- modifications requiring amendment to consent should be made at the request of the owner[719]
- councils should not serve orders they do not intend to pursue[720]
- there could be potential probity issues[721].

711 Campbelltown City Council submission, October 2012.
712 Ibid, p 3.
713 For example, see submissions from City of Canada Bay Council, The Hills Shire Council, Bankstown City Council and Sutherland Shire Council, July/August 2014.
714 Bankstown City Council submission, July 2014.
715 Blacktown City Council submission, July 2014.
716 For example, see submissions from Blacktown City Council and Warringah Council, July 2014.
717 Blacktown City Council submission, July 2014.
718 Warringah Council submission, July 2014.
719 Blacktown City Council submission, July 2014.
720 Ibid, July 2014.
721 Lismore City Council commented that council staff had previously been accused of improper conduct as a result of using this type of power, due to not providing public consultation for demolition activities: Lismore City Council submission, July 2014.

Blacktown City Council noted that councils retain discretion to not require an approval for variations during construction and it is a longstanding practice for councils to serve orders to remedy breaches of consent where a problem has arisen (including where modifications have occurred).[722]

Campbelltown City Council noted 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).[723]

As a result of considering the issues raised by stakeholders, we have revised our finding. We have made it clear that we are only suggesting use of orders powers in appropriate circumstances and not to "circumvent" the need for council approval/consent.

We maintain our view that, when used in appropriate circumstances, the use of order powers could help to reduce red tape and costs for applicants.

6.2.13 Emergency repair works

Finding

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.

Stakeholders generally supported our finding about fast-tracking emergency repair works.[724]

In responses to our Issues Paper, stakeholders raised concerns regarding the delays associated with gaining planning approvals or permissions from councils when emergency works are required. It was suggested that councils should have in place a process to 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).

722 Blacktown City Council submission, July 2014.

723 Campbelltown City Council submission, October 2012.

724 For example, see submissions from Coffs Harbour City Council, Blacktown City Council, City of Canada Bay Council, Warringah Council, The Hills Shire Council, Bankstown City Council, Sutherland Shire Council and Penrith City Council, June/July/August 2014.

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.[725] 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.

Some of the comments we received from stakeholders included that:

- most councils generally take a supportive and proactive approach in dealing with approvals associated with emergency repair works[726]
- council officers are encouraged to note any matters during their field operations that may assist in areas outside their own[727]
- this finding could be incorporated into exempt and complying policies.[728]

6.2.14 Promoting Better Practice program

Finding

14 Broadening the scope of the Office of Local Government's (OLG) current Promoting Better Practice program would strengthen its assessment of regulatory performance. Greater promotion of OLG's better practice findings amongst all councils would improve regulatory outcomes.

[725] For example, see Maitland City Council, *Local disaster plan*, available at: http://www.maitland.nsw.gov.au/ResidentsCommunity/Local-Disaster-Plan accessed on 27 March 2013.
[726] Coffs Harbour City Council submission, June 2014.
[727] Blacktown City Council submission, July 2014.
[728] Penrith City Council submission, July 2014.

The Productivity Commission identified the PBP program as leading practice[729] in relation to review and assessment of council performance.[730] 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.[731]

Stakeholders generally supported our finding about broadening the scope of the PBP program.[732] Several councils noted they consider the program to be useful. However, some also said that the program does not currently assist councils in their regulatory activities – although these councils acknowledged the potential for it to do so.[733] Specific stakeholder comments are set out in the Box below.

729 Productivity Commission Performance Benchmarking Report, p 28.
730 Ibid.
731 Ibid.
732 For example, see submissions from Coffs Harbour City Council, NSW Aboriginal Land Council, Blacktown City Council, City of Canada Bay Council, Warringah Council, The Hills Shire Council, Bankstown City Council, Sutherland Shire Council and Penrith City Council, June/July/August 2014.
733 For example, see submissions from Lake Macquarie City Council and Lismore City Council, November 2012.

Box 6.15 Stakeholder submissions

Blacktown City Council

Council undertook a Better Practice Program review in 2011 and has progressed a majority of the outcomes to improve Council practices.

Coffs Harbour City Council

Agree- subject to the better practice findings being cost effective, adaptable and practical to implement for councils of all sizes.

Tumbarumba Shire Council

Needs to be streamlined performance monitoring systems. There are too many duplicated systems in existence at present.

Warringah Council

Clarification is required on the ability for DLG to deliver this effectively with current resources and priorities.

NSW Aboriginal Land Council

The current Promoting Better Practice program has very limited consideration of Local Government relationships with local Aboriginal communities. Despite some encouraging and proactive relationships between Local Councils and Aboriginal communities around the State, the Promoting Better Practice checklist, available online, only extends to a stocktake of MoUs with Local Aboriginal Land Councils, or local Aboriginal communities and Aboriginal employment rates. NSWALC encourages consultation with Local Aboriginal Land Councils and Local Aboriginal communities to develop practical and meaningful contributions in broadening the scope of the Promoting Better Practice program.

Source: Various submissions from councils and NSW Aboriginal Land Council, June/July 2014.

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 OLG 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, OLG 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 OLG publicises leading regulatory practices identified in a PBP review. This could occur via a newsletter or OLG 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.

6.2.15 Regional illegal dumping squads

Finding

15 The establishment of Regional Illegal Dumping Squads helps councils to combat illegal dumping across member council boundaries using a strategic coordinated approach in partnership with the NSW Environment Protection Authority.

This is a new best practice finding, which did not appear in our Draft Report. Regional Illegal Dumping (RID) squads are also discussed in Chapter 2.

RID squads have been established to help combat illegal dumping across member council boundaries using a strategic coordinated approach in partnership with the EPA.[734]

The EPA has facilitated the establishment of several RID squads in partnerships with local government:

- the first RID squad was established in 1999 in Western Sydney comprising Bankstown, Fairfield, Holroyd, Liverpool, Penrith, Parramatta and The Hills councils[735]
- a second RID squad was launched in the Southern Councils Group area from Wollongong to Bega[736]
- a third RID squad was established running through the central band of Sydney east of Parramatta[737]
- a fourth RID squad has been developed in the Hunter, including Cessnock City, Newcastle, Maitland, Dungog, Muswellbrook, Upper Hunter and Singleton councils and Central Coast councils, Gosford and Wyong.[738]

The Box below sets out some further information on the first RID squad.

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734 EPA submission, July 2014.

735 Committee on Environment and Regulation, *Inquiry into management and disposal of waste on private lands*, 28 October 2013, p 42, available at: http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/0/29fae9ddcc3d7323ca257c23007b6589/$FILE/Transcript%20-%20Hearing%20-%2028%20October%2013.pdf accessed on 17 October 2014.

736 Ibid.

737 Ibid.

738 ABC News, *Illegal dumping squad to crackdown on offenders in the Hunter*, 8 August 2014, available at: http://www.abc.net.au/news/2014-08-08/illegal-dumping-squad-to-crackdown-on-offenders-in-the-hunter/5656932 accessed on 8 August 2014.

Box 6.16 Western Sydney Regional Illegal Dumping Squad

The Western Sydney RID Squad operates across member council boundaries to investigate and enforce breaches of NSW regulations on illegal dumping and illegal landfilling.

Specifically the RID Squad aims to:

- encourage a more strategic coordinated approach to dumping incidents
- investigate incidents and take action against offenders
- organise clean-ups
- track down illegal landfills
- identify changes and trends in illegal dumping across a regional area
- deter and educate community members about illegal dumping.

The Western Sydney RID Squad was established in 1999 to solely combat illegal dumping incidents.

With support from the EPA, the RID Squad member councils of Bankstown, Fairfield, Holroyd, Liverpool, Penrith, Parramatta and The Hills have formed a partnership to ensure illegal dumping issues are addressed in a regional manner.

From 1 July 2010 to 30 June 2011, the Western Sydney RID Squad investigated 4,645 illegal dumping incidents.

Investigations resulted in 95 clean-up notices and 691 penalty notices being issued.

Source: EPA, *Regional Illegal Dumping Squads*, available at: http://www.epa.nsw.gov.au/warr/ridsquads.htm accessed on 11 August 2014.

The EPA is also developing a state-wide database for use by local government and other organisations to record illegal dumping incidents and identify patterns to aid in prevention. It is intended that the database will also have a feature for members of the public to report illegal dumping.[739] The EPA also offers an illegal dumping training course for local government officers in enforcement roles.[740]

We consider the establishment and practices of Regional Illegal Dumping Squads to be best practice.

[739] EPA submission, July 2014.
[740] Ibid.

6.2.16 Onsite sewage management systems

Finding

16 Councils could regulate onsite sewage management systems more efficiently by:

- implementing risk-based regulation and efficient revenue policies to better manage limited resources
- working together regionally to swap knowledge of contractors (eg, the Septic Tank Action Group) to address issues with variable quality servicing
- developing standardised service report templates for services undertaken by contractors to streamline processes and improve consistency of reporting
- issuing approvals to install and operate onsite sewage management systems together in one package of approvals to reduce paperwork and administrative costs.

Risk-based regulation and efficient revenue policies

Councils that implement risk-based regulation and efficient revenue policies are able to better manage limited resources.

Councils have regulatory powers to set performance standards, related maintenance and reporting requirements for onsite sewage management systems (onsite systems) through approvals to install and operate the systems. They also have the ability to recover approval, renewal and inspection fees towards the cost of managing these systems.[741]

However, stakeholders have indicated that due to resource constraints, some councils are prevented from implementing satisfactory inspection and compliance programs for onsite systems.[742]

Maintaining an ongoing inspection program can be very costly for councils.[743] 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.[744]

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741 OLG, *Circular to Councils: Sewage Management (SepticSafe Program) Update,* 30 July 2004, available at: http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Circulars/04-37.pdf accessed on 14 October 2014.

742 For example, Liverpool Plains Shire Council submission, October 2012.

743 Personal communication, telephone conversation with Whitehead & Associates Environmental Consultants, 9 August 2013.

744 Port Macquarie-Hastings Council, *Submission to Domestic Wastewater Inquiry*, December 2011, p 2, available at: https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/7E3A7423864A67A2CA2579980078D419 accessed on 6 November 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).[745]

Some councils find their current resources are insufficient to conduct the number of on-the-ground inspections needed.[746] Some councils disburse funds raised back into general revenue for the overall council, rather than dedicating fees for onsite system regulation and inspections.[747]

A number of councils have implemented risk-based regulation and efficient revenue policies for onsite sewage management which enable better management of limited resources and more efficient regulation. Further information about onsite sewage management is set out at Appendix E.

In one council, use of a risk-based regulatory program for onsite sewage management reduced non-compliances (structural defects and/or unhealthy conditions) dramatically. In 2003, 75% of onsite sewage management systems within the Eurobodalla Shire Council's boundaries needed work. In 2011, this had reduced to only 15% of systems needing work.[748] The Box below outlines the two key elements for best practice regulation in this area.

[745] OLG, *Circular to Councils: Sewage Management (SepticSafe Program) Update,* 30 July 2004, available at: http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Circulars/04-37.pdf accessed on 14 October 2014.

[746] Shoalhaven City Council, *Submission to Domestic Wastewater Inquiry*, December 2011, p 2, available at: https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/B43BAC42C67401FECA25799800795592 accessed on 19 November 2013.

[747] Personal communication, telephone conversation with Wollondilly Shire Council, 3 September 2013.

[748] Eurobodalla Shire Council, *Submission to Domestic Wastewater Inquiry*, December 2011, p 5, available at: https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/29D53433283AC38ACA25799800791291 accessed on 19 November 2013.

Box 6.17 Risk based regulation and efficient revenue polices

Risk-based, targeted approvals and inspections - 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).

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.

Source: Personal communications, telephone conversation with NSW Health, 9 August 2013; email from NSW Health, 4 March 2014. See also: Wagga Wagga City Council's *On-site Sewage Management Plan 2009-14*, 2009, pp13-14 & Appendix 1, available at http://www.wagga.nsw.gov.au/__data/assets/pdf_file/0017/2933/On_Site_Sewage_Management_Plan.pdf accessed on 20 October 2013.

The Table below highlights three examples of council approaches to incorporating these key elements.

Table 6.2 Best practice regimes of councils in onsite system regulation

	Risk-based approach to licencing?		Efficient revenue policy?	
	Approvals	**Ongoing Inspections**	**Approvals**	**Inspections**
Port Macquarie-Hastings Council[a]	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.	Yes – inspection frequency corresponds to renewal period (eg, every 1, 3 or 5 years). Licensee can be re-rated to be inspected more frequently if a poor compliance history is demonstrated.	Flat approval fee. Council is considering a graduated fee scheme to encourage use of lowest-risk technologies (as per Wagga Wagga City Council below). Uses s107A of LG Act to automatically renew and levy renewal fee on licensee's Rates Notices. Dedicates revenue to onsite system management.	Charges for initial inspection(s) under Approval to Install. Inspections under Approval to Operate are covered from flat approval fee.
Eurobodalla Shire Council[b]	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.	Yes – inspection frequency corresponds to renewal period (eg, every 1, 2 or 5 years). Licensees with positive compliance history are rewarded with fewer inspections.	Flat approval fee. Considering levying renewal fee on licensee's Rates Notices through s107A of LG Act (as per Port Macquarie-Hastings Council above). Dedicates revenue back to onsite system management.	Charges for inspections on user pays basis under s608 LG Act ('reasonable fee for service').
Wagga Wagga City Council[c]	Yes –section 68 approvals issued for 3, 6 or 12 months, or 1, 1-3, 3-5, 5, 5-10 or 10 years based on a risk assessment.	Yes - inspection frequency corresponds to renewal period. Can be exempt from inspections under very specific low-risk circumstances.	Graduated sliding scale of approval fees depending on risk of system technology, encouraging licensees to choose lowest risk system appropriate for their needs.	Charges for inspections on user pays basis.

a Personal communications, emails from Port Macquarie-Hastings Council, 6 August 2013, 18 November 2013, December 2013 and 13 March 2014.

b Eurobodalla Shire Council, *On Site Sewage Management Code of Practice*, p 9, available at http://www.esc.nsw.gov.au/inside-council/council/council-policies/codes/2013-OSMS-CoP-24-Sept-13.pdf accessed on 3 December 2013. Personal communication, telephone conversation with Eurobodalla Shire Council, 12 September 2013.

c Wagga Wagga City Council, *On-site Sewage Management Plan 2009-14*, 2009, pp 13-15, available at http://www.wagga.nsw.gov.au/__data/assets/pdf_file/0017/2933/On_Site_Sewage_Management_Plan.pdf accessed on 20 October 2013. Personal communication, telephone conversation with Metropolitan Water Directorate, 25 July 2013.

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 and fewer inspections/less frequent servicing of low risk systems[749] or systems with a 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.[750] It also gives owners the opportunity to pay by instalments if necessary,[751] as well as automatically renewing the approval.[752] 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.

Quality of contractors servicing onsite sewage management systems

Councils that work together regionally to swap knowledge of contractors (eg, the Septic Tank Action Group in the Hunter) are able to better address issues with variable quality servicing.

Councils have indicated that there is variable quality in contractors providing servicing of onsite sewage management systems. Further information about onsite sewage management generally is set out at Appendix E.

Since 1998, the market was opened to allow private contractors to conduct services (rather than having to be serviced by the system's manufacturer).[753] There is no licencing or accreditation scheme for service contractors.

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749 The number of services (eg, 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.

750 Eurobodalla Shire Council, *PS13/09 Draft Onsite Sewage Management Code of Practice: Report to Policy and Strategy Committee Meeting of Eurobodalla Shire Council*, July 2013, pp 15-16, available at: http://www.esc.nsw.gov.au/inside-council/council/meetings/2013/july/policy-and-strategy-committee-meeting/130702_agenda.pdf accessed on 2 December 2013.

751 Ibid.

752 Personal communication, telephone conversation with Port Macquarie-Hastings Council, 8 January 2013.

753 BioSeptic, *Submission to Domestic Wastewater Inquiry*, December 2011, p 5, available at https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/E64F94E8C160DE95CA25799800793A7A accessed on 18 November 2013.

Stakeholders have complained that the quality of servicing undertaken by contractors varies greatly, to the detriment of system operators, who remain liable for any failures to comply with the conditions of the approval.[754] 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".[755] 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.[756]

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.[757] The Box below outlines an innovative current practice that addresses this issue using the current regulatory framework.[758]

754 Personal communications, telephone conversation with Port Macquarie-Hastings Council, 8 September 2013, telephone conversation with Whitehead & Associates Environmental Consultants, 9 August 2013.

755 BioSeptic, *Submission to Domestic Wastewater Inquiry*, December 2011, p 6. Personal communication, email from Port Macquarie-Hastings Council, 31 October 2013.

756 Personal communications, telephone conversation with Port Macquarie-Hastings Council, 8 September 2013, telephone conversation with Whitehead & Associates Environmental Consultants, 9 August 2013.

757 OLG, *Sewage and Wastewater*, available at: http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_policyindex.asp?areaindex=PLCYADV&documenttype=8&mi=6&ml=6&paid=33 accessed on 18 November 2013.

758 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 6.18 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 has determined "acceptability" criteria as a group, 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 OLG, 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.

Sources: NSW Parliament, Legislative Assembly, Committee on Environment and Regulation, *Inquiry Into the Regulation of Domestic Wastewater*, Report 1/55, November 2012, pp 50-51 available at: http://www.parliament.nsw.gov.au/ accessed on 14 October 2014 (Domestic Wastewater Inquiry Report). Personal communication, telephone conversation with NSW Health, 9 August 2013.

Standardised service reports for onsite sewage management system service contractors

The development of standardised service report templates for services undertaken by contractors helps to streamline processes and improve consistency of reporting.

When service contractors undertake services of onsite sewage management systems, they are to provide a copy of the service report to the system operator and the council (as well as retaining a copy for themselves).[759] There is currently no standard service report for contractors to use. As a result, the information provided can be highly variable and inconsistent.[760] Stakeholders have indicated that the interpretation of forms and data provided can be a time-consuming and expensive process.[761] 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.[762] 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.[763]

[759] NSW Health, Certificate of Accreditation, Aerated Wastewater Treatment System as per Personal communication, email from Port Macquarie-Hastings Council, 5 November 2013.

[760] Personal communication, telephone conversation with Port Macquarie-Hastings Council, 8 September 2013. See also: STAG, *Submission to Domestic Wastewater Inquiry*, January 2012, p 3.

[761] Ibid.

[762] Ibid. Personal communication, telephone conversation with Port Macquarie-Hastings Council, 8 September 2013.

[763] Personal communication, telephone conversation with NSW Health, 9 August 2013.

The Domestic Wastewater Inquiry recommended that Fair Trading or OLG (formerly 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.[764]

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.[765]

Members of the Septic Tank Action Group (STAG)[766] 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.[767]

764 Domestic Wastewater Inquiry Report, p vii.

765 The Southern NSW Special Interest Group is made up of many southern council environmental health officers, including Eurobodalla Shire Council and Bega Valley Shire Council.

766 STAG is made up of many Central Coast and Mid-North Coast NSW Council environmental health officers, including Port Macquarie-Hastings Council and Great Lakes Council.

767 Personal communications, email from Port Macquarie-Hastings Council, 13 December 2013; email from Great Lakes Council, 13 December 2013.

Figure 6.1 Possible Template for Contractors Inspecting Aerated Systems

GENERIC SERVICE AGENT
GENERIC ADDRESS
GENERIC PHONE NUMBER
ABN

Aerated Wastewater Treatment System (AWTS) SERVICE REPORT

Name/Owner/Occupier_____

Site Address: _____Town / Suburb:_____PC:____

Council Area: _____Approval No:_____ System:_____

System age:____ Yrs; Service cycle : 1 / 2 / 3 / 4 Date of service: ___/___/20___

Rating System: G- Good F – Fair P- Poor

1.Septic tank	Condition	4. Irrigation Area	Condition
Septic tank condition		Inline Filter check	N/A
Square junctions		Pipes Buried/Movable	
Sludge depth	mm	Sprinklers/Drippers	
Desludge required	Y N	Working (number)	
Scum depth	mm	Subsurface	
Outlet filter	N/A	Signage (number)	
2. Treatment tank		Ponding	
Air valves working		Overspray	
Check & adjust Air supply		Bore on Property	
Scum in clarifier		**5. General**	
Skimmer working	N/A	Tanks & surrounds	
Clarifier clarity	mm	Odour	
Sludge depth in Clarifier	mm	Plans in Meter Box	Y/N
Sludge return Working N/A	Y/N	**6. Comments/Recommendations**	
Chlorine Contact tank clarity	mm		
Chlorine test N/A	mg/L		
pH test			
Dissolved Oxygen test	mg/L		
Chlorine tablets remaining N/A			
Chlorine tablets added N/A			
Flow orifice check			
3.Electronic components			
Air blower working N/A	Y/N amps		
Air Filter check			
Air Pump working N/A	Y/N amps		
Irrigation pump working	Y/N amps		
Sludge return pump working N/A	Y/N amps		
UV Working	Y/N/ N/A		
Timer check			
Leads & connectors			
Circuit Breakers/Fuses			
Low Air Alarm working N/A	*A/V Y/N		
Irrigation pump alarm working	A/V Hi/Lo Y/N		
Alarm Panel	Int/Ext		

Note: * A/V = Audible/Visual
Start time:.....am/pm Finish time.....am/pm

Service technician 1:_____Signed_____
Service technician 2:_____Signed_____

Source: Personal communication, email from Eurobodalla Shire Council, 18 September 2013.

Streamlined approvals for onsite sewage management systems

Councils that issue approvals to install and operate onsite sewage management systems together in one package of approvals are better able to reduce paperwork and administrative costs.

Landowners are required to obtain an approval to install and an approval to operate an onsite system:

- an approval to install does not need to be renewed
- an approval to operate requires regular renewal and ongoing council inspections to ensure that a system continues to function properly over its lifetime.[768]

Stakeholders have indicated that landowners do not like having to apply for two approvals, as they do not understand why two approvals are necessary.[769]

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 system owners.[770] We consider the streamlining of approvals for onsite sewage management systems to be best practice.

The Box below outlines this best practice approach.

768 *Local Government Amendment (Miscellaneous) Act 2002* (NSW), No 40, Schedule 1 [11]-[13].

769 Personal communications, telephone conversation with Port Macquarie-Hastings Council, 8 September 2013, telephone conversation with Eurobodalla Shire Council, 12 September 2013.

770 Personal communication, telephone conversation with Port Macquarie-Hastings Council, 10 December 2013.

Box 6.19 Dual approvals - Port Macquarie-Hastings Council

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 *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).

Sources: Personal communications, telephone conversation with Port Macquarie-Hastings Council, 10 December 2013; email from Port Macquarie-Hastings Council, 6 September 2013. See also: *Local Government (General) Regulation 2005* (NSW), clause 34.

Two stakeholders commented on this approach.[771]

Sutherland Shire Council commented that approvals to operate could be replaced with inspection programs according to risk.[772]

Camden Council expressed concerns with our suggested approach:

> Currently, the ATI sets out what system will be installed and what standards will be complied with. Inspections of the installation will be carried out to ensure that the OSSM is installed in accordance with the approval. When the system is installed satisfactorily, Council issues the ATO.
>
> In the absence of this approach, or a similar one, Council has concerns that the system that is installed is the same as the one that was approved. The improper installation of OSSMs can have health and environmental impacts.[773]

We consider that Camden Council's concern is already addressed through the imposition of the standard approval condition under clause 34 (discussed in the Box above). That condition states that once a system is installed, it cannot commence operation until the relevant council has inspected and notified in writing that the installation is satisfactory. Councils could also attach additional conditions, such as requiring operators to notify councils when installation of a system is completed, to ensure these inspections take place prior to operation.

771 For example, see submissions from Camden Council and Sutherland Shire Council, July/August 2014.
772 Sutherland Shire Council submission, August 2014.
773 Camden Council submission, July 2014.

7 Planning

Many submissions to this 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. As previously discussed, the Planning Bill 2013 and Planning Administration Bill 2013 are not currently progressing.[774] The NSW Government is now considering options on the best means to implement its planning reform program as set out in its Planning White Paper.

This chapter discusses key stakeholder concerns raised in our review in relation to planning, and outlines our response to these concerns. We expect the NSW Government's planning reform program to address a large proportion of these concerns. However, we also present some recommendations which seek to maximise the outcomes or opportunities of that reform program, 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 Environment (DPE) and local government, which we also expect will address many stakeholder concerns and enhance the outcomes of the planning system review (Chapter 1).

7.1 Current regulatory environment

7.1.1 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

[774] The Planning Administration Bill has been passed by Parliament but cannot progress as it is cognate to the Planning Bill.

  - 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.

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.[775] 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.[776]

The HIA stated that councils regularly fail to meet statutory timeframes for processing development applications (DAs).[777] This assertion is supported by data published by the DPE.[778] For example, under the EP&A Regulation, complying development consents must be processed within 10 days. DPE's data shows that on average, complying development consents took 14 days across councils in 2010/11.[779]

[775] OSBC submission, 20 November 2012.
[776] Ashfield Council submission, October 2012.
[777] HIA submission, November 2012.
[778] DPE (formerly DoPI), *Local Development Performance Monitoring 2010-2011*, February 2012, pp 6, 37, available at: http://www.planning.nsw.gov.au/Portals/0/AboutUs/docs/ldpm_feb2012_part1.pdf accessed on 14 October 2014. On average, development applications took 68 days to determine in 2010/11. Eight councils had an average DA determination time in excess of 100 days.
[779] Ibid.

7.2.2 Our response

Our review suggests the mains 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 (eg, concurrence from State agencies),[780] 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 DPE and local government is aimed at addressing the issues of complexity and, in particular, council capacity and capability in planning regulation (see Chapter 2).

As discussed above, the NSW Government is still committed to its planning reform program as set out in the Planning White Paper. The Planning White Paper also targets both of these concerns (see below).[781]

Planning reforms proposed by the NSW Government's Planning White Paper

The new planning system presented in the Planning White Paper is focused on five elements of reform:

1. changing the planning culture
2. community participation
3. a more strategic focus
4. more streamlined approval in the development assessment process, and
5. the provision of infrastructure.[782]

There are also reforms to strengthen building certification and regulation. Further details are provided in the Box below.

[780] Randwick and Holroyd City Councils noted that significant delays are experienced when developments also require approval or 'concurrence' from the State.

[781] NSW Government, *A New Planning System for NSW - White Paper*, April 2013, available at: http://www.planning.nsw.gov.au/white_paper accessed on 14 October 2014 (Planning White Paper).

[782] Planning White Paper, p 17.

Box 7.1 Five elements of NSW planning system reform

1. **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.

2. **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.

3. **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.

4. **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.

5. **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.

Source: Planning White Paper, pp 6-9.

Strategic focus

The Planning White Paper proposes a new approach to strategic planning. Emphasis would be placed on agreeing initially on how an area will be developed over time, through preparing Regional, Subregional and Local Plans. These plans would provide guidance and certainty for government, industry and the community.[783]

Streamlined approval

Under the Planning White Paper proposals, approval processes for developments that conform to standards and requirements set out in the strategic plan (ie, the Local Plans in the local context) would be streamlined. This would be through complying or code assessment, resulting in an increase in the level of complying or code assessable development in the system. Fully compliant proposals would require approval within prescribed timeframes,[784] with no further referral or concurrence required. Non-compliant proposals would be subject to full merit assessment.[785]

These reforms would 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.[786] This would 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.

Design review panels under the State Environmental Planning Policy 65 (SEPP 65) are an example of such an independent panel. These panels provide independent advice to councils on design issues for residential flat developments considered under SEPP 65. There are currently six ministerially appointed design review panels operating in NSW. Several councils have established alternative mechanisms to obtain design advice on SEPP 65 applications, including specialist peer review, in-house or external advisory panels.[787]

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783 Planning White Paper, p 26.

784 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: Planning White Paper, p 119.

785 Planning White Paper, pp 129-133.

786 Planning White Paper, p 137. These panels are in addition to the Regional Planning Panels who make decisions on regionally significant developments.

787 DPE (formerly DoPI), *SEPP 65 – Design Quality of Residential Flat Development*, November 2011, pp 10-14, available at: http://www.planning.nsw.gov.au/Portals/0/sepp65/submissions/CollinsJ_120221.pdf accessed on 15 October 2014.

DPE is currently reviewing SEPP 65 and is considering amendments to allow councils to appoint and decide who sits on a panel.[788]

Cultural reform

The Planning 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.[789]

The cultural change program will be led by DPE, in collaboration with the Planning Institute of Australia and local councils.[790] DPE 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.[791]

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.

7.3 Inconsistent administration of planning regulation

7.3.1 Stakeholder concerns

Stakeholders 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.[792]

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)[793]

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788 DPE, *Improving apartment design and affordability*, available at: http://www.planning.nsw.gov.au/Portals/0/DeliveringHomes/SEPP65_Brochure.pdf, accessed on 8 October 2014.
789 Planning White Paper, pp 29, 36.
790 Planning White Paper, pp 36-39.
791 Planning White Paper, p 39.
792 HIA submission, November 2012.
793 For example, see submissions from HIA, Mobile Carriers Forum, NSW Business Chamber and Scarlet Alliance (Australian Sex Workers Association), October/November 2012.

- implementation of state policies or guidance across councils (eg, different council requirements placed on building owners in response to DPE's guidance on how councils should mitigate the risks of awnings over public land)[794]
- 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.[795]

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.[796] 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 proposed planning reforms will also address inconsistencies in planning regulation. For example:

- The current DCPs, that can be inflexible and inconsistent with higher-order policies, would be replaced by Local Plans with fully integrated development guidelines. This would 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, DPE would develop a standard code assessable DA form, which could be accessed online. This would eliminate the need for councils to individually develop application forms for this purpose.

In addition, adoption of our recommended planning Partnership Model (Chapter 2) would 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 two 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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794 NSW Business Chamber submission, October 2012.

795 J Hutcheson submission, September 2012.

796 For example, see submissions from Business Council of Australia and Randwick City Council, October/ 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
- stipulate processes to be carried out at the construction stage and/or at occupation.[797]

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.

[797] DPE (formerly DoPI), *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 (DPE Development Assessment Guidelines).

- 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.[798]

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
- 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.[799]

A summary of the types of comments we received from stakeholders relating to development consent conditions are presented in the following Box.

[798] Ibid.
[799] DPE (formerly DoPI)/BPB joint submission, 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 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).

DPE, 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: Submissions from Scarlet Alliance, Urban Taskforce Australia, Mobile Carriers Forum, DPE (formerly DoPI) and 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 draft recommendation

We made a draft recommendation that DPE, 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 use for different forms of development.

The Planning White Paper outlines that development of a standard state-wide toolbox of development conditions is part of the Government's reform package.[800] It notes that consistent development consent conditions across the State would enable better compliance with conditions, faster determination of development proposals and certainty in the matters that need to be satisfied.[801] DPE has also advised that the introduction of more standardised conditions of consent as one of its reform priorities.[802]

The Planning Bill 2013 was designed to increase the use of complying and code assessable development approvals in NSW.[803] These are based on predetermined conditions for applications that meet set criteria.[804] The Bill is not currently progressing. However, the Government has indicated that it will consider other options in pursuing reforms.[805]

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 Planning White Paper's proposal to develop more standardised development consent conditions. Our draft recommendation supported the Planning White Paper proposal and provided further detail on how a standardised set of development conditions could be developed and implemented to maximise the opportunities arising from the planning system review.

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800 Planning White Paper, p 120.
801 Planning White Paper, p 187.
802 Personal communication, email from DPE (formerly DoPI), 5 February 2013.
803 Planning White Paper, p 8.
804 Personal communication, email from DPE (formerly DoPI), 5 June 2013.
805 DPE, *The current status of planning reforms*, available at: http://www.planning.nsw.gov.au/NewsCentre/LatestNews/TabId/775/ArtMID/1658/ArticleID/150/The-current-status-of-planning-reforms.aspx accessed on 8 September 2014.

7.4.4 Stakeholder feedback

Submissions to our Draft Report indicated substantial support for our recommendation to develop an appropriate set of standardised consent conditions.[806] Shellharbour City Council notes that:

> …benefits exist for developers who undertake work over multiple LGA's and find multiple, confusing wordings on conditions that are designed to achieve the same outcome.[807]

Similarly, Albury City Council argues that:

> The development of a standardised and consolidated set of conditions which councils can utilise will be of benefit in both adopting a level of consistency in regards to key issues and also providing a level of support and resource for smaller councils.[808]

Stakeholders also recognised the need to retain flexibility for councils to allow for local conditions and protection of amenity.[809] Some stakeholders also suggest that standard consent conditions may be appropriate for only some types of development. For example, Tweed Shire Council argues that standard conditions should only apply to single dwelling and dual occupancy residential developments.[810]

Mosman Municipal Council and Bankstown City Council do not support our draft recommendation, arguing that they already use their own standard conditions of consent.[811]

7.4.5 Our final recommendation

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 for some areas.

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806 For example, see submissions from Coffs Harbour City Council, Eurobodalla Shire Council, Blacktown City Council, The Hills Shire Council, Warringah Council, Marrickville Council, Environmental Health Australia and OSBC, June/July 2014.

807 Shellharbour City Council submission, July 2014.

808 Albury Council submission, July 2014.

809 For example, see submissions from Parramatta City Council, City of Ryde Council, Wyong Shire Council, Camden Council, Albury City Council and Penrith City Council, June/July 2014.

810 Tweed Shire Council submission, June 2014.

811 For example, see submissions from Mosman Municipal Council and Bankstown City Council, July 2014.

Stakeholder responses to our draft recommendation acknowledge these benefits of standardising conditions of consent. They also recognise the limitations of standardisation – that is, that standardisation will not be appropriate for all consent conditions. We note that extensive consultation with councils and other stakeholders will be required to develop an appropriate set of standardised conditions.

With substantial stakeholder support and acknowledgement of the matters that require further consultation, we have maintained this recommendation.

The standard set(s) of conditions should:

- form one of the planks of work undertaken by the dedicated team of staff within DPE, 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[812]
- 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.

As outlined in section 7.8 below, sex services premises are one such development type where some standardisation of conditions may be possible.

In developing the standard sets of conditions, DPE should consider carefully the claims that councils are requiring expensive consultants to certify certain aspects of construction as part of development consent conditions.

DPE's draft set of conditions for residential development

DPE 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.[813]

In light of the broader review of the planning system, these conditions have not yet been finalised by DPE, but it seems reasonable to expect that any further work to develop standardised conditions should use this draft set of conditions as a starting point.

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[812] In *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, it was held that for a condition to come within the relevant statutory power it must fulfil these three conditions. See also: DPE Development Assessment Guidelines, p 17.

[813] DPE (formerly DoPI), *Standard Conditions of Approval – Single Dwellings and Dual Occupancies*, consultation draft – not Government policy, 2010.

Box 7.3 Draft Standard Conditions of Approval for Single Dwellings and Dual Occupancies – developed by DPE (formerly 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.

Source: DPE (formerly DoPI), *Standard Conditions of Approval – Single Dwellings and Dual Occupancies*, consultation draft – not Government policy, 2010.

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 DPE 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, DPE 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 DPE to first identify which conditions may be standardised and which may be varied, in consultation with local government and other stakeholders. DPE 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 DPE 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 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]

Standard conditions for complying development under the SEPP (Exempt and Complying Development Codes) 2008

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides standard conditions that apply to complying development certificates under the General Housing Code and the Rural Housing Code.[d]

[a] OLG, *Collaborative Arrangements between Councils – Survey Report,* June 2011, p 239, available at: http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Collaborative%20Arrangements.pdf accessed on 14 October 2014.

[b] HCCREMS website, available at http://www.hccrems.com.au/Home.aspx accessed on 14 October 2014.

[c] EPA, *About the public register (POEO)*, available at: http://www.epa.nsw.gov.au/prpoeo/ accessed on 14 October 2014.

[d] *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Schedule 6.

In leading the development of standard sets of consent conditions, we recommend that DPE also seeks to utilise the standard condition sets developed and experience gained through these initiatives. It may also be useful for DPE 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.[814]

Recommendation

19 The Department of Planning and Environment, 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 use for different forms of development.

[814] Personal communication, email from Randwick City Council, 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. (The Productivity Commission has persuasively argued that deregulation of trading hours more generally would benefit consumers, increase competition and increase retail employment.[a])

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 DPE and specific areas identified, it is not possible to quantify these impacts.

a Productivity Commission, *Economic structure and performance of the Australian retail industry*, 2011, Chapter 10, available at: http://www.pc.gov.au/ accessed on 14 October 2014.

Source: CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014, pp 14, 18-19 (CIE Report).

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.[815]

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 DPE 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.[816] 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.[817]

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 should be further addressed by the planning reform package.

Recent changes to legislation have relegated DCPs to the status of a guideline document.[818],[819] The changes preclude 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.[820] 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.[821]

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815 Moore and Dyer, *The Way Ahead for Planning in NSW? NSW Planning System Review Issues Paper*, December 2011, p 46. See also: Blacktown City Council, available at: http://www.blacktown.nsw.gov.au accessed on 22 March 2013.

816 Business Council of Australia submission, October 2012.

817 Mobile Carriers Forum submission, November 2012.

818 Environmental Planning and Assessment Amendment Bill 2012.

819 *Environmental Planning and Assessment Act 1979* (NSW), sections 74BA and 74C.

820 This excludes DCPs which provide for complying development.

821 Clayton Utz, *Less complexity, more flexibility for NSW development: Development Control Plans' role to be reduced*, 31 October 2012, available at: http://www.claytonutz.com.au accessed on 22 March 2013.

The Planning Bill 2013 would have seen Local Plans replace existing LEPs, and performance based development guides in Local Plans replace current DCPs. This would have directly addressed concerns about multiple, onerous and conflicting planning controls being difficult to comply with and should have ensured that the community is consulted regarding Local Plan development guides.[822] However, the Bill is not currently progressing as discussed above.

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 (eg, 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 (eg, industrial to commercial to provide for new businesses in gentrified areas).[823]

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 Planning 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.

[822] Planning White Paper, pp 90-93.

[823] For example, see submissions from Mobile Carriers Forum 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)[824]
- long delays in council approvals for change of use from one type of retail business to another (eg, butcher to hairdresser).[825]

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 Planning 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.[826] The NSW Government has proceeded with amendments to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to expand the types of changes of use that are considered to be complying development.[827] These changes came into effect on 22 February 2014.

7.8 Sex services premises

7.8.1 Background

Development consent is required from a council before any premises can be used as a sex services premises. Local councils are responsible for planning and location controls and environmental health in this area.

824 HIA submission, November 2012.
825 Personal communication, meeting with OSBC, 31 August 2012.
826 Planning White Paper, pp 126-127.
827 Subdivision 10A was amended by the *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Commercial and Industrial Development and Other Matters) 2013.*

In 2004, the Sex Services Premises Planning Advisory Panel prepared planning guidelines – *Sex services premises: Planning guidelines* - that were published by the (then) Department of Planning. The purpose of the guidelines was to assist councils make decisions about sex services premises that achieve occupational health and safety objectives, minimise the potential for corruption and the impact of premises upon neighbourhood amenity and the environment.[828]

The guidelines suggest that sex services premises should be treated in a similar manner to other commercial enterprises, and should be able to rely on consistency and continuity in local planning decisions.[829]

Although DPE encourages councils to consider the guidelines in regulating the land use of sex services premises, councils are not required to follow them.

7.8.2 Stakeholder concerns

We received a submission to our Draft Report from the Australian Sex Workers Association (also known as the Scarlet Alliance). The submission raised several concerns about council regulation of sex services businesses. These concerns include:

- excessive DA requirements for sex services businesses that are not applied to other businesses (eg, extra parking, opening times, notification requirements and zoning restrictions)
- councillors refusing applications from sex services businesses because of moral objections or fear of losing local government votes even when planning staff advise an application complies with council requirements
- a lack of recognition of the different scales and sizes (and associated need for regulation) of different sex work settings in LEPs and DCPs
- council officers or councillors misunderstanding or overstepping their roles in relation to regulation of the sex industry.[830]

The Scarlet Alliance considers that these factors have resulted in unnecessary costs in the Land and Environment Court for businesses and councils, unnecessary regulatory burdens upon sex industry businesses, dangers for sex worker health and safety, and significant barriers to compliance.[831]

[828] Sex Services Advisory Panel, *Sex Services premises: Planning guidelines*, December 2004, p 3.
[829] Ibid.
[830] Scarlet Alliance submissions, November 2012 and July 2014.
[831] Ibid.

The Scarlet Alliance suggested a number of reforms, including:

- The existing Guidelines should be formally endorsed and incorporated into Government Policy.
- The existing Guidelines should be revised, updated and applied as an ongoing resource for councils.
- A sex liaison officer should be appointed within the NSW planning department to assist councils in abiding by the guidelines.
- Government should fund an education program to inform councillors of the rationale behind decriminalisation.
- Sex work should be treated as legitimate work and businesses should be treated as legitimate businesses by states and councils, and should not be subject to special provisions.[832]

7.8.3 Our response

We note that under current Government policy sex work has been decriminalised in NSW. Consistent with that policy, sex services premises should be treated as legitimate businesses and not subject to unnecessary regulatory requirements. In our view, some of the issues raised by the Scarlet Alliance are policy, rather than red tape issues.

We support councils developing standard conditions and minimum requirements where there is agreement and commonality in approach to reduce red tape for businesses. However, we also support councils retaining the flexibility to regulate differently to reflect local conditions and community concerns. As noted elsewhere in this report,[833] councils have argued strongly for retaining the flexibility to regulate to reflect local conditions and community concerns.

We note that council DCPs are often used to establish the planning controls for sex services premises in their areas.[834] These DCPs provide certainty for sex services businesses on the requirements they must meet to operate in a particular area.

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832 Ibid.

833 For example, see Chapter 5 in relation to section 68 approvals for busking and mobile food vendors.

834 For example, see Kogarah City Council, *Kogarah Development Control Plan - Part D-5 – Sex Services Premises*, 2013 available at: http://www.kogarah.nsw.gov.au/__data/assets/pdf_file/0006/20220/Kogarah-DCP-2013-Part-D5-Sex-Services-Premises-20130926.pdf, accessed on 8 October 2014.

In addressing red tape issues concerning sex services premises, we consider there is merit in:

- reviewing the *Sex services premises: Planning guidelines* and council DCPs to establish whether there are any opportunities to standardise planning requirements or consent conditions
- ensuring councils are aware of the *Sex services premises: Planning guidelines* to guide their decision-making.

This should be included in the process of developing standard conditions recommended above, in consultation with council, community and industry stakeholders. If performance based development guides replace current DCPs, this should be considered in that process.

8 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 burden. 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.[835] 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.

[835] NSW Government, *A New Planning System for NSW - White Paper*, April 2013, p 183, available at: http://www.planning.nsw.gov.au/white_paper accessed on 14 October 2014 (Planning White Paper).

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.[836]

Building certification is the process of ensuring that buildings are compliant with the Building Code of Australia (BCA) and safe for occupation. The BCA is now part of the 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.[837] 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 inspections during construction, determine whether the building meets the NCC and planning requirements, collect certification from others and will issue the 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 and building work 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.[838] However, private certifiers must rely on councils to enforce any breaches of building codes or conditions of development consent they uncover.

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836 Planning White Paper, p 185.

837 Department of Planning and Infrastructure submission to *IPART's Regulation Review - Licence Rationale and Design Issues Paper*, December 2012.

838 BPB, *Issues Paper of the NSW Planning System Review Submission from the Building Professionals Board*, March 2012, p 4.

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. 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

Regulator	Responsibilities
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 *Environmental Planning and Assessment Act 1979 (*EP&A Act), *Local Government Act 1993* or the *Protection of the Environment Operations Act 1997*. ▾ Impose on-the-spot fines for failure to comply with orders. ▾ Handle complaints from the community regarding urgent matters – eg, dangers to the public. ▾ Handle complaints from the community that aren't related to the occupation certificate – eg, 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 and other 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. ▾ Review the accreditation scheme under the *Building Professionals Act 2005.* ▾ Conduct investigations into certifying authorities, accredited certifier directors and building professionals. ▾ Prosecute offences against the *Building Professionals Act 2005* or the *Building Professionals Regulation 2007* (NSW), or any offence under the EP&A Act or the regulations under that Act that relates to accredited certifiers, certifying authorities or building professionals. ▾ Undertake audits of certifiers to ensure that records of certificates issued, actions taken, projects worked on are being kept and are in order. ▾ Promote and maintain standards of building and subdivision certification and design in NSW. ▾ Investigate matters referred to the Board by the Minister. ▾ Provide advice with respect to any other matter in connection with the administration of the *Building Professionals Act 2005.*

Regulator	Responsibilities
Department of Planning and Environment	▼ Administer the building control aspects of the EP&A Act and Regulation including the approval/certification processes, approval of building and use changes, and the regulation of the maintenance of fire safety measures. ▼ Formulate building regulation and reform policy. ▼ Review and contribute to the reform of the BCA (a part of the NCC) on behalf of NSW Government, industry and community through representation on the Australian Building Codes Board (ABCB) – to ensure it is acceptable to NSW. ▼ Administer the Building Regulation Advisory Council (BRAC).
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: BPB, *Managing complaints about development info sheet*, October 2011, available at: http://bpb.nsw.gov.au/our-role/what-we-do accessed on 11 September 2014 and personal communication, email from DPE, 14 October 2014.

8.1.1 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
- regulatory creep by councils.

Each of these concerns is interrelated to some extent, and explained further below.

8.1.2 Business concerns

Business stakeholders would like councils to refrain from monitoring certifier conduct and leave certifiers to concentrate on regulating building compliance issues. The 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.[839]

[839] HIA submission, November 2012, p 10.

The 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. The HIA argued that these levies assume building activity is non-compliant with the development consent.[840]

Supporting this view of tension between councils and certifiers, the Master Builders Association, in a submission to the Planning System Review Panel, argued that:

> The current animosity between Councils and the private certification sector needs to be extinguished.[841]

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.[842]

8.1.3 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.[843]

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.[844]

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840 Ibid.

841 Master Builders Association NSW, *Submission to the Planning System Review Panel,* November 2011, p 5.

842 See comments from Whitaker R, *Public Roundtable for IPART's Review of Licence Rationale and Design* (Public Roundtable), Transcript, p 80.

843 For example, see submissions from Holroyd City Council and Shoalhaven City Council, October/November 2012.

844 Wollongong City Council submission, November 2012, p 3.

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 light weight that councils 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.[845]

The lack of clarity over regulatory responsibility, both between regulators and for members of the public, was another concern raised by councils.[846] 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.[847]

Some councils asserted that the BPB requires councils to investigate complaints in relation to certifier conduct and this imposes burdens on councils (as they are required to compile evidence) and creates unnecessary red tape. They argued that the BPB needs to take the lead role in investigating complaints regarding the performance of PCAs.[848]

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.[849]

8.1.4 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 PCA
- micro-analysing certifier's forms to find mistakes in order to complain to the BPB[850]
- not taking timely enforcement action where a certifier has notified council of a breach of consent conditions.[851]

845 Sutherland Shire Council submission, November 2012, pp 7-8.
846 Newcastle City Council submission, November 2012, p 3.
847 Sutherland Shire Council submission, November 2012, p 7.
848 For example, see Holroyd City Council submission, November 2012, p 3.
849 BPB, *Issues Paper of the NSW Planning System Review Submission from the Building Professionals Board*, March 2012, p 5.
850 Association of Accredited Certifiers' submission, November 2012, p 2.
851 DPE (formerly DoPI)/BPB joint submission, November 2012.

8.1.5 BPB's concerns

The BPB, on the other hand, considers that a lot of complaints arise as a result of councils' 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.[852] This was 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).[853]

The BPB also argued that councils do not have a strong understanding of their regulatory responsibilities.[854] Furthermore, the BPB was critical of efforts by individual councils to impose additional requirements beyond the relevant standards of the BCA.[855]

8.2 Other reviews

The NSW building regulation and certification system is currently the subject of reform efforts as part of the NSW planning system review (as also discussed in Chapter 7). An associated review examined ways to improve building certification.[856] In addition, there has been an inquiry into construction industry insolvency – the Independent Collins Inquiry into Construction Industry Insolvency in NSW.[857] Some of the reforms recommended by these reviews seek to address the issues and concerns raised in our review. Each of these reviews is discussed in greater detail below.

8.2.1 NSW planning system review

The Planning White Paper, which was released in April 2013, included additional reforms for the NSW building regulation and certification system, which were not covered in the Planning Green Paper released in 2012.[858] 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.[859]

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852 Personal communication, email from DPE (formerly DoPI), 5 February 2013.

853 Personal communication, meeting with BPB, 25 October 2012.

854 Ibid.

855 DPE (formerly DoPI)/BPB joint submission, November 2012.

856 Maltabarow G, *Building certification and regulation – serving a new planning system for NSW*, May 2013, p 4 available at http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=6356 accessed on 14 October 2014 (Maltabarow Report).

857 Collins, B, *Independent Inquiry into Construction Industry Insolvency in NSW, Final Report*, November 2012, available at: https://www.finance.nsw.gov.au/sites/default/files/pdfs/IICII-final-report.pdf accessed on 14 October 2014 (Collins Report).

858 NSW Government, *A New Planning System for NSW: Green Paper*, July 2012, available at: http://www.planning.nsw.gov.au/en-us/policyandlegislation/previousstagesofplanningreview.aspx accessed on 14 October 2014.

859 Planning White Paper, p 192.

- Requiring the design, installation and commissioning of critical building systems (eg, fire safety systems) to be certified by an accredited person.[860]
- Accreditation of additional occupations involved in building design, fire safety and access design (eg, registered architects).[861]
- 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).[862]
- Introducing revised mandatory 'critical stage' building inspections, particularly for Class 2-9 buildings (eg, highrise residential buildings).[863]
- Removing the need for a separate PCA in order to improve compliance coordination.[864]
- Improved levels of documentation through all stages of the building life cycle, including developing a building manual, to improve information available to those responsible for ensuring buildings remain safe.[865]
- Requiring certifiers to sign off compliance with the development consent and the BCA as building work progresses and at the end of the work.[866]
- Peer review and enhanced decision support on complex building matters for certifiers.[867]
- Stronger disciplinary guidelines, increased auditing and improved reporting obligations/data collection.[868]
- Improving the regulation of the approval of building changes, and material use changes for the purposes of maintaining building safety and performance.[869]

The Planning 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.[870]

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860 Ibid, p 193.
861 Ibid, pp 185-186.
862 Ibid, p 186.
863 Ibid, p 194.
864 Ibid, p 187.
865 Ibid, pp 198-199.
866 Ibid, p 190.
867 Ibid, p 189.
868 Ibid, p 202.
869 Ibid, p 191.
870 Ibid, p 119.

Some of these issues were addressed in the new Planning Bill 2013 and Planning Administration Bill 2013. For example, clearer roles for certifiers were defined, the role of PCA was subsumed to the certifier and a requirement for a Building Manual was introduced.[871] However, the Bills are not currently progressing.[872] Consequently, the Government is now considering the best means to implement its building reforms as set out in the Planning White Paper.

The key implications of the Planning White Paper reforms to building regulation and certification 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.

As part of the planning reform review, early 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.[873]
- Empowering the BPB to conduct investigations of certifier's performance, without requiring a specific complaint.[874]
- Requiring a standardised, mandatory written contract outlining a certifier's statutory roles and responsibilities to be used when appointing a private certifier as the PCA on a project.[875]
- Requiring certifiers to apply the "not inconsistent" test to both BCA and planning consent compliance at the Occupation Certificate stage.[876]

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871 Planning Bill 2013, clauses 8.3 and 8.20.

872 The Planning Administration Bill has been passed by Parliament but cannot progress as it is cognate to the Planning Bill.

873 *Environmental Planning and Assessment Act 1979* (NSW), section 121CA.

874 *Building Professionals Act 2005* (NSW), section 9A.

875 See new section 73A of the *Building Professionals Act 2005* (NSW), inserted by the *Environmental Planning and Assessment Amendment Act 2012 No 93* (NSW). For further details, see proposal at BPB, *Better Building Model,* 2012, available at: http://www.bpb.nsw.gov.au/resources/982/PCA%20CONTRACT%20final.pdf accessed on 22 March 2013.

876 *Environmental Planning and Assessment Regulation 2000* (NSW), clause 154.

These changes came into force in early March 2013.[877]

8.2.2 Building certification review

The then Minister for Planning, Brad Hazzard, appointed George Maltabarow to undertake a review of building regulation and certification to complement the Planning White Paper reforms. The review's aim was to develop a more robust certification system, so as to better support the new planning system.[878]

It found stakeholders had similar concerns with council's role in certification as those raised in our review. For example, some stakeholders thought that:

- confusion arose over council's responsibilities when private certifiers were appointed (eg, some councils 'stood back' from monitoring compliance with their consent conditions)[879]
- conflicts existed between council's dual role as consent authority and certifier (ie, opining on compliance with its own consent conditions)[880]
- private certifiers rarely reported non-compliance to councils.[881]

The review found that the boundaries between responsibilities of councils and private certifiers were unclear.[882] Indeed, this was the most significant issue identified by the review. It recommended an expert panel define these responsibilities, and develop a framework requiring greater co-operation between councils and private certifiers.[883]

Another way to resolve the issue of conflicting responsibilities would be for councils to no longer provide certification services. However, the review thought this should remain a matter of choice for councils.[884]

In relation to enforcement responsibilities, the panel is to address the following elements:

- mandatory initial enforcement action by certifiers where there is non-compliance by builders (with timely reporting to councils)
- requiring councils to follow up initial enforcement action where warranted.[885]

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877 Media Release, *Housing supply and certifier changes begin*, 5 March 2013, available at: https://www.nsw.liberal.org.au/news/state-news/housing-supply-and-certifier-changes-begin accessed on 15 October 2014.
878 Maltabarow Report, p 4.
879 Ibid, p 11.
880 Ibid, p 36.
881 Ibid, p 11.
882 Ibid, pp 5 , 7.
883 Ibid, pp 18, 21 and 34.
884 Ibid, p 37.
885 Ibid, p 46.

According to the review, the greatest barrier to more effective enforcement and inspection by councils is that there are limited options for them to recover these costs. Creating a revenue stream relating to consent applications may be one way for councils to better fund these activities.[886]

Other key recommendations involve:

- Additional expert panels assessing the regulatory impact of the Planning White Paper's building and certification reforms, and the scope of certification (ie, defining what certifiers are required to do to certify both BCA and planning consent compliance).[887]
- The BPB strengthening its oversight of certifiers, by expanding its investigation and audit functions, and improving its acquisition of relevant operating data.[888]
- IPART developing guidelines on fees (ie, publish annual benchmark range of fees).[889]
- Repealing recent amendments to the EP&A Act and Building Professionals Act which introduced mandatory contracts between certifiers and owners, and widened the scope of certification at the completion stage of a building (as discussed in section 8.2.1 above).[890]

8.2.3 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.

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.[891] The proposed Commission's role would be very broad, as it would include 10 separate bodies in NSW that have responsibility for this sector.

886 Ibid, p 38.
887 Ibid, p 7.
888 Ibid, pp 44 and 47.
889 Ibid, p 47.
890 See section 8.2.1.
891 Collins Report, p 352.

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.[892]

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 system review.[893]

8.3 Improving compliance and enforcement

Our recommendations below seek to maximise the opportunities arising from the planning system 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 Fair Trading - to achieve coordinated, effective regulation.[894]

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

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892 For example, see submissions from Randwick City Council and Australian Institute of Building Surveyors, November 2012.

893 NSW Government, *Response to the Independent Collins Inquiry into Insolvency in the NSW Construction Industry*, 18 April 2013, available online at: http://www.finance.nsw.gov.au/sites/default/files/pdfs/20130418-collins-inquiry-recommendations-and-responses.pdf accessed on 3 July 2013.

894 Personal communication, meeting with BPB, 25 October 2012; meeting with Fair Trading, 19 December 2012; meeting with Development and Environmental Professionals' Association, 16 November 2012.

- ensured complaints were appropriately directed and efficiently dealt with
- worked closely with councils on removing the causes of complaints (eg, poorly drafted 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.

8.4 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,[895] 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.

8.4.1 State building regulators in Victoria and Queensland

The high profile failures of the former Victorian Building Commission (VBC) and Queensland Building Services Authority (QBSA) 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.

[895] For example, see submissions from Randwick City Council, November 2012, pp 7-8; Australian Institute of Building Surveyors, November 2012.

Queensland

The Queensland Parliament's Inquiry into the operation and performance of the QBSA stated as its first recommendation that "the QBSA be disbanded as soon as alternative mechanisms for delivering its functions can be established."[896] 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.[897]

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.[898]

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.

The Government's response has been to establish a new building industry regulator, the Queensland Building and Construction Commission.[899] Its functions include licensing contractors; educating homeowners and handling disputes between contractors and homeowners.[900]

Victoria

In Victoria, two separate reports have cast doubt over the effectiveness of the former 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.[901]

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

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896 Queensland Parliament, Transport, Housing and Local Government Committee, *Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012,* November 2012, p 19.

897 Ibid, p 18.

898 Ibid.

899 Queensland Department of Housing and Public Works, *Queensland Building Services Authority Review*, available at: http://www.hpw.qld.gov.au/construction/qbsa-review/Pages/default.aspx accessed on 18 December 2013.

900 Queensland Building and Construction Commission, *About Us*, available at: http://www.qbcc.qld.gov.au/about-us/ accessed on 18 December 2013.

901 Victorian Auditor-General's Office, *Compliance with Building Permits,* December 2011, p 21, available at: http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2011-12/20111207-building-permits.aspx accessed on 16 October 2014.

> impact of the commission's regulatory efforts, or the extent to which building surveyors adequately discharge their statutory responsibilities.[902]

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.[903]

The report noted the need for councils and the Commission to work more closely together in monitoring the performance of the building permit system.[904]

The Victorian Ombudsman released an investigation into the governance and administration of the VBC in December 2012.[905] 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.[906]

In response to the failings of the VBC, its functions were absorbed into a new regulator, the Victorian Building Authority, on 1 July 2013.[907] 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.

8.4.2 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.[908] 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

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902 Ibid, p ix.
903 Ibid, p 35.
904 Ibid, p xi.
905 Victorian Ombudsman, *Own motion Investigation into the governance and administration of the Victorian Building Commission,* December 2012, available at: https://www.ombudsman.vic.gov.au/getattachment/d10d9a76-61ac-4871-ac25-4000f77b51b0//media/media-alerts/media-alerts/own-motion-investigation-into-the-governance-and-a.aspx accessed on 16 October 2014.
906 Ibid.
907 Victorian Department of Planning and Community Development, *A fresh start for building industry regulation: Reforming Victoria's building system*, November 2012; available at: http://www.vba.vic.gov.au/about accessed on 20 October 2014.
908 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.

- 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 recommended in our Draft Report that a NSW Building Authority be established, which draws together all regulation of the 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 difficultly of dealing with multiple government agencies on construction and compliance issues.

A Building Authority which focuses on regulating NCC issues will avoid the pitfalls experienced by both the Victorian and Queensland Building regulators. By focusing on regulation of NCC issues and not, like the QBSA, areas such as 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 Fair Trading, remain with Fair Trading and not be incorporated into this new regulator.

The BPB currently conducts advisory reviews and investigates complaints in relation to certifier misconduct (in 2010/11, it conducted 48 reviews of private certifiers).[909] Fair Trading currently investigates and audits residential construction work across both building and plumbing (and in 2010/11, it undertook 1,320 field inspections).[910] As a consumer, protection agency 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.

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[909] BPB, *Issues Paper of the NSW Planning System Review Submission from the Building Professionals Board*, March 2012, p 4.

[910] Fair Trading, *Year in review 2010-2011*, 2011, p 10.

Combining these two 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[911] and depending on the outcomes of a regulatory impact statement, may change.[912] 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. The White Paper reforms propose to strengthen the regulation of maintenance of building safety by requiring accreditation of additional occupations involved in building design and construction. These include designers, specialist engineers, fire protection system installers and inspect/test technicians, energy efficiency designers and access consultants and other relevant professions.[913] In this way benefits will accrue to other industry practitioners.

We also recommended that the new Building 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. This may provide the new Building 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 full time inspectors in food inspections, a capacity that could never be achieved by the State alone.[914]

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911 Collins Report, p 353.

912 NSW Government, *Response to the Independent Collins Inquiry into Insolvency in the NSW Construction Industry*, 18 April 2013, available at: http://www.finance.nsw.gov.au/sites/default/files/pdfs/20130418-collins-inquiry-recommendations-and-responses.pdf accessed on 11 September 2014.

913 Planning White Paper, p 180.

914 Personal communication, meeting with Food Authority, 25 October 2012.

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 the HIA, which was discussed above.

We suggested our draft recommendation be subject to a detailed cost-benefit analysis and that alternative structures should be considered when undertaking the cost-benefit analysis.

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 the Department of Planning and Environment (DPE). This has the benefit of reducing the set up costs of implementing the recommendation as it would minimise disruption while still achieving the goal of a single body in charge of regulating all aspects of the NCC in NSW.

Another advantage of transferring the responsibility for building regulation and oversight to an existing organisation is potential economies of scale generated by having a larger regulator. Examples include having common complaints management and investigative processes. Using a multi-function regulator such as Fair Trading (as opposed to an industry-specific one) could also have other benefits including potentially greater protection against regulatory capture.[915]

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.

8.4.3 Stakeholder feedback

The majority of stakeholder submissions supported our draft recommendation.[916] Reasons for support included:

- it will help fix the current fragmented system[917]
- it will reduce red tape, costs, duplication and risk[918]

[915] Personal communication, email from Fair Trading, 3 October 2014.
[916] For example, see submissions from Albury City Council, Blacktown City Council, Central NSW Councils, Cessnock City Council, City of Canada Bay Council, City of Ryde Council, Parramatta City Council and Wyong Shire Council, June/July 2014.
[917] Owners Corporation Network of Australia submission, July 2014.
[918] Master Builders Association of NSW submission, July 2014.

- support of single agency structures in Queensland and Victoria, despite some criticism of similar structures in these States[919]
- it would allow the efforts of various agencies to be effectively coordinated and efficiently delivered[920]
- it incorporates the 'partnership concept'.[921]

Stakeholders also provided suggestions regarding the implementation of the recommendation:

- a cost benefit analysis is sensible and should include assessment of current reforms being pursued by the BPB, DPE and Fair Trading[922]
- a stronger agency should have adequate resources to monitor and regulate the performance of certifiers, including the power to remove accreditation[923]
- the complaint handling procedures of a new agency should be reviewed, fine-tuned and streamlined.[924]

A number of submissions warned against creating further regulatory burden and the risk that a new agency may have the same issues as currently experienced by the BPB. Addressing this was seen as a key concern.[925]

Another concern for stakeholders was the impact of the recommendation on council resources. A submission from Great Lakes Council stated that councils have limited resources for conducting audits of building sites other than when making critical stage inspections in the role of PCA. There was also concern that councils may be required to conduct more building site audits under a partnership model.[926]

Other suggestions made in submissions included:

- insurance should cover remedial work to rectify defectively certified work[927]
- a tiered penalty system that attached greater penalties to the cost of the works would be more effective[928]
- increase the size of fines a council can issue.[929]

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919 Master Builders Association of NSW submission, July 2014.
920 BPB submission, July 2014.
921 Ibid.
922 Ibid.
923 Willoughby City Council submission, July 2014.
924 The Hills Shire Council submission, July 2014.
925 For example, see submissions from OSBC, Holroyd City Council, Marrickville Council and Environmental Health Australia, July 2014.
926 Great Lakes Council submission, July 2014. The submission refers to the Food Authority partnership model (discussed on p 217 of the Draft Report) which uses council inspectors to achieve greater capacity.
927 Blacktown City Council submission, July 2014.
928 Bankstown City Council submission, July 2014.
929 Bankstown City Council submission, July 2014.

The BPB also supported our draft recommendation. The BPB stated that a single agency is their preferred approach, and that a partnership model would make the roles of councils and certifiers clearer. The Board did however raise some issues that would need to be managed or addressed, if a single agency was created, including:

- risks and costs associated with the execution of a restructure
- potential disruption to existing programs and operations
- a single agency will not, on its own, solve current regulatory problems.[930]

The DPE also support the establishment of a single State building regulator. However, DPE do not consider it appropriate or efficient to separate the NCC from building regulation or building policy. The NCC is a component of the building control system. According to DPE the proposed model should include the role of DPE in building control.[931]

8.4.4 Our final recommendation

Since the release of our Draft Report, the BPB has begun implementing some of the recommendations of our Draft Report, and is addressing some of the issues raised in the Maltabarow Report and the Planning White Paper. Initiatives include:

- Forming a Practice Guide Reference Group which is developing a comprehensive practice guide for certifiers. This will have useful attachments such as checklists, and is designed to have statutory effect.
- Forming a Local Government Reference Group which is developing a cooperative framework for councils and private certifiers. This framework will define the roles, scope and responsibilities of each party in building developments, with a particular focus on enforcement procedures.
- Proposed expansion of its accreditation scheme to impose stronger checks and balances on more professions related to building and construction.
- Strengthening its investigative and disciplinary processes.
- Establishing an insurance committee that is working to develop a more sustainable and affordable model for professional indemnity insurance for certifiers.[932]

The Practice Guide Reference Group and Local Government Reference Group comprise individuals from a range of stakeholder groups, including councils and certifiers, and chaired by the BPB's President.

930 Building Professionals Board submission, July 2014.
931 Personal communications, emails from DPE, 13 & 14 October 2014.
932 Personal communication, email from BPB, 13 August 2014.

These initiatives, if successful, should address some of the concerns raised in submissions regarding our recommendation. For example, the BPB is working towards clearly defining roles for each party in a partnership model, and is developing an insurance model for certifiers. In addition, if our recommendation is adequately implemented and resourced, then issues of impact on council resources will also be addressed.

We acknowledge the risks surrounding structural change in creating a single Building Authority. However, these risks are offset by the benefits of better regulatory outcomes if our recommendation is implemented effectively. In light of strong support from all of the key stakeholders (and almost all of the submissions) we have maintained our draft recommendation.

However, we have amended our recommendation to include in the proposed Building Authority the building control and safety aspects of the planning system administered by DPE. We agree that it would be sensible to locate DPE's present functions in the new Authority, if adopted. We note that the DPE currently works closely with the BPB on building and certification issues.

On 12 September 2014, the NSW Government announced it has launched a review of building certification laws. This will include review of the *Building Professionals Act 2005*. The review will involve extensive community consultation and will also consider building reforms in the Planning White Paper, the Maltabarow Report, and IPART's recommendations in this report and our report into Licensing.[933] We consider that a cost benefit analysis of the creation of a Building Authority could be an appropriate part of this review process.

Recommendation

20 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, the building regulation expertise of the Department of Planning and Environment 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).

[933] Media Release, *NSW Government to Review Building Certification Laws,* 12 September 2014, available at: http://www.planning.nsw.gov.au/NewsCentre/LatestNews/TabId/775/ArtMID/1658/ArticleID/224/NSW-Government-to-Review-Building-Certification-Laws.aspx accessed on 16 October 2014.

Box 8.1 CIE's analysis of the impact 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: CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014, pp 61-67 (CIE Report).

8.5 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 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.[934] As noted above, under the proposed planning reforms the separate role of the PCA is anticipated to be abolished, and the role of the PCA would be undertaken by the appointed certifier or certifiers.[935] A certifier may be either a council certifier or a private certifier.[936] 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.

934 BPB, *What type of certifier do I need*, available at: http://bpb.nsw.gov.au/engage-certifier/what-type-certifier-do-i-need accessed on 16 October 2014.

935 Under proposals contained in the Planning White Paper, the term PCA will be dropped, and a single certifier will issue both the construction and occupation certificates: Planning White Paper, p 187.

936 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.

To address this, we recommended in our Draft Report increasing the visibility of certifier disciplinary records by linking the BPB's existing registers to enable a consumer to check a certifier's accreditation and whether they have had any disciplinary action taken against them. Currently, the BPB maintains two registers – a register of accredited certifiers and a register of disciplinary action taken against a certifier, including if a certifier has lost their accreditation. We recommended that initially a link could be made between the two registers, and in the longer term, a single register containing this information could be created. We note that since the Draft Report was released, the first part of our recommendation has been implemented.[937]

We also suggested in our Draft Report that the Fair Trading's Consumer building guide[938] be used 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.[939] The contract checklist provides for consumer acknowledgement that they have read and understood the Consumer building guide.[940] Including information on how to check a certifier's accreditation and disciplinary record in this document would help raise the visibility of certifier records and support our recommendation.

Together these measures would:

- 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 draft recommendation supported reforms outlined in the Planning White Paper to improve the auditing of certifiers and place greater reliance on a certifier's disciplinary record.[941] It would work in concert with 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 would serve as an incentive for certifiers to improve their conduct.

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937 See http://bpb.nsw.gov.au/engage-certifier/find-certifier.

938 Fair Trading, *Consumer building guide,* available at: http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Publications/Consumer_building_guide.pdf accessed on 10 July 2013.

939 *Home Building Act 1989* (NSW), section 7AA.

940 *Home Building Regulation 2004* (NSW), Schedule 3.

941 Planning White Paper, pp 201-202.

8.5.1 Stakeholder feedback

Stakeholder submissions to our Draft Report showed a high level of support for our recommendation.[942] The BPB has implemented the first part of our recommendation and their website allows for a user to search for a certifier in its register and then find disciplinary actions against that certifier via a link. The BPB indicated it will monitor users' response to this feature and consider upgrading this feature to a single register in future. The BPB also indicated that it is strengthening its disciplinary processes by appointing a judicial officer to review their investigative processes and chair the disciplinary committee.[943]

Other comments made in submissions included:

- certifiers should be primarily obligated to the owner of the development consent[944]
- the recommendation will help consumers make an informed decision when appointing a certifier[945]
- it will reduce misconduct and help protect consumers.[946]

There was some criticism of the recommendation in submissions, including:

- the proposal fails to recognise that a consumer has less opportunity to select a certifier when they employ a project builder[947]
- it may cause certifiers to be unfairly penalised when relatively minor breaches are recorded on the public register[948]
- registers of certifiers and the register of building licensees should be located under the one agency to provide easier access for consumers and reduce confusion.[949]

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942 For example, see submissions from Blacktown City Council, Central NSW Councils, Cessnock City Council, City of Canada Bay Council, City of Ryde Council, Coffs Harbour City Council, Eurobodalla Shire Council, Ku-ring-gai Council, Marrickville Council, Mosman Municipal Council, OSBC, Owners Corporation Network of Australia, Parramatta City Council, The Hills Shire Council, Warringah Council and Willoughby City Council, June/July 2014.

943 BPB submission, July 2014.

944 Tweed Shire Council submission, June 2014.

945 Wyong Shire Council submission, July 2014.

946 Shellharbour City Council submission, July 2014.

947 Albury City Council submission, July 2014.

948 For example, see submissions from Environmental Health Australia and Holroyd City Council, July 2014.

949 Master Builders Association submission, July 2014.

8.5.2 Our final recommendations

We consider that informing consumers of the registers through Fair Trading's Consumer building guide (or other appropriate material) should provide greater opportunity to consumers using project builders to select project builders using reputable certifiers. Consumers should also be informed of the registers through the BPB's new mandatory contracts between certifiers and clients (or other appropriate material), assuming the provisions instituting the new contracts are not repealed as recommended by the Maltabarow Report.[950]

Disciplinary action is not taken lightly and only after due process. The purpose of publicising disciplinary actions on the register is to have a deterrent effect. This deterrent effect will be more effective if publication is drawn more directly to the attention of consumers. A benefit of the proposed Building Authority would be the location of the registers (or register) in the same agency.

We have maintained our draft recommendation in relation to the registers. We have also recommended that consumers be informed of the registers in material provided to consumers by Fair Trading and the BPB.

Recommendation

21 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.

22 NSW Fair Trading, in its consumer building guide or other appropriate material, and the Building Professionals Board, in its mandatory contracts between certifiers and clients or other appropriate material, should refer consumers of building services to the Building Professionals Board's register of accredited certifiers and register of disciplinary action.

[950] See the discussion of this mandatory contract in sections 8.2.1 and 8.2.2. The BPB's mandatory contracts are available at: http://bpb.nsw.gov.au/engage-certifier/forms accessed on 20 October 2014.

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: CIE Report, pp 67-70.

8.6 Addressing regulatory creep

The NCC is an initiative of the Council of Australian Governments (COAG) developed to incorporate all on-site construction requirements into a single code. The NCC comprises the BCA and the Plumbing Code of Australia (PCA). Further information about the BCA is set out in the Box below.

Box 8.3 Building Code of Australia

The BCA is produced and maintained by the Australian Building Codes Board on behalf of the Australian Government and State and Territory Governments. The BCA has been given the status of building regulation by all States and Territories.

The goal of the BCA is to achieve nationally consistent, efficient, minimum standards of relevant safety (including structural safety and safety from fire), health, amenity and sustainability objectives.

This goal is applied so:

- there is a rigorously tested rationale for the regulation
- the regulation generates benefits to society greater than the costs (that is, net benefits)
- the competitive effects of the regulation have been considered and the regulation is no more restrictive than necessary in the public interest
- there is no regulatory or non-regulatory alternative that would generate higher net benefits.

Proposals to change the BCA are subjected, as applicable, to a Regulatory Impact Assessment process.

The BCA contains technical provisions for the design and construction of buildings and other structures, covering such matters as structure, fire resistance, access and egress, services and equipment, and energy efficiency as well as certain aspects of health and amenity.

Source: Australian Building Codes Board, The Building Code of Australia, available at: http://www.abcb.gov.au/about-the-national-construction-code/the-building-code-of-australia.aspx accessed on 15 September 2014.

We note that State and Territory governments retain the right to vary or add to the BCA.[951]

[951] ABCB, *NCC Awareness Resource Kit: Module One – An Introduction to the Building Code of Australia, Frequently Asked Questions*, available at: http://www.abcb.gov.au accessed on 16 September 2014.

Local government deviations from the BCA

The Productivity Commission[952] and various stakeholders[953] have noted that councils often impose additional requirements over and above the BCA. For example, changes have included design matters such as increased ceiling height requirements, reduction in external noise and improved disability access. According to research conducted by the Australian Building Codes Board (ABCB) "such interventions significantly impact on housing affordability".[954]

We understand that councils have prescribed conditions above the BCA through LEPs, DCPs and development consent conditions. The Box below summarises the relevant legislation and planning instruments.

Box 8.4 Legislation and planning instruments

Legislation

- *Environmental Planning and Assessment Act 1979.*
- *Environmental Planning and Assessment Regulation 2000*.

Environmental planning instruments

An environmental planning instrument is a statutory instrument and must be published on the NSW legislation website.

- **State Environmental Planning Policies** (SEPPs) are prepared by DPE on behalf of the Minister and made by the Governor.
- **Local Environmental Plans** (LEPs) are generally proposed by councils and made by the Minister for Planning.

Other

- **Development Control Plans** (DCPs) are made by councils. The provisions of a DCP are not statutory requirements. The Minister may direct a council to make, amend or revoke a DCP.
- **Development consent conditions** are imposed by councils. Councils have enforcement powers under the Act (eg, to issue penalty notices or take proceedings).

Source: *Environmental Planning and Assessment Act 1979* (NSW), sections 24, 37, 55, 74BA, 74C, 74F, 80A.

952 Productivity Commission, *Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator*, July 2012, p 266, available at: http://www.pc.gov.au/projects/study/regulation-benchmarking accessed on 14 October 2014 (Productivity Commission Performance Benchmarking Report).

953 DPE (formerly DoPI)/BPB joint submission, HIA submission, November 2012.

954 Productivity Commission Performance Benchmarking Report, p 266.

The following examples collected by the ABCB demonstrate instances of councils imposing conditions above the BCA (see Table below).

Table 8.2 Local Government Interventions List – NSW examples

Regulated area	Issues
Residential buildings and serviced apartments	Acoustic privacy, ceiling heights
Access Development Control Plan 2004	Adaptable housing for people with a disability
Child Care Centres Development Control Plan 2005	Increased amenity, fire safety
Development Control Plan No. 56 – Dwelling House Development	Ceiling heights, location and size of balconies, aircraft noise attenuation, energy efficiency and building design, water heaters, dual flush toilets, water saving devices, building materials and whole of life termite protection
Development Control Plan No.72 - Mixed Use Premises	Ceiling heights, solar design and energy efficiency, noise attenuation, access for people with disabilities, and rainwater tanks for gardens, car washing, toilet cisterns and washing machines
Development Control Plan No.35 – Residential Flat Buildings	Ceiling heights, room sizes, requirements for lifts, noise attenuation, number of exits, fire rating of exit doors, widths of corridors, orientation, and location of windows
Development Control Plan – Part C.7 Bushfire Protection	Sprinkler systems and other protective measures
Development Control Plan – Part C.1 – C.6 General Development Guidelines	Energy efficiency, hot water systems, rainwater tanks, access for people with disabilities and adaptable housing

Source: ABCB, *Impacts on Housing Affordability: Local Government Regulatory Measures that Exceed the Requirements of the Building Code of Australia Results of Preliminary Analysis,* 2008.

Gateway model

A number of States have placed limitations on councils' ability to impose requirements above those contained in the BCA. In Queensland and Western Australia, for example, variations that are inconsistent with the BCA or the State's development code have no effect.[955] 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, planning schemes that impose building conditions of a different standard than the BCA are required to seek Ministerial authorisation and approval through a gateway process.[956]

[955] Productivity Commission Performance Benchmarking Report, p 270.
[956] Ibid.

The gateway model is referred to in the Intergovernmental Agreement for the Australian Building Codes Board. Pursuant to that agreement, to strengthen reforms to building and plumbing regulation nationally, the respective governments of the Commonwealth, the States and the Territories commit to:

> …seeking commitments … from their local governments and other local government-like bodies where they have any administrative responsibility for regulating the building and plumbing industry, and as far as practicable implementing a 'gateway' model which prevents local governments and other local government-like bodies from setting prescriptive standards for buildings that override performance requirements in the NCC.[957]

The principles of the gateway model are set out in the Box below.

Box 8.5 Gateway model

The 'gateway' model, which reflects the gate-keeper role of the State and Territory Planning Ministers in needing to approve any amendments to local government planning ordinances, is based on the following principles:

- If a building matter is covered by the NCC, or is being addressed through the ABCB work program, state, territory or local government should not apply a higher or different standard through local planning ordinances.
- If a building matter is not already covered by the NCC and is not being addressed through the ABCB work program, a local or State jurisdiction would be permitted to address that issue. However, the proposed regulation should be subject to a COAG-consistent RIS that would be reported to the Building Ministers' Forum and the Office of Best Practice Regulation. State governments should also seek to ensure that where more than one planning ordinance is dealing with that issue in a single jurisdiction, it is consistently applied.
- Where a building matter has been accommodated in a planning ordinance, it will become redundant if it is eventually dealt with under the NCC, even if the measure is at a different standard.

Through this process, all of the documented benefits derived from a nationally consistent code or standard can be maintained, whilst allowing industry to set new benchmarks if it wants to exceed the minimum measures considered proportionate to the individual issue.

Source: ABCB, *Chairman's Submission to Senate Economics Reference Committee*, February 2014, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Affordable_housing_2013/Submissions accessed on 29 September 2014.

[957] ABCB, *An Agreement between the Governments of the Commonwealth of Australia, the States and the Territories to continue the existence and provide for the operation of the Australian Building Codes Board*, April 2012, p 2, available at: http://www.abcb.gov.au/ accessed on 16 October 2014.

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.[958]

We note that the ABCB's recently released 2014-15 ABCB Business Plan stated that:

> The next instalment of building regulatory reforms aims to:
>
> … limit the imposition of higher prescriptive standards for building design and construction than those agreed to nationally through the NCC by other authorities, such as local governments.[959]

Planning reforms

We note that the Planning White Paper includes reforms 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).[960]

State Environmental Planning Policy No 65

State Environmental Planning Policy 65- Design Quality of Residential Flat Development (SEPP 65) was amended in 2008 to require that a consent authority must not refuse a residential flat development application on any of the following grounds:

- if the proposed ceiling heights are equal to, or greater than, the minimum set out in Part 3 in the Residential Flat Design Code
- if the proposed area for each apartment is equal to, or greater than, the recommended internal and external areas in Part 3 the Residential Flat Design Code.[961]

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958 Productivity Commission Performance Benchmarking Report, p 271.

959 ABCB, *Annual Business Plan 2014-2015*, available at: http://www.abcb.gov.au/about-the-australian-building-codes-board/abcb-annual-business-plan accessed on 15 September 2014.

960 Planning White Paper, p 204.

961 DPE, *Amendment No. 2 to SEPP 65 – Design Quality of Residential Flat Development, Circular PS 08-004*, 14 July 2008.

This amendment was introduced with the intention of assisting with housing affordability. The Residential Flat Design Code is a guideline document which supports SEPP 65. It deals with elements such as the location, size and scale, appearance and amenity of residential flat development and provides directions about how to design appropriate controls as well as detailed building elements.[962] SEPP 65 states that in the event of any inconsistency between SEPP 65 and another environmental planning instrument, SEPP 65 prevails to the extent of the inconsistency.[963] Further changes to the policy are currently proposed.[964]

Whilst SEPP 65 doesn't prevent developments from going beyond the set minimum heights or area, it does prevent councils from refusing developments that comply with these minimum requirements. SEPP 65 should also prevent DCPs from imposing ceiling heights or area requirements that are more stringent than the SEPP's requirements.

8.6.2 Our draft recommendation

We recommended in our Draft Report that councils seeking to impose conditions above those stipulated in the BCA or a NSW specific technical code should be required to seek approval from an independent body. This would force 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 Planning White Paper's reforms[965] and our recommendations in Chapter 7. In Chapter 7, we recommended that DPE develop standard development consent conditions, to minimise costs to business and the community of inconsistent, onerous, or poorly drafted conditions.

Under our recommendation, councils would be limited in their ability to impose excessive, untested requirements which add red tape. However, they would still have the flexibility to request approval to impose limitations on construction where there is a legitimate justification or net benefit. We considered that imposing a gateway model would 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.

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962 DPE, *SEPP 65 & Residential Flat Design Code Review*, November 2011, p 1.

963 SEPP 65, Part 1 Clause 6.

964 See http://www.planning.nsw.gov.au/en-au/deliveringhomes/designqualityofresidentialflatbuildings.aspx accessed on 20 October 2014.

965 Planning White Paper, p 187.

In our view, a gateway model would also allow 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.

8.6.3 Stakeholder feedback

While the majority of submissions agreed with our recommendation[966], there were a significant number who did not.[967] Stakeholders who gave support or qualified support made the following comments:

- Businesses will benefit significantly.[968]
- The recommendation should apply only to those works associated with buildings and not to subdivision or public infrastructure works.[969]
- Certification would be greatly assisted if Councils refrained from imposing conditions inconsistent with the BCA.[970]

The key thrust of submissions that disagreed with the recommendation was that the ability to impose conditions of consent over and above the BCA should be retained for the purpose of local conditions, amenity and policy.[971] Comments included:

- Councils have a role in protecting their local amenity and this should not be compromised by commercial considerations. Other factors such as landslip, flooding and bushfires are examples where a council requires flexibility to impose increased construction standards to meet community expectations.[972]
- Councils should retain the ability to modify building standards in special circumstances such as bushfire, flooding, land instability and heritage conservation.[973]
- The benefits of a safer building and extending the life of a building are often not factored into a developer's considerations.[974]

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966 For example, submissions that agree include: Coffs Harbour City Council, Eurobodalla Shire Council, Great Lakes Council, Holroyd City Council and Marrickville Council, June/July 2014.

967 For example, submissions that disagree include: Blacktown City Council, Tumbarumba Shire Council, City of Ryde Council, Warringah Council, Parramatta City Council, and North Sydney Council, June/July 2014.

968 NSW Business Chamber submission, July 2014.

969 Camden Council submission, July 2014.

970 BPB submission, July 2014.

971 For example, see submissions from City of Canada Bay Council, Fairfield City Council, Willoughby City Council, Mosman Municipal Council, Blacktown City Council, City of Ryde Council, Warringah Council, Parramatta City Council, The Hills Shire Council, Penrith City Council, Ku-ring-gai Council, Tweed Shire Council and North Sydney Council, June/July 2014.

972 The Hills Shire Council submission, July 2014.

973 Ku-ring-gai Council submission, July 2014.

974 Fairfield City Council submission, July 2013.

However, in contrast to these views, a number of submissions indicated that councils should rarely need to require higher standards than those in the BCA:[975]

- Councils do not generally impose conditions which require works above and beyond the BCA where those works relate to the building "construction" requirements.[976]
- Where councils are of the view that the requirements of the BCA are inadequate the Australian Building Codes Board should be lobbied to investigate and report on the matter.[977]
- Councils should not be imposing conditions above that of the BCA because construction compliance is totally different to that of planning assessment consents.[978]

Other issues raised in submissions were the burden on councils of conducting cost benefit analysis, the appropriateness of cost benefit analysis and the potential for the 'gateway' to add red tape:

- The proposed use of a 'gateway' model would place a significant burden on Councils and significantly delay the assessment of development applications.[979]
- Applying a cost benefit analysis and submitting this to an independent body, such as IPART, will slow approval times, increase associated costs and add to red tape.[980]
- Imposing a cost benefit analysis test to justify varying the conditions implies that the only relevant threshold test is financial.[981]
- The requirement for a cost benefit analysis and approval by an independent body such as IPART, does not recognise the expertise available within local government.[982]

Fair Trading questioned why our recommendation was confined to deviations from the BCA, rather than the NCC.[983]

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975 Several submissions directly stated that councils should comply with, or have no need to deviate from, the BCA. For example, see submissions from Shoalhaven City Council, Marrickville Council, Bankstown City Council, Camden Council, Albury City Council, City of Sydney, Blacktown City Council, Coffs Harbour City Council, Environmental Health Australia and Holroyd City Council, June/July 2014.

976 Blacktown City Council submission, July 2014.

977 Coffs Harbour City Council submission, June 2014.

978 For example, see submissions from Environmental Health Australia and Holroyd City Council, July 2014.

979 Mosman Municipal Council submission, July 2014.

980 For example, see submissions from Ku-ring-gai Council and Tumbarumba Shire Council, July 2014.

981 North Sydney Council submission, July 2014.

982 The Hills Shire Council submission, July 2014.

983 Personal communication, email from Fair Trading, 3 October 2014.

8.6.4 Our final recommendation

We have amended our recommendation to refer to the NCC, rather than limit it to the BCA. This is consistent with the intention of the Intergovernmental Agreement for the ABCB discussed above.

We have considered stakeholder concerns relating to retaining councils' ability to impose conditions above the BCA to respond to local conditions, amenity and policy. We acknowledge that planning and building/construction are not always easily separable and can impinge on each other. However, in our view:

- the NCC already provides numerous variations and additions to the Code to respond to State and local conditions
- councils will still be able to impose conditions above the NCC that have net benefits through our proposed 'gateway' model.

For example:

- **Floods:** NCC standards relating to floods are triggered in areas designated as flood hazard areas. Flood hazard areas are mapped and determined by councils.[984]
- **Bushfires:** NCC standards relating to bushfires are subject to a variation in NSW. The NSW variation permits councils to determine bushfire related construction standards in development consent conditions in consultation with the NSW Rural Fire Service.[985]
- **Sustainability.** As noted previously, the NCC is subject to the State specific technical code BASIX in relation to sustainability measures (eg, energy and water efficiency). BASIX has been subject to cost benefit analysis under the Code and has been found to have net benefits.[986]

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[984] Areas are able to be designated as flood hazard areas by a local authority. For example see: MacLeman, G, *Building Service New South Wales - Building Code of Australia 2014*, Volume 2 - Housing Provisions, 5-190.F50, p 2-612.

[985] *Building Code of Australia 2014*, NSW variation to clause 3.7.4.0. See also: MacLeman, G, *Building Service New South Wales - Building Code of Australia 2014*, Volume 2 - Housing Provisions, Part 3.7.4, p 2-4101.

[986] DPE, *BASIX Target Review*, 2013, p 1, available at: http://www.basix.nsw.gov.au/basixcms/images/4050pdfs/BASIX-Target-Review-supporting-research.pdf accessed on 17 September 2014.

Heritage conservation is subject to NSW heritage legislation. Councils impose heritage conditions through their LEPs, DCPs and development consent conditions. We note, however, that heritage is not an example of conditions being imposed above the NCC. Rather, in the case of heritage buildings, it can be difficult to meet the requirements of the NCC.[987] This issue has recently been recognised at a national level. The Australian Building Codes Board is currently investigating the application of the NCC to heritage buildings and we understand the issue is to be addressed at the next Building Ministers Forum.[988]

We note that LEPs are required to be made by the Minister. In our view, as part of the Ministerial approval process the 'gateway' model should be applied. Any standards in LEPs which exceed the NCC or a NSW specific technical code and are not supported by cost benefit analysis demonstrating a net benefit should be removed by the Minister.[989]

It appears from Table 8.2 above that the majority of deviations from the BCA in NSW are imposed through DCPs. We noted in Chapter 7 that recent amendments have clarified that DCPs do not have statutory effect.

In our view, when councils wish to impose conditions above the NCC through DCPs or development consent conditions, those conditions should be subject to the 'gateway'. The condition should be justified under a cost benefit analysis and approval should be sought from an independent body (drawing on planning and construction expertise).

We note that cost benefit analysis is a broad tool for considering not just costs but more broadly economic, social and environmental impacts, which would encompass amenity, heritage and ecology issues. It includes both quantitative (eg, dollar value) and qualitative analysis.[990]

Some submissions raised concerns about potential delays to development approvals and cost burdens on councils in undertaking cost benefit analysis, as a result of the 'gateway' model. We acknowledge that there is a risk of this process adding costs for councils seeking variations above the NCC and proponents of developments. However, in our view, this risk can be mitigated by:

- Providing simple guidance for councils on how to prepare a cost benefit analysis for the 'gateway' model.
- Enabling councils to seek approval of conditions in their DCPs, which once approved, could be used in development consents (without having to seek approvals in relation to individual developments).

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987 For example see MacLeman, G, *Building Service New South Wales - Building Code of Australia 2014*, Volume 2 - Housing Provisions, 80-03, p 2-5691.

988 Personal communications, email from and telephone conversation with Australian Building Codes Board, 22 September 2014.

989 This could be part of the 'gateway determination' by the Minister under section 56 EP&A Act.

990 Better Regulation Office, *Guide to Better Regulation*, November 2009, pp 16-17, available at: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009, pdf accessed on 14 October 2014.

- Requiring the independent body to respond within a specified timeframe to 'gateway' applications.

Although the 'gateway' model represents an additional step for councils in seeking to include variations above the NCC, it will provide significant net savings for the NSW community generally. It is anticipated councils will only make applications under the gateway that have a sound basis.

In light of the above factors, on balance we have decided not to make any changes to our recommendation.

Recommendation

23 Councils seeking to impose conditions of consent above that of the National Construction Code must conduct a cost benefit analysis justifying the benefits of these additional requirements and seek approval from an independent body, such as IPART, under a 'gateway' model.

Box 8.6 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 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: CIE Report, pp 70-72.

8.7 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.[991] Having done so, the certifier (if private) is obliged to inform council of their actions.

[991] *Environmental Planning and Assessment Act 1979*, section 109L.

The proposed planning reforms were to 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.[992] 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. This was to be supported by changes to the planning regulations to make provisions in relation to council follow-up action and for this action to be notified to specified persons.[993] Similarly, the building certification review proposed certifiers take first-instance enforcement action.[994]

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.[995] 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.

In order for a certifier to issue an occupation certificate, they must be satisfied that:

- the building is suitable for occupation or use in accordance with its classification under the BCA[996]
- the development is not inconsistent with the development consent[997]
- any pre-conditions to the issue of an occupation certificate have been met.[998]

In our Draft Report, we recommended that the new regulations under the new planning legislation require that where councils have been notified of a breach of 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 decided to take no action then the certifier could proceed to issue the occupation certificate. The certifier could do so knowing that the council had considered the identified breach, and had used its statutory discretion not to act. However, if the council did not respond within the specified period, then the certifier could also proceed to issue the occupation certificate.

We considered that this would result in a smoother building certification process, with fewer avoidable delays, and reduce costs of construction.

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992 Planning Bill 2013, cl 8.24.
993 Ibid.
994 Maltabarow Report, p 46.
995 *Ryde City Council v Echt & Anor* [2000] NSWCA 108.
996 Environmental Planning & Assessment Act, section 109H.
997 *Environmental Planning & Assessment Regulation 2000* (NSW), clause 154.
998 *Environmental Planning & Assessment Act 1979* (NSW), section 109H(2).

We did 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, construction management or other non-safety related issues.

8.7.1 Stakeholder feedback

A significant number of stakeholders disagreed with our draft recommendation. Most objections related to allowing a certifier to issue an occupation certificate where the council has failed to respond to a notification of a builder's breach within a specified period of time.[999]

The BPB showed support for improving the current situation but indicated that the issue of builder's breaches is more complex than our recommendation suggests. The BPB's submission stated that the recommendation does not address problems arising from a lack of clarity for certifiers and councils around roles, the level of due diligence required and what matters should be addressed relating to builders breaches. The BPB made a suggestion that certifiers be required to notify councils of breaches when they occur, and that councils be given the right to require certifiers to investigate and report on breaches of consent conditions.[1000]

Both the BPB (as discussed in section 8.4.4 above) and DPE are currently assisting in defining roles by developing a cooperative framework for councils and private certifiers.[1001]

The submission from Fairfield City Council suggested an alternative approach to our draft recommendation:

- The current regulations do not clarify roles and responsibilities other than when a certifier is required to issue a notice. Private certifiers do not have regulatory powers to enforce notices and the system does not support the certifier or council in undertaking these roles other than provide confusion.
- The current regulatory system where the certifier and Council are both responsible for regulating the one development for construction work through to environmental and pollution issues is cumbersome and leads to duplication and in some cases inappropriate action or no action.

999 For example, see submissions from Willoughby City Council, Mosman Municipal Council, Blacktown City Council, Ku-ring-gai Council, Bega Valley Shire Council and City of Ryde Council, June/July 2014.

1000 BPB submission, July 2014.

1001 Personal communication, email from BPB, 13 August 2014.

- To resolve issues of inaction by Council where a Notice has been issued by a private certifier, the legislation could be changed to …[a]… process that only allows a certifier to issue a stop work notice requiring no new work to be undertaken until the development is brought back into conformity with the Construction Certificate (CC). This allows the certifier to assess if they can resolve the issue and bring the development back into conformity with the CC.
- The certifier should have a requirement to try and resolve the matter and be seen to have undertaken this step before handing the matter to Council for action.
- Where a breach has been reported by a certifier and a council has not acted in a timely manner, a certifier could be allowed to issue a stop work notice requiring no new work to be undertaken until the development is brought back into conformity with the Construction Certificate.[1002]

Other submissions raised issues relating to the lack of clarity of certifiers and councils roles and responsibilities in dealing with builders breaches. Concerns raised in relation to our draft recommendation include:

- it will create a fast track mechanism for signing off on unauthorised building works[1003]
- safety and amenity may be compromised if occupation certificates are issued where builders have breached construction standards or consent conditions[1004]
- certifiers may unfairly pass compliance problems onto councils[1005]
- councils incur costs relating to notices without related revenue streams[1006]
- difficulty in enforcing certifier's notices, as draft notices and information supplied by certifiers are generally inadequate and poorly worded[1007]
- certifiers should be responsible for following up or enforcing notices.[1008]

1002 Fairfield City Council submission, July 2014.
1003 The Hills Shire Council submission, July 2014.
1004 For example, see submissions from Bega Valley Shire Council, Hornsby Shire Council, Blacktown City Council and Central NSW Councils, June/July 2014.
1005 For example, see submissions from Shoalhaven City Council, The Hills Shire Council, Environmental Health Australia, Ku-ring-gai Council and Holroyd City Council, July 2014.
1006 For example, see submissions from the Building Professionals Board, Coffs Harbour City Council, Ku-ring-gai Council and Sutherland Shire Council, June/July/August 2014.
1007 For example, see submissions from Shellharbour City Council and Ku-ring-gai Council, July 2014.
1008 For example, see submissions from Penrith City Council, Cessnock City Council, Coffs Harbour City Council and Willoughby City Council, June/July 2014.

In relation to the issue of councils being unable to recover their costs, submissions made the following further points:

- It is already a problem for councils that they become mediators with a regulatory role but with no financial assistance.[1009]
- The costs councils incur as a result of undertaking compliance roles on behalf of private certifiers, should be subsidised by a compliance levy paid to councils at the time of lodgement of the approval documentation.[1010]
- The recommendation would allow certifiers to protect their commercial interests by passing on difficult or controversial projects to council to clean up.[1011]
- Councils do not have the resources to respond to all such breaches and may be unreasonably exposed if deemed concurrence means they assume liability for deficient work.[1012]

8.7.2 Our final recommendation

We have considered stakeholders' submissions, in particular concerns that our draft recommendation would result in 'fast track' approval of unauthorised works and unrecoverable costs for councils.

Our draft recommendation was only intended to enable the occupation certificate to proceed if a council fails to respond to a certifier's notice within a specified time and the breach relates to a planning issue. That is, the breach is unrelated to compliance with the NCC and to the fire and structural safety of the building.

Our draft recommendation was also directed at the situation where a council fails to respond at all. A notice in writing that the council is now investigating or has determined not to further investigate the matter would be sufficient. An investigation would not need to be completed within the specified period.

As noted above, recent changes to the EP&A Act prevent occupation certificates from being issued unless the development is 'not inconsistent' with the development consent. Certifiers can notify a council of a breach of consent conditions, but do not have enforcement powers. Ultimately, the council is responsible for determining whether enforcement action is warranted. If a council does not make a timely response this shouldn't prevent the occupation certificate from being issued. The specified period in which to respond should be a reasonable period that would enable council sufficient time to determine whether it will investigate further or not. The BPB's new cooperative enforcement approach should facilitate this process.

1009 For example, see submissions from Penrith City Council and Coffs Harbour City Council June/July 2014.
1010 Coffs Harbour City Council submission, June 2014.
1011 Shoalhaven City Council submission, July 2014.
1012 Blacktown City Council submission, July 2014.

In our view the recent amendment to the EP&A Act, clarifying that councils can recover enforcement costs relating to the conduct of an investigation leading up to the issuing of an order, goes a long way to addressing this problem.[1013] However, the amendment doesn't cover situations where councils investigate but, as a result of unclear or insufficient evidence, determine not to take any action.

As councils have powers to enforce development consents under the EP&A Act (rather than certifiers), in our view the efficient costs of undertaking this role should be considered in setting relevant fees (eg, development applications) and council rates.

The recent work of the BPB with the Practice Guide and Local Government Reference Groups discussed earlier should also assist in reducing costs to councils in investigating breaches and issuing orders. As part of this work, there is a need to train certifiers, and provide tools/guidance documents (eg, templates and checklists) to assist certifiers, in:

- basic evidence collection, sufficient to support a notice being issued by councils (eg, documenting the problem, including basic photos and retaining notes of conversations or emails relating to the breach)
- basic drafting skills, sufficient to clearly articulate in the draft notice issued by the certifier the breach and the rectification action required to bring the development back into conformity.

On balance, we have retained our recommendation but clarified that it is not intended to operate in relation to breaches of fire and structural safety conditions.

Recommendation

24 Certifiers should be required to inform councils 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:
   - if the breach relates to the National Construction Code (NCC), the council should be required to respond to the certifier in writing within a set period of time
   - if the breach is not related to the NCC, the council should be required to respond to the certifier in writing within a set period of time, and if they do not respond within the specified period, then the certifier can proceed to issue an occupation certificate.

1013 *Environmental Planning and Assessment Act 1979* (NSW), section 121CA.

Box 8.7 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: CIE Report, pp 72-73.

8.8 Clarifying roles and regulatory responsibilities

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 PCA[1014] 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 both the Planning White Paper and the building certification review, which proposed clarification of the roles and regulatory responsibilities of councils, certifiers, builders, owners and the BPB.[1015] Advice from DPE indicates that the anticipated 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.[1016] Further, the building certification review recommended an expert panel be established to clarify the responsibilities of councils and certifiers.[1017]

As discussed in section 8.4, the BPB has now established two reference groups; one to develop a practice guide for certifiers, which will better define their roles, and another to clarify enforcement and communication protocols between local government and certifiers to ensure development is properly enforced.

1014 As noted earlier this term will be abolished as a result of Planning White Paper reforms; however a single certifier will still be responsible for certification issues for a development.
1015 Planning White Paper, p 192. See also: Maltabarow Report, p 46.
1016 Personal Communication, meeting with DPE (formerly DoPI), 24 May 2013.
1017 Maltabarow Report, p 46.

Building on these proposals, we recommended in our Draft Report that, in addition to the sign currently outlining a PCA'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.

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 would also reduce staff time taken to redirect these issues.

While it is not expected that this recommendation would 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.

8.8.1 Stakeholder feedback

Most submissions agreed with our recommendation.[1018] For example, Tweed Shire Council stated that directing complainants to specific contacts will speed up complaint handling and reduce councils' involvement.[1019] Only Penrith City Council disagreed, on the basis that certifiers should have more responsibility for site issues than they currently have.[1020]

A number of submissions did however make suggestions regarding the implementation of signage:

- Signs will be more effective if roles and responsibilities of certifiers, builders and councils are clearer.[1021]
- Signage should highlight that the PCA is responsible for the site.[1022]
- It needs to be made clear that a certifier has a responsibility to investigate and action complaints in relation to their development sites.[1023]

1018 For example, see submissions from Eurobodalla Shire Council, Owners Corporation Network of Australia, OSBC, Environmental Health Australia, Holroyd City Council, City of Canada Bay Council and Marrickville Council, June/July 2014.
1019 Tweed Shire Council submission, June 2014.
1020 Penrith City Council submission, July 2014.
1021 For example, see submissions from Mosman Municipal Council, Blacktown City Council, City of Ryde Council and Ku-ring-gai Council, June/July 2014.
1022 Central NSW Councils submission, July 2014.
1023 Blacktown City Council submission, July 2014.

- Certifiers should also be required to provide standard information to adjoining property owners.[1024]
- To gauge effectiveness of this recommendation an audit of building sites should be undertaken to determine current levels of site signage compliance.[1025]
- Warringah Council and Penrith City Council volunteered to participate in a trial of the signage.[1026]

The BPB raised in its submission that complaints are better directed to different parties depending on the site issue. For example, a formal complaint to the BPB requires detailed information, including statutory declarations by complainants, to invoke the statutory powers of the Board. Complaints about building activity (such as run-off) are better directed to the council.[1027]

8.8.2 Our final recommendation

As discussed in section 8.4, the BPB is using reference groups to develop a comprehensive practice guide for certifiers and a cooperative framework for councils and private certifiers. The BPB has indicated that the reference groups will better define the role of certifiers and councils, and clarify enforcement and communication protocols between local government and certifiers to ensure development is properly enforced.[1028]

Given the high level of support for the recommendation, and the minimal cost of a trial, we have maintained our recommendation.

Recommendation

25 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.

1024 Willoughby City Council submission, July 2014.
1025 Great Lakes Council submission, July 2014.
1026 For example, see submissions from Warringah Council and Penrith City Council, July 2014.
1027 BPB submission, July 2014.
1028 BPB submission, July 2014. Personal communication, email from BPB, 13 August 2013.

Box 8.8 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: CIE Report, p 73.

8.9 Annual Fire Safety Statement requirements

Under clause 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. The owner must also provide a copy to NSW Fire and Rescue.[1029] The AFSS is a certificate that attests that each measure installed in the building or on the land or otherwise implemented 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.[1030]

The fire safety measures are applied to various building types,[1031] including multi-unit residential blocks, office buildings, shops, and commercial and industrial development blocks, but not to single, private dwellings.[1032]

8.9.1 Stakeholder concerns

Certain stakeholders have questioned the need for hard copy AFSS to be provided by building owners to councils and NSW Fire and Rescue.[1033] For example, Coolamon Shire Council has submitted that this is a duplication of record keeping.[1034]

1029 For the Commissioner of Fire and Rescue Service in accordance with the EP&A Regulation.
1030 Personal communication, email from DPE (formerly DoPI), 5 February 2013.
1031 This includes Class 1b-9 buildings (ie, buildings other than single dwellings and associated buildings such as sheds, garages and carports): Planning White Paper, pp 198-199.
1032 Ibid.
1033 For example, see submissions from Sutherland Shire Council, Coolamon Shire Council and Lismore City Council, October/November 2012.
1034 Coolamon Shire Council submission, October 2012.

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 safety measure has been installed and assessed properly. However, they have suggested that the annual reporting requirements to two government bodies are onerous and unnecessary.[1035] NSW is the only jurisdiction to require such regular reporting of statements.

8.9.2 Our draft recommendation

We made a draft recommendation that the NSW Government should enable building owners to submit the AFSS online to councils and the Commissioner of the Fire and Rescue Service.

DPE 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 DPE's view, an easing of this requirement (eg, by requiring stakeholders to keep their statements onsite for inspection if needed) could reduce compliance. Nonetheless, DPE has acknowledged that streamlining of the AFSS submission process to the relevant authorities would be worthwhile.[1036] This has been recognised in the Planning White Paper reforms.

The Planning White Paper proposed a range of reforms relating to building fire safety,[1037] including the electronic submission and management of fire safety statements for remote viewing by "authorised persons".[1038] 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.

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 6.3).

As the fire safety measures and AFSS requirements are stipulated in the EP&A Act, we consider that DPE 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.

1035 Ibid.
1036 Personal communication, email from DPE (formerly DoPI), 6 February 2013.
1037 Planning White Paper, pp 193, 198-200.
1038 Ibid, p 200.

8.9.3 Stakeholder feedback

Submissions to our Draft Report indicated substantial support for this recommendation.[1039] Wyong Shire Council states that:

> An online lodgement system for Annual Fire Safety Statements would greatly assist property owners in meeting their obligations in this area, and reduce a resourcing requirement for both Local Government and the Fire and Rescue Service.[1040]

Stakeholders identify implementation as a key issue. Some stakeholders note that similar notification systems operate in NSW for swimming pools and boarding houses,[1041] although Marrickville Council argues that insufficient resourcing has limited the success of Fair Trading's boarding houses register.

Blacktown City Council suggests that a new system should also provide for reminder notices to owners.[1042] A number of councils argue that councils should also have the ability to recover the costs of checking or registering an AFSS.[1043]

8.9.4 Our final recommendation

We have maintained this recommendation, noting the considerable stakeholder support for online submission of an AFSS.

We agree with stakeholders that the NSW Swimming Pools Register[1044] provides an example of online registration that may be relevant for DPE to consider in developing an online submission facility. DPE should also consider the experience of councils and OLG in implementing the associated swimming pools inspections program. This is discussed further in Chapter 9.

Recommendation

26 The NSW Government (eg, the Department of Planning and Environment) should enable building owners to submit Annual Fire Safety Statements online for access by councils and the Commissioner of the Fire and Rescue Service.

1039 For example, see submissions from Tumbarumba Shire Council, City of Sydney, City of Canada Bay Council, Willoughby City Council and Holroyd City Council, July 2014.

1040 Wyong Shire Council submission, July 2014.

1041 For example, see submissions from City of Ryde Council, Ku-ring-gai Council and Marrickville Council, June/July 2014.

1042 Blacktown City Council submission, July 2014.

1043 For example, see submissions from Camden Council, Fairfield City Council, Warringah Council, Newcastle City Council and Marrickville Council, June/July 2014.

1044 NSW Government, *Swimming Pool Register*, available at: http://www.swimmingpoolregister.nsw.gov.au/ accessed on 17 September 2014; *Swimming Pools Act 1992* (NSW), section 30A.

Box 8.9 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: CIE Report, pp 73-74.

9 Public health, safety and the environment

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 inspection 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 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 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.[1045]
- 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.[1046] 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.

The 'home jurisdiction' rule in NSW allows for a food safety inspection to be mutually recognised across council areas. This enables food safety inspections of these vendors to be conducted only by the 'home' council, rather than each council in which they operate, provided the vendor operates in its home jurisdiction. This also ensures that inspections of mobile food vendors can be kept to a minimum, and hence reduces costs.

1045 Low risk businesses are inspected in response to complaints and/or incidents. These businesses sell packaged foods such as potato chips, chocolate bars and packaged confectionery. See: Food Authority, *Summary report of NSW enforcement agencies' activities*, 2011 available at: http://www.foodauthority.nsw.gov.au/_Documents/local-government_pdf/summary_report_council_activities_2010_11.pdf, p 4 accessed on 22 March 2013.

1046 Food Authority, *Mobile Food Vending Guidelines*, available at: http://www.foodauthority.nsw.gov.au/_Documents/industry_pdf/Mobile_Food_Vending_Guidelines.pdf accessed on 18 December 2013 (Mobile Food Vending Guidelines).

The 'Scores on Doors' and the 'Name and Shame' System of food retail business performance

There are currently two systems, 'Name and Shame' and 'Scores on Doors', which provide information about 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.[1047]

The Food Authority notes 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.[1048]

The Food Authority has looked at ways to improve participation in 'Scores on Doors'. A Working Group made up of key participants and stakeholders was formed in June 2013 to consider the future development of the program.[1049] The Food Authority advises that this Working Group reported its findings in December 2013. These findings have led to an improvement in the program and an associated increase in the number of participating councils and businesses. The Food Authority advises that as at 3 October 2014, 47 NSW councils (around a third of all NSW councils) are either participating in or committed to participating in Scores on Doors.[1050]

9.1.2 Stakeholder concerns

Many stakeholders consider the Food Authority's Partnership Model with councils to be best practice (see Chapter 2). However, submissions have raised concerns about council regulation of food safety within this model and responded to our draft recommendations, as detailed below.

1047 Food Authority, *Scores on doors guidelines*, available at: http://www.foodauthority.nsw.gov.au/_Documents/industry_pdf/scores_on_doors_guidelines.pdf accessed on 22 March 2013.

1048 Food Authority submission, October 2012.

1049 Food Authority, *Scores on Doors Working Group*, available at: http://www.foodauthority.nsw.gov.au/news/news-14-Jun-13-scores-on-doors-working-group/ accessed on 19 December 2013.

1050 Personal communication, email from NSW Food Authority, 9 October 2014.

Regulatory overlap

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.[1051]

Stakeholders broadly support removal of this duplication.[1052]

Single register of notification for all food businesses

Some stakeholders argue there is need for a single food business notification register maintained by the Food Authority.[1053] 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.

Some submissions to our Draft Report also suggested that a single register should be supported by an appropriate framework for recording inspection reports and to enable reporting for council purposes.[1054]

Other stakeholders do not support having a single register, maintained by the Food Authority.[1055] The City of Sydney Council suggests that councils should maintain their own registers of food businesses and then share this information with the Food Authority as required.[1056]

Many submissions to our Draft Report also noted problems with the Food Authority's current "Food Notify" register, including that: it is not kept up to date; multiple registrations cannot be logged for a single business; and occasionally councils are not notified of changes to registration details.[1057]

1051 For example, see submissions from Holroyd City Council, Orange City Council and Newcastle City Council, November 2012.

1052 For example, see submissions from Albury City Council, Eurobodalla Shire Council, Bankstown City Council, Great Lakes Council, July 2014.

1053 For example, see submissions from Holroyd City Council, Sutherland Shire Council, Wentworth Shire Council and Lismore City Council, October/November 2012.

1054 For example, see submissions from Albury City Council, Eurobodalla Shire Council, Outdoor Recreation Industry Council NSW and Great Lakes Council, July 2014.

1055 For example, see submissions from City of Sydney and Tweed Shire Council, June/July 2014.

1056 City of Sydney Council submission, July 2014.

1057 For example, see submissions from Tweed Shire Council, Sutherland Shire Council and City of Ryde Council, June/July/August 2014.

The Food Authority has advised that it has considered several options for reducing the administrative burdens associated with food business notification and improving regulatory practice. It supports the development of a system of notification that allows food businesses to notify the appropriate enforcement agency once. It proposes to achieve this through recognition of existing council notification processes rather than maintaining a central register. The Food Authority has advised that it will consult with councils on implementation and will develop a protocol on data to be held by councils for all retail food businesses.[1058]

Exemption from notification for 'negligible risk' food businesses

Stakeholders responded to our draft recommendation that the Food Authority should review the notification system to determine whether negligible risk food businesses should be exempt from the requirement to notify. Mosman Municipal Council and Fairfield City Council questioned what a 'negligible risk' food business is and what process might be followed if such a business alters its stock to include higher risk items.[1059]

The Food Authority has advised that any change to the notification system that would exempt businesses based on risk category would involve extensive consultation and policy development, including amendments to primary legislation.[1060]

Frequency of inspections for complying food businesses

Some stakeholders argued 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.[1061] The NSW Business Chamber estimates the cost saving to businesses would be in the order of $4 million per year.[1062]

Inspection processes can be inconsistent.[1063] 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.

1058 Personal communication, email from NSW Food Authority, 9 October 2014.
1059 For example, see submissions from Mosman Municipal Council and Fairfield City Council, July 2014.
1060 Food Authority submission, July 2014.
1061 NSW Business Chamber submission to IPART's Regulation Review - Licence Rationale and Design Issues Paper, December 2012.
1062 Ibid.
1063 Local Government & Shires Association submission, October 2012.

Our draft recommendation provided that the Food Authority 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. Some stakeholders supported a risk-based inspections approach and the use of compliance incentives.[1064]

Other stakeholders were concerned that councils should retain flexibility to conduct inspections in response to compliance concerns. They argued that restricting the number of inspections may be detrimental to public health if councils were unable to inspect a business that has exceeded the maximum number of inspections.[1065] Some suggested that any maximum inspection frequency should relate only to "routine" inspections and not to follow-up, sampling or complaint inspections.[1066]

One council also noted that there are additional benefits from having regular contact between councils and food businesses, particularly given the high turnover of businesses and staff in the modern food industry. These benefits include relationship building and sharing information.[1067]

Standard inspections template

Councils also inspect premises using different criteria – ie, the Food Authority's standardised inspection checklist is used by some but not all councils.

The Food Authority has promoted its standardised Food Premises Assessment Report (FPAR) checklist for councils to conduct inspections of food businesses. It notes that the checklist is used by the majority of NSW councils and helps to ensure consistency across council areas.[1068]

Some stakeholders have criticised the checklist, arguing that:

- it should provide more space for council officers to make notes[1069]
- it limits a council officer's observation during the inspection.[1070]

1064 For example, see submissions from Food Authority, Blacktown City Council, City of Sydney and Fairfield City Council, July 2014.
1065 For example, see submissions from Environmental Health Australia and Holroyd City Council, July 2014.
1066 For example, see submissions from Warringah Council, Mosman Municipal Council and Penrith City Council, July 2014.
1067 Tweed Shire Council submission, June 2014.
1068 Food Authority submission, July 2014.
1069 Tumbarumba Shire Council submission, July 2014.
1070 Environmental Health Australia submission, July 2014.

Other councils argued that a standard inspection template needs to be comprehensive, user friendly and flexible to allow council officers to capture additional site-specific requirements.[1071]

The Food Authority has advised that it is forming a working group to further refine and improve the FPAR tool and encourage even more councils to use it.[1072]

Single, mandated system for reporting on food business compliance

Some stakeholders consider there is a need for a single, mandated system for reporting on food business compliance.[1073] There are two systems in place at the moment ('Name and Shame' and 'Scores on Doors'). Stakeholders noted that neither system is designed to assess food business compliance. Rather, they provide information about food business performance.[1074]

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.[1075] Warringah Council also supports the Scores on Doors program and argues that it should be adopted state-wide with the Food Authority's inspection template/report to drive consistency and transparency.[1076]

Great Lakes Council notes that Scores on Doors is ineffective because it is voluntary. Albury City Council, however, argues that Scores on Doors should remain voluntary because it is a subjective process that is open to interpretation. It also notes the challenges for smaller rural councils in implementing a reporting system where there may be limited inspection resources, close business communities and small numbers of food outlets.[1077]

Inspections of mobile food vendors

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.[1078]

1071 For example, see submissions from Cessnock City Council and Mosman Municipal Council, June/July 2014.
1072 Personal communication, email from NSW Food Authority, 9 October 2014.
1073 For example, see submissions from Restaurants and Catering Association, November 2012 and Warringah Council, July 2014.
1074 For example, see submissions from Great Lakes Council, Eurobodalla Shire Council, July 2014.
1075 Restaurant and Catering Association submission, November 2012.
1076 Warringah Council submission, July 2014.
1077 Albury City Council submission, July 2014.
1078 For example, see submissions from OSBC, NSW Business Chamber and Wollongong City Council, October/November 2012.

The 'home jurisdiction' rule, applying to mobile food vending vehicles under the Food Authority's mobile food vendor guidelines, enables mutual recognition of food safety inspections of mobile food vendors. This approach is supported by a number of stakeholders[1079], including the Office of the NSW Small Business Commissioner (OSBC), who argue that it will 'eliminate confusion, reduce administrative burden and create flexibility for these small business operators.'[1080]

Some stakeholders do not support the 'home jurisdiction' approach for operational inspections of mobile food vendors. They argue that while councils can approve or register a vehicle in the home jurisdiction, councils should retain the power to conduct operational inspections, regardless of the home jurisdiction.[1081]

Some stakeholders have also noted the practical problems presented by mobile food vendors that do not operate in their home jurisdiction. These vendors may be approved or registered in their home jurisdiction but an operational food safety inspection can only be undertaken in a jurisdiction where they are operational.[1082]

The NSW Farmers Market Pty Ltd argues that the Food Authority's mobile food vendor's guidelines should also include farmers and food producers who attend markets around the State. It considers that these food vendors should only have one annual inspection and be issued with a certificate of compliance.[1083] The City of Sydney Council notes the greater potential for non-compliance associated with temporary food stalls. It suggests that further research and alternative models should be explored for these food vendors.[1084]

9.1.3 The 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.[1085] In response to these concerns, since 2012 the Food Authority has been conducting a series of continuing internal reviews of its regulatory arrangements.

1079 For example, see submissions from Coffs Harbour City Council, Wyong Shire Council and Marrickville Council, June/ July 2014.

1080 OSBC submission, July 2014.

1081 For example, see submissions from Camden Council and Penrith City Council, July 2014.

1082 For example, see submissions from Fairfield City Council and Camden Council, July 2014.

1083 NSW Farmers Market Pty Ltd submission, June 2014.

1084 City of Sydney Council submission, July 2014.

1085 Productivity Commission, *Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator*, July 2012, available at: http://www.pc.gov.au/projects/study/regulation-benchmarking accessed on 14 October 2014 (Productivity Commission Performance Benchmarking Report).

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:

- Develop a system of notification that allows food businesses to notify once by recognising existing council notification processes. The Food Authority has advised that it will consult with councils on implementation and to develop a protocol on data to be held by councils for all retail food businesses.[1086]
- 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).[1087]
- 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.

9.1.4 Our final 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 enables food safety inspections of these vendors to be conducted only by the 'home' council, rather than each council in which they operate, provided the vendor operates in its home jurisdiction. This also ensures inspections of mobile food vendors can be kept to a minimum, and hence reduces costs.

We consider that stakeholder objection to this recommendation may be caused by:

- confusion about the separate purposes of mutual recognition of food safety registration and inspection under the Food Authority's mobile food vendor guidelines and our separate recommendation for mutual recognition of section 68 approvals granted to mobile food vendors (discussed in Chapter 5), and

1086 Personal communication, email from Food Authority, 9 October 2014.

1087 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: Productivity Commission Performance Benchmarking Report, p 330.

- the practical difficulties presented by mobile food vendors that do not operate in their home jurisdiction.

We note that the Food Authority's guidelines on mobile food vending vehicles address this scenario and provide that:[1088]

> If the vehicle does not trade in the local council area in which it is garaged then it can be inspected by another council in which it first trades.

The council conducting this inspection can charge an inspection fee.[1089]

The Food Authority's guidelines also provide that where a food vending vehicle has been inspected and the inspection report is satisfactory, a council officer should not conduct a further inspection unless there is a perceived risk to food safety and public health.[1090]

We have separately addressed stakeholder comments about section 68 approvals for mobile food vendors in Chapter 5.

Recommendation

27 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 taken into account by other councils when considering if inspection is warranted.

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: CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014, pp 83-87 (CIE Report).

1088 Mobile Food Vending Guidelines, section 2.5, p 8.
1089 Ibid.
1090 Ibid.

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.

As outlined above, some submissions to our Draft Report argued that inspection frequency should be determined only in relation to routine inspections, and not follow-up inspections or those conducted in response to a complaint. Most stakeholders support further guidance from the Food Authority on inspection frequency and on what constitutes a "strong record of compliance" for retail food businesses. However, many also argued that councils should retain the flexibility to conduct inspections as appropriate to respond to compliance concerns.

We agree with stakeholder comments and have amended this recommendation. We recommend the Food Authority, in consultation with councils, provide guidance on reducing the frequency of routine inspections by councils of retail businesses with a strong record of compliance. Further, this should be accompanied by guidance from the Food Authority to councils about what constitutes a 'strong record of compliance' for retail food businesses.

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

28 The NSW Food Authority, in consultation with councils, should provide guidance on reducing the frequency of routine 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: CIE Report, pp 83-87.

The Food Authority's internal review of its regulatory arrangements

We recommend the Food Authority complete its internal review and work with councils to implement reforms within 18 months of the review being completed. The Food Authority should consider relevant stakeholder submissions to our review.

The Food Authority's 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 system of notification for all food businesses – to allow food business notification to be provided once and to remove the need for businesses to notify (in some circumstances) both the Food Authority and councils. This could be achieved through recognition of existing council notification processes and supported by Food Authority guidelines on council data collection for retail food businesses.
- Consider whether negligible risk food businesses should be exempt from the requirement to notify.[1091]
- 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 report on the performance of food retailers in NSW. A standard inspections template should be developed and tested in collaboration with councils.

[1091] 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.

Recommendation

29 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 system of notification for all food businesses that avoids 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 a 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 system of notification for all food businesses

A single system of notification 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 system 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 Food Authority. The cost to notify 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 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: CIE Report, pp 85-87.

9.2 Private swimming pools

There are more than 300,000 backyard swimming pools in NSW.[1092] 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.[1093] These amendments are intended to enhance the safety of children under the age of five years around private ('backyard') swimming pools in NSW.

9.2.1 Recent legislative changes

The amendments to the Act and associated legislation imposed new requirements on councils and pool owners. The main changes were:

- the establishment of a NSW Swimming Pools Register[1094]
- the requirement for NSW pool owners to register their swimming pools by 29 October 2013[1095]
- the requirement for tourist and visitor accommodation or premises consisting of more than two dwellings with a swimming pool to be inspected at least once every three years[1096]
- the requirement for pool owners to obtain or have in place a compliance certificate, which is valid for 3 years, before sale or lease of their property, from 29 April 2015.[1097]

Pool owners' and councils' responsibilities under this new legislation are outlined below.

1092 Media Release, *Minister visits Penrith to discuss swimming pool safety changes*, October 2012, available at: http://www.stuartayres.com.au/media/media-releases/minister-visits-penrith-discuss-swimming-pool-safety-changes accessed on 26 August 2014.

1093 These amendments were made by the *Swimming Pools Amendment Act 2012* (NSW).

1094 NSW Government, *Swimming Pool Register*, available at: http://www.swimmingpoolregister.nsw.gov.au/ accessed on 18 December 2013. See also: *Swimming Pools Act 1992* (NSW), section 30A.

1095 *Swimming Pools Act 1992* (NSW), sections 30B(1) and (2).

1096 *Swimming Pools Act 1992* (NSW), section 22B(2).

1097 *Residential Tenancies Act 2010* (NSW), section 52; *Residential Tenancies Regulation 2010* (NSW), Schedule 1, cl. 40A (to commence on 29 April 2015); *Conveyancing (Sale of Land) Regulation 2010* (NSW), Schedule 1, cl. 16 (to commence on 29 April 2015).

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 2015.[1098]

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.[1099]

Councils

Councils are required to:

- Develop and implement a swimming pool barrier inspection program in consultation with their communities.[1100]
- Include in its annual report such information (if any) about inspections as required by the regulations.[1101] Inspect pools associated with tourist and visitor accommodation and multi-occupancy developments at three-year intervals.[1102]
- Inspect pools at the request of a pool owner of a single dwelling, prior to sale or lease.[1103]
- Issue compliance certificates for swimming pools that have been inspected and comply with the Act. Compliance certificates are valid for three years.[1104]

1098 *Residential Tenancies Act 2010* (NSW), section 52; *Residential Tenancies Regulation 2010* (NSW), Schedule 1, cl. 40A (to commence on 29 April 2015); *Conveyancing (Sale of Land) Regulation 2010* (NSW), Schedule 1, cl. 16 (to commence on 29 April 2015).
1099 *Swimming Pools Act 1992* (NSW), sections 22A and 22C.
1100 *Swimming Pools Act 1992* (NSW), section 22B(1).
1101 *Swimming Pools Act 1992* (NSW), section 22F(2).
1102 *Swimming Pools Act 1992* (NSW), sections 22B(2) and (4).
1103 *Swimming Pools Act 1992* (NSW), section 22C(3).
1104 *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 for pools which do not already have a valid compliance certificate in place[1105], 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 concerns

Several councils expressed concerns with the swimming pool inspection requirements imposed on them under the Act.[1106] For example, Shoalhaven City Council noted:

> Added responsibilities without adequate ability to raise sufficient revenues can place unreasonable impacts on existing resources (eg proposed new Swimming Pool Fencing legislation).[1107]

Similarly, Lismore City Council stated:

> 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?[1108]

In response to our Draft Report, Warringah Council noted:

> The limit on fees ($150 first inspection and $100 second inspection) relating to compliance certificates does not cover the true costs of Council in dealing with non-compliant pools. In the order of 95% of pools seeking compliance certificates fail their first inspection and the majority also require notices and directions. Cost recovery provisions are essential if this role is to be managed effectively by Councils.[1109]

1105 *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.

1106 For example, see submissions 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, October/November 2012.

1107 Shoalhaven City Council submission, October 2012.

1108 Lismore City Council submission, November 2012.

1109 Warringah Council submission, July 2014.

Other councils provided similar comments about high failure rates for swimming pools on first inspection and the need for follow up inspections, detailed advice and consultation with owners that involve unrecovered costs to councils.[1110] The high inspection failure rate has also been noted by OLG.[1111]

Some stakeholders advise that private certifiers either will not undertake swimming pool inspections or will undertake this service at far greater cost to a pool owner than the maximum fees prescribed for councils by the *Swimming Pools Regulation 2008*.[1112]

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.[1113]

Several stakeholders' submissions to the Draft Report were critical of the consultation and implementation processes for amendments to the Act and associated legislation. Specific stakeholder views are presented in the following Box.

1110 For example, see submissions from Albury City Council and Fairfield City Council, July 2014.

1111 OLG, *More time to get pools safe before selling or leasing*, available at: http://www.olg.nsw.gov.au/news/14-07-more-time-get-pools-safe-selling-or-leasing accessed on 14 October 2014.

1112 For example, see submissions from The Hills Shire Council and Albury City Council, July 2014.

1113 David Day, Wollongong City Council, *Public Roundtable for IPART's Review of Local Government Compliance and Enforcement* (Public Roundtable), Transcript, 4 December 2012, p 72.

Box 9.4 Stakeholder comments - consultation and implementation of Swimming Pools Act amendments

Ku-ring-gai Council

The State should be adopting procedures to ensure implementation of any new legislation is fully supported with the provision of model policy documents, sufficient technical training for field practitioners as well as administrative practitioners and true regard for resourcing and full cost recovery. The implementation of recent swimming pool barrier reforms by the lead state agency has been disappointing. Many Councils are now carrying a huge burden with little capacity for support.

Lismore City Council

The implementation of the amendments to the *Swimming Pools Act 1992* has been disastrous because of a failure to properly listen to the concerns expressed by NSW councils. That failure to listen and what appears a regular practice of NSW government agencies to implement regulatory changes and leave the implementation to local councils.

Warringah Council

A better consultation model…needs to be developed, for example the recent extension of the legislated date to obtain a compliance certificate (by one year) was not subject to consultation, and the industry was aware of the decision before most Councils. This change has pushed back expected peaks in application numbers and caused resourcing issues for Councils.

Owners Corporation Network of Australia

…this legislation was developed by Local Government without consulting the body charged with accrediting and regulating certifiers. The Building Professionals Board was simply presented with the problem and an impossible timeframe to deliver appropriately skilled people.

Marrickville Council

…Marrickville Council recommends early engagement with stakeholders. This engagement should also encompass appropriate fees which enable true cost recovery if local government is expected to provide services. The agency responsible for driving the change should source stakeholders (at the local government level) who are recognised as leaders in that area and not rely solely on peak industry bodies as representative of local government.

Source: Various submissions, July 2014.

Several councils support our draft recommendation for OLG to promote the use of shared services or 'flying squads' for swimming pool inspections to address spikes in demand[1114] and others asked for further detail.[1115] Bankstown City Council states:

> The use of shared services or 'flying squads' will assist those councils that may be under resourced and therefore unable to maintain the required level of inspections.[1116]

Sutherland Shire Council notes the costs associated with establishing these arrangements.[1117]

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.[1118] 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.[1119]

9.2.3 Our final recommendation

Any significant delegation of regulatory responsibility from State to local government should be accompanied by some assistance and guidance. OLG 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.[1120]

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 (ie, minimum of one inspection per year for all retail food premises). Where resources have been an issue, it has promoted resource sharing amongst councils (eg, the Riverina group of councils) and the use of private contractors.[1121]

1114 For example, see submissions from Bankstown City Council, Sutherland Shire Council, Albury City Council, July/ August 2014.
1115 For example, see submissions from Mosman Municipal Council and City of Ryde Council, June/July 2014.
1116 Bankstown City Council submission, July 2014.
1117 Sutherland Shire Council submission, August 2014.
1118 Anonymous submission, November 2012.
1119 Ibid.
1120 Corin Moffatt, OLG, *Public Roundtable for IPART's Review of Local Government Compliance and Enforcement* (Public Roundtable), Transcript, 4 December 2012, p 56.
1121 Food Authority submission, October 2012.

Our draft recommendation on swimming pool inspections included that OLG should:

- 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.

As noted by several stakeholders, OLG acted on these aspects of the draft recommendation and most councils have already implemented swimming pool inspection programs to comply with the Act.[1122]

We understand that OLG, Ageing, Disability and Home Care (ADHC) and Fair Trading conducted "Joint Swimming Pools and Boarding Houses Act Implementation" workshops for council staff in June 2013.[1123]

OLG has also prepared various guidance material on council regulatory responsibilities under the Act, including:

- a sample pool registration form[1124]
- a sample Action Plan for councils to prepare for commencement of provisions requiring pool owners to provide a valid compliance certificate when selling or leasing a property[1125]
- a Practice Note on applying exemptions under the Act to ensure that non-traditional pool constructions can be assessed for child safety and, if appropriate, certified as compliant.[1126]

OLG has advised that it is continuing to provide consultation and implementation support for the new swimming pool inspection requirements. For example, OLG advises that it has two external advisory groups that are informing the implementation of the swimming pool register and preparation for the sale and lease provisions outlined above. Stakeholders consulted include councils, industry and pool safety advocates.[1127]

1122 For example, see submissions from Ku-ring-gai Council, Tumbarumba Shire Council, Marrickville Council and Parramatta City Council, July 2014.

1123 OLG, *Council Circular: Implementation Workshops - Swimming Pools Amendment Act 2012 and Boarding Houses Act 2012*, 2 May 2014, available at: http://www.olg.nsw.gov.au/news/13-22-implementation-workshops-swimming-pools-amendment-act-2012-and-boarding-houses-act-2012 accessed on 14 October 2014.

1124 OLG, *NSW Swimming Pool Register – Registration Form*, available at: http://www.olg.nsw.gov.au/sites/default/files/Sample-pool-registration-form-for-councils.pdf accessed on 14 October 2014.

1125 OLG, *Council Circular: Preparing for sale and lease provisions for properties with swimming pools*, 13 December 2013, available at: http://www.olg.nsw.gov.au/news/13-53-preparing-sale-and-lease-provisions-properties-swimming-pools-commence-29-april-2014 accessed on 14 October 2014.

1126 OLG, *Practice Note 17 – Application of section 22 of the Swimming Pools Act 1992*, March 2014, available at: http://www.olg.nsw.gov.au/content/practice-note-no-17-application-section-22-swimming-pools-act-1992 accessed on 14 October 2014.

1127 Personal communication, email from OLG, 3 October 2014.

The OSBC suggests that OLG should also provide simple, standardised information for councils to use for businesses with swimming pools such as tourist and visitor accommodation providers.[1128]

As these aspects of our draft recommendation have been substantially implemented, we have not included them in our final recommendation.

Although some councils note that they have also implemented a pool inspection program as required by the Act,[1129] other councils support our recommendation for OLG to develop a 'model' risk-based inspections program.[1130] This suggests there is still a need for OLG guidance in this area and as such we have retained this aspect of our recommendation.

Several councils support our recommendation for use of shared services or 'flying squads' for swimming pool inspections. This is an area where OLG can provide councils with support to have arrangements in place in time for an anticipated increase in demand for inspections from 29 April 2015. At this time pool owners will be required to provide a valid swimming pool compliance certificate when selling or leasing a property with a pool.

We recommend that OLG should:

- develop a risk based 'model' inspections program for councils which would allow for councils to tailor the program to their own circumstances
- promote and assist councils to use 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.[1131]

In developing a risk based model inspections program, OLG 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).

1128 OSBC submission, July 2014.

1129 For example, see submissions from Blacktown City Council and Ku-ring-gai Council, July 2014.

1130 For example, City of Sydney submission, July 2014.

1131 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.

We note stakeholder comments about inadequate consultation and assistance provided by OLG to councils in implementing amendments to the Act. We also note OLG's advice that it is continuing to provide implementation support and has external advisory groups that are informing this implementation. In developing and rolling out the remaining aspects of our recommendation, OLG 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. They should also take account of lessons learned from implementation of amendments to the Act to date.

We also note councils' comments about fees prescribed for council inspection of swimming pools being inadequate to recover their costs in implementing the legislative changes. It appears that a high failure rate for swimming pool inspections, the level of inspection fees prescribed by the *Swimming Pools Regulation 2008*, and an inability for councils to charge fees for more than two inspections, are contributing to the under-recovery of councils' costs.

We therefore also recommend that OLG should:

- review the Act within five years from commencement of the amendments to determine whether the benefits of the legislative changes clearly outweigh the costs
- review councils' regulatory performance and inspection fees prescribed by the *Swimming Pools Regulation 2008*, including whether inspection fees recover councils' efficient costs
- undertake regular reviews of its guidance material for councils and pool owners to ensure this material is current, reflects best practice, and that it incorporates learning from implementation of amendments to the *Swimming Pools Act 1992* (NSW).

Recommendation

30 The Office of Local Government should:

- develop a 'model' risk-based inspections program to assist councils in developing their own programs under the *Swimming Pools Act 1992* (NSW)
- promote and assist councils to use 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) within five years from commencement of the amendments to determine whether the benefits of the legislative changes clearly outweigh the costs

- review councils' regulatory performance and inspection fees prescribed by the *Swimming Pools Regulation 2008* (NSW), including whether inspection fees recover councils' efficient costs
- undertake regular reviews of its guidance material for councils and pool owners to ensure this material is current, reflects best practice, and that it incorporates learning from implementation of amendments to the *Swimming Pools Act 1992* (NSW).

Box 9.5 CIE's analysis of this recommendation

CIE found that this recommendation would:

- produce a net benefit of $4.2 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 $1.15 million per annum.

Model inspection program

Without detail on what development of an inspections program entails, CIE was not able to estimate the impact.

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: CIE Report, pp 87-96.

9.3 Boarding houses

Boarding houses represent only a small proportion (3%) of the NSW accommodation market.[1132] However, they have recently been subject to legislative amendments, which have caused concern amongst some councils.

Under section 124 the *Local Government Act 1993* councils have the power to make certain orders for places of shared accommodation (including residential boarding houses). However, the legislative changes under the *Boarding Houses Act 2012* (NSW) require councils to conduct mandatory inspections.

[1132] Property Owners Association of NSW, *Boarding House*, available at: http://www.poansw.com.au/boardinghouse.php#nav2 accessed on 22 March 2013.

9.3.1 Recent legislative changes – the *Boarding Houses Act 2012* (NSW)

The object of the *Boarding House Act 2012* (the Act) is to establish an appropriate regulatory framework for the delivery of quality services to residents of registrable boarding houses, and for the promotion and protection of the wellbeing of such residents.[1133]

Registrable boarding houses include: [1134]

- general boarding houses – accommodating five or more people for fee or reward
- assisted boarding houses – accommodating two or more persons with "additional needs" which means people who need daily, ongoing care and support services as a result of an age related frailty, a mental illness or a disability.

Boarding House proprietors are required to register their registrable boarding house with 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.[1135]

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.[1136] They are able to charge a fee for these initial inspections.[1137] An initial compliance investigation is to determine whether the premises comply with planning, building and fire safety requirements and accommodation standards.[1138] Councils have long been responsible for regulating these matters with respect to boarding houses – the Act now specifies a timeframe for councils to inspect registrable boarding houses to ensure they comply.

Councils may also issue penalty notices for new offences relating to the registration of boarding houses.[1139]

1133 *Boarding Houses Act 2012* (NSW), section 3.
1134 *Boarding Houses Act 2012* (NSW), sections 5, 36 and 37. See also: ADHC, *Delivering Disability Services*, available at: http://www.adhc.nsw.gov.au/sp/delivering_disability_services/boarding_house_program/boarding_house_reform, accessed on 8 October 2014.
1135 *Boarding Houses Act 2012* (NSW), section 9.
1136 *Boarding Houses Act 2012* (NSW), section 16(2).
1137 *Boarding Houses Act 2012* (NSW), section 23.
1138 *Boarding Houses Act 2012* (NSW), section 16(3).
1139 *Boarding Houses Act 2012* (NSW), section 98(1).

Boarding House Implementation Committee

The Department of Family and Community Services, Ageing, Disability and Home Care (FACS) 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
- 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.[1140]

The Implementation Committee comprises senior representatives from the government agencies with a role under the Act (including the Office of Local Government (OLG)) as well as representatives of non-government organisations.[1141]

9.3.2 Stakeholder concerns

According to Randwick City Council and Homelessness NSW, councils do not have adequate resources to undertake the volume of inspections required under the Act.[1142] Boarding houses are largely located in urban areas. Therefore, the burden of inspections will fall mainly on inner city councils.[1143]

In response to the Draft Report, Parramatta City Council argued that guidance material should be developed for:

- tenants of boarding houses and the community to help the understand their rights and how they can make complaints or requests

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1140 ADHC, *Boarding Houses Act 2012 Implementation Committee – Terms of Reference* (provided by ADHC).
1141 Ibid.
1142 For example, see submissions from Homelessness NSW and Randwick City Council, November 2012.
1143 Homelessness NSW submission, November 2012.

- potential developers of boarding houses to help them understand the inspection program.[1144]

Several stakeholders noted the implementation activities and materials of FACS and comment that these should have been available earlier as part of the rollout of the new legislation.[1145] Albury City Council stated that:

> This would have saved significant resources for all Councils as well as provided a more consistent approach that would benefit industry and the community.[1146]

9.3.3 Our final recommendation

To minimise costs to councils and the broader community, councils need to undertake their regulatory responsibilities as efficiently as possible. We therefore made a draft recommendation that FACS, in consultation with OLG, provide support to councils by:

- Developing a 'model' risk based inspections programs, including an inspections checklist, which will support councils in developing their own inspections programs required to fulfil their obligations under the Act.
- 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.

The Act requires initial compliance inspections of boarding houses within 12 months of registration (ie, before 30 June 2014 for existing boarding houses).

As noted by several stakeholders, these draft recommendations have been substantially implemented by FACS. FACS developed a suite of guidance material for councils to support the implementation of the Act, including:

- a Guide for Councils on the *Boarding Houses Act 2012* (NSW)[1147]
- a fact sheet providing information for councils in developing a boarding house inspection program[1148]
- an inspections report template.[1149]

1144 Parramatta City Council submission, July 2014.

1145 For example, see submissions from Marrickville Council, Albury City Council and City of Sydney, July 2014.

1146 Albury City Council submission, July 2014.

1147 Fair Trading, *Guides for councils - boarding houses*, available at: http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/Tenants_and_home_owners/Guide_for_councils_boarding_houses.pdf accessed on 27 August 2014.

1148 Fair Trading, *Boarding house inspections*, available at: http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/Tenants_and_home_owners/Boarding_house_inspections.pdf accessed on 27 August 2014.

1149 Fair Trading, *Boarding Houses*, available at: http://www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Boarding_houses.page accessed on 27 August 2014.

FACS developed this guidance material covering all registrable boarding houses even though its continuing regulatory responsibilities are confined to the assisted boarding house sector under Part 4 of the Act. It is Fair Trading that has responsibility for administering most sections of the Act, including those sections related to council inspections of boarding houses.[1150]

OLG, FACS and Fair Trading conducted "Joint Swimming Pools and Boarding Houses Act Implementation" workshops for council staff in June 2013.[1151]

FACS has also advised that it is developing a 'kit' for operators of boarding houses that may be accommodating people with additional needs. When completed, this kit will be available on the FACS and Fair Trading websites.[1152]

As the agency responsible for administering the relevant sections of the Act, we recommend that Fair Trading undertake regular reviews of the boarding house guidance material for councils and boarding house operators to ensure this material is current, reflects best practice, and that it incorporates learnings from implementation of the *Boarding Houses Act 2012* (NSW).

Recommendation

31 NSW Fair Trading should undertake regular reviews of the boarding house guidance material for councils and boarding house operators to ensure this material is current, reflects best practice, and that it incorporates learnings from implementation of the *Boarding Houses Act 2012* (NSW).

Box 9.6 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: CIE Report, pp 96-101.

1150 Fair Trading, *About Us*, available at: http://www.fairtrading.nsw.gov.au/ftw/About_us/Legislation/List_of_legislation. page? accessed on 16 October 2014. Personal communication, email from FACS, 1 October 2014.

1151 OLG, *Council Circular: Implementation Workshops - Swimming Pools Amendment Act 2012 and Boarding Houses Act 2012*, 2 May 2014, available at: http://www.olg.nsw.gov.au/news/13-22-implementation-workshops-swimming-pools-amendment-act-2012-and-boarding-houses-act-2012 accessed on 14 October 2014.

1152 FACS submission, July 2014.

9.4 Waste Management Plans

The building and construction industry is a major contributor to waste, much of which is still deposited in landfill.[1153] 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 to assist councils in developing their own waste management policies. The document describes 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 seven page standard WMP template, which councils may adapt to their needs.[1154]

Most 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.

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 two to three page WMP templates, and
- one has a 19 page WMP form.[1155]

We did not find any examples of councils that had directly applied the model WMP template.

1153 EPA, *Model Waste Not DCP Chapter – A Site Waste Minimisation and Management Chapter for Consolidated Development Control Plans*, 2008, p 1, available at: http://www.epa.nsw.gov.au/warr/WasteNotDCP.htm accessed on 14 October 2014 (Model Waste Not DCP).

1154 Ibid, Appendix A.

1155 We examined WMP requirements from Blacktown City Council, Sutherland Shire Council, The Hills Shire Council, Parramatta City Council, Great Lakes Council, Wagga Wagga City Council and Warringah Council.

9.4.2 Stakeholder concerns

The 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.[1156]

The 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, the 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.[1157]

Our draft recommendation provided that DPE, 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 establish 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.

Several stakeholders support the development of standard waste management requirements for exempt and complying development, subject to consultation with councils and other stakeholders.[1158] Penrith City Council suggests that this should be accompanied by education of applicants to ensure they are aware of waste management requirements.[1159]

Blacktown City Council suggests that standard waste management requirements could apply for the demolition and construction phases of a development, but not to ongoing waste management. It argues that this component of waste management plans should be provided to councils with a DA to ensure they can accommodate proposed waste collection services.[1160]

1156 HIA submission, November 2012, p 8.
1157 For example, see submissions from HIA and NSW Business Chamber, October/November 2012.
1158 For example, see submissions from Willoughby City Council, Mosman Municipal Council, Ku-ring-gai Council, Fairfield City Council, City of Ryde Council, Tweed Shire Council and Environmental Health Australia, June/July 2014.
1159 Penrith City Council submission, July 2014.
1160 Blacktown City Council submission, July 2014.

Stakeholder views vary in relation to the need for separate WMPs for complying development. Some councils consider that separate WMPs for these developments are unnecessary.[1161] Other stakeholders consider that WMPs are site specific, addressing the individual waste concerns on their merits.[1162]

9.4.3 Our final recommendation

We support enhanced standardisation and consistency being introduced into WMP requirements.

To achieve this goal, the HIA suggests that a state-wide Waste Management Code or policy be introduced, which sets out compliance requirements.[1163] 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.

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.[1164]

Given the additional administrative costs incurred by builders and developers in having to submit WMPs for every complying development, 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.

1161 For example, see submissions from Sutherland Shire Council and Ku-ring-gai Council, July/ August 2014.

1162 For example, see submissions from Environmental Health Australia and Holroyd City Council, July 2014.

1163 HIA submission, November 2012.

1164 Model Waste Note DCP, p 3.

This is consistent with reforms outlined in the NSW Government's Planning White Paper, including a proposal for standard construction conditions across NSW that are proportionate to the impact of a development.[1165]

This approach has also been supported by the EPA. It considers there is an opportunity to develop standard waste management requirements in the NSW Housing and NSW Commercial and Industrial Code that ensure:[1166]

- the EPA and councils can meet their waste obligations
- developers properly address waste management throughout all stages of development.

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.

Recommendation

32 The Department of Planning and Environment, in consultation with the NSW Environment Protection Authority 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 complying developments.

1165 NSW Government, *A New Planning System for NSW - White Paper*, April 2013, p 187 available at: http://www.planning.nsw.gov.au/white_paper accessed on 14 October 2014 (Planning White Paper).

1166 Personal communication, email from EPA, 9 October 2014.

Box 9.7 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 three 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: CIE Report, pp 80-81.

10 Parking and road transport

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 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.[1167] 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.

[1167] Austroads, *2010 Road Safety on Local Government Roads: Final Report No AP-R359-10*, 2010, p 8.

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 Parking fines

Parking regulation is a highly visible responsibility of councils and receives a significant level of media attention.[1168] A stakeholder submission criticised councils for focusing on this area to raise revenue.[1169] In 2011/12, councils issued over 1.2 million penalty notices for parking across the State,[1170] with fines totalling $163 million.[1171]

Reviews of fines are handled by both councils and the State Debt Recovery Office (SDRO). Given the involvement of two agencies, and the number of fines issued each year, there is potential for significant unnecessary costs if regulatory arrangements are inefficient.

1168 Campion, V, *Parking fines lining the council coffers with gold,* The Daily Telegraph, 11 October 2012, available at: http://www.theaustralian.com.au/news/parking-fines-lining-the-council-coffers-with-gold/story-e6frg6n6-1226493171289 accessed on 4 March 2013.

1169 Banyard R submission, 29 October 2012.

1170 SDRO, *SDRO Review Guidelines,* November 2012, p 18.

1171 Sydney Morning Herald, *Ranger danger on way out as councils get creative on parking,* 18 October 2012, available at: http://www.smh.com.au/nsw/ranger-danger-on-way-out-as-councils-get-creative-on-parking-20121017-27rlx.html accessed on 4 March 2013.

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.[1172] 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 and North Sydney, have established parking appeals panels. These panels act as an alternative review mechanism for parking fines.[1173] 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.[1174]

1172 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).

1173 Parramatta's parking panel downgraded approximately 50% of parking fines to cautions in its first 6 months of operation. See: Media Release: *Six months on and Council's Adjudication Panel earns a fine review,* 2 June 2011.

1174 SDRO, *SDRO Review Guidelines,* November 2012, pp 3-7.

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.[1175]

10.1.2 Stakeholder concerns

NSW Ombudsman

In its submission to our review, the NSW Ombudsman provided its 2012 report *Managing Representations about Fines*.[1176] 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.[1177]

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 state-wide 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.[1178]

State Debt Recovery Office

SDRO has noted that council parking panels have resulted in significant delays of more than six 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.[1179]

1175 Personal communication, email from SDRO, 1 March 2013.
1176 NSW Ombudsman submission, November 2012.
1177 Ibid, p 2.
1178 Personal communication, telephone conversation with NSW Ombudsman, 1 February 2013.
1179 Personal communication, email from SDRO, 17 May 2013.

In an effort to limit these outcomes, SDRO advised that it has been progressively updating the service level agreements it has with councils and agencies across the State. Under the amended service level agreements, 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.[1180]

10.1.3 Our draft recommendation

In our Draft Report, we recommended the use of a single, consistent standard for the review of parking fines. In our view this 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 do not experience inconsistent outcomes depending on who they ask for a review.[1181]

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.[1182] 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).[1183] For these councils on the basic service package, we recommended they adopt SDRO's guidelines for their handling of fine appeals or requests for review. Doing so would promote consistency and fairness across the State.

1180 Ibid.
1181 NSW Ombudsman submission, November 2012.
1182 SDRO dealt with 1.44 million fines last year. Personal communication, email from SDRO, 1 March 2013.
1183 Ibid.

10.1.4 Stakeholder feedback

We received numerous submissions in support of our draft recommendation.[1184] These comments included:

- it will reduce duplication of effort[1185]
- there will be greater consistency of the appeals process[1186]
- the use of SDRO templates and guidelines will help guide councils in their reviews[1187]
- current duplication of the review process is a waste of council resources[1188]
- the recommendation removes perceived bias in the review process.[1189]

A small number of the submissions opposed the recommendation on the basis that councils' local knowledge, access to direct evidence (eg, photos or notes), and knowledge of local and temporary traffic conditions justify a dual review process.[1190] Fairfield City Council stated that any review process will be inconsistent because of unique representations and differing extenuating circumstances.[1191]

10.1.5 Our final recommendation

Overall, we received broad support from stakeholders for our recommendation. In our view, dual review processes are not justified, leading to unnecessary costs and inconsistencies. We have maintained our draft recommendation.

Recommendation

33 Councils should either:

- solely use the State Debt Recovery Office (SDRO) to handle parking fine requests for review or appeals to remove current confusion, duplication and reduce costs, or

1184 For example, see submissions from Tweed Shire Council, Cessnock City Council, Wyong Shire Council, Shellharbour City Council, Mosman Municipal Council, Ku-ring-gai Council, Sutherland Shire Council, OSBC and Environmental Health Australia, June/July/August 2014.
1185 Sutherland Shire Council submission, August 2014.
1186 For example, see submissions from Shellharbour City Council, Ku-ring-gai Council, Cessnock City Council, Albury City Council, Penrith City Council and Bankstown City Council, June/July 2014.
1187 Blacktown City Council submission, July 2014.
1188 Penrith City Council submission, July 2014.
1189 Shellharbour City Council, July 2014.
1190 For example, see submissions from Fairfield City Council, Blacktown City Council and City of Ryde Council, June/July 2014.
1191 Fairfield City Council submission, July 2014.

– adopt the SDRO's guide for handling representations where a council is using SDRO's basic service package and retain 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 City 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 three 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.

Source: CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014, pp 102-104 (CIE Report).

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.

The Office of Local Government (OLG) has published a guideline for councils for 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 model agreement for use by councils. This document, however, has not been updated since 1998.[1192]

[1192] OLG, *Free Parking Area Agreements Guidelines*, August 1998.

Discussions with stakeholders indicated that many councils either do not have a parking policy in place, or have modified OLG'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.

10.2.1 Our draft recommendation

We recommended that OLG 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, OLG'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 would 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, we recommended that OLG should consider instituting a periodic review process to allow for the ongoing incorporation of leading practices in this area.

10.2.2 Stakeholder feedback

Most submissions supported our draft recommendation.[1193] Comments in support included:

- there is an increase in demand for these agreements[1194]

[1193] For example, see submissions from Coffs Harbour City Council, Cessnock City Council, Willoughby City Council, Eurobodalla Shire Council, OSBC, Gosford City Council, Environmental Health Australia, Holroyd City Council, City of Canada Bay Council, Tumbarumba Shire Council, City of Ryde Council, Warringah Council and Parramatta City Council, June/July 2014.

[1194] Tweed Shire Council submission, June 2014.

- a revised document is well overdue[1195]
- the recommendation will help resolve Work, Health and Safety issues and minimise lengthy legal discussions on access rights and legislative duplication.[1196]

However, Bankstown City Council disagreed with our recommendation, stating:[1197]

> This is not an issue for the OLG. Instead this is a decision for Councils, based on stakeholder arrangements and local agreements.

10.2.3 Our final recommendation

We received a high level of support from stakeholders for our draft recommendation. A revised model agreement will reduce costs in this area by providing clarity and reducing delays in negotiating such agreements. We have maintained our recommendation subject to some small changes to encompass the matters discussed below.

We note that Roads and Maritime Services (RMS) also negotiates with councils with respect to parking facilities. The guidelines should therefore also consider appropriate provisions for agreements with State agencies.

We also note that forthcoming reforms to strata laws and the LG Act will include provisions to enable councils to provide enforcement services to strata buildings to prevent unauthorised use of parking spots by non-residents.[1198] This is apparently a growing problem for unit blocks near business centres or railway stations, and owners corporations can only deal with owners or tenants who park illegally.[1199] In reviewing the guidelines and model agreement, OLG should consider incorporation of this new parking enforcement role. This would have added benefits of:

- standardising the treatment of strata parking spaces
- assisting councils in the development of agreements with owners corporations.

1195 Ku-ring-gai Council submission, July 2014.
1196 Blacktown City Council submission, July 2014.
1197 Bankstown City Council submission, July 2014.
1198 Current reforms to strata laws are expected to be progressed from early 2015. See also: Fair Trading, *Reform of strata and community scheme laws,* available at: http://www.fairtrading.nsw.gov.au/ftw/About_us/Have_your_say/Review_of_strata_and_community_scheme_laws.page accessed on 13 October 2014.
1199 Thomson, J, *Unit block 'parking thieves' face $550* fines, January 2014 available at: http://news.domain.com.au/domain/real-estate-news/unit-block-parking-thieves-face-550-fines-20140117-30yrw.html accessed on 13 February 2014.

Recommendation

34 The Office of Local Government should review and, where necessary update, its free parking area agreement guidelines (including model agreements) for use in agreements with private companies, State agencies and owners corporations. 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 OLG. There would also be a small increase in cost to the NSW Government and councils.

Source: CIE Report, p 104.

10.3 Trailer and caravan parking

Background

An issue raised by the submission from North Sydney Council was the effect of long-term parking of boat trailers, caravans and advertising trailers in the council area. This has also been recognised as an issue by the NSW Government. Long-term parking of trailers, particularly boat trailers, is an ongoing source of frustration for many members of the community, and for councils who have stated they do not have appropriate powers to deal with this issue. The problem is greater in high density areas where on street parking is limited.[1200]

Legislation relating to on street parking is administered by either RMS or OLG, while implementation and compliance is generally the responsibility of local government, RMS and NSW Police. While there are a number of instruments that relate to trailer and, caravan parking; there is no specific legislation that applies explicitly to the long-term parking of trailers.

The sections below discuss the legislative background, findings of a working group convened by the NSW Government and stakeholder submission relating to this issue.

[1200] Transport for NSW, *Boat Trailer Working Group – Discussion report and options paper*, March 2013, p 3, available at: http://www.transport.nsw.gov.au/sites/default/files/b2b/publications/boat-trailer-working-group-report-0313.pdf accessed on 15 October 2014 (Boat Trailer Discussion Report).

Relevant legislation

Under the *Road Transport (Vehicle Registration) Act 1997* – it is an offence to use or park an unregistered registrable vehicle on a road or road related area. The definition of a registrable vehicle includes a trailer. Maximum penalties include fines up to $2,200 and seizure of the vehicle.[1201]

The *Road Rules 2008* (NSW) are made pursuant to the *Road Transport (Safety and Traffic Management) Act 1999*. The Road Rules are directed at regulating road safety. RMS considers that a legally parked, roadworthy trailer, with a load that complies with statutory dimension limits, poses no more of a safety issue than any other similar sized vehicle (such as a small truck).[1202]

There are a number of aspects of the Road Rules that are relevant to trailer parking. The Road Rules allow Councils to erect parking signs that prohibit the parking of vehicles for particular lengths of time, or for a period of time on a particular day(s).[1203]

These powers are generally used as a parking management tool to ensure turnover of parking spaces. They have sometimes been used by various Councils (including Woollahra and North Sydney) to target streets where boat trailers, caravans and the like are stored for extended periods of time, by forcing owners to regularly move their vehicles or risk being fined. These restrictions can be effective to move trailers out of a particular street. However, some councils advise that parking restrictions have proven ineffective for resolving the issue for a number of reasons.

Parking restrictions have to be signposted and while they are effective in moving trailers from the immediate vicinity of a notice, owners often simply relocate to a nearby area that is not subject to parking restriction and the problem recommences. To effectively resolve the issue, parking restrictions would need to be introduced across large parts of a local government area. This could be prohibitively expensive and unwelcome from an amenity perspective as well as causing inconvenience to residents and visitors.[1204]

1201 Ibid, pp 7-8.
1202 Boat Trailer Discussion Report, pp 8-9.
1203 *Road Rules 2008* (NSW), clauses 205 and 205(a).
1204 Boat Trailer Discussion Report, p 9.

The Road Rules prohibit all vehicles over 7.5 metres in length or over 4.5 tonnes in weight from parking in built up areas for over one hour.[1205] This rule is intended to restrict the parking of large vehicles in specific areas where they cause concern.[1206] North Sydney Council has argued for the NSW Government to amend this rule so that it restricts the timeframe boat trailers, trailers, advertising trailers and caravans are allowed to park.[1207] One problem with amending this section is that the parking restriction would then apply across the State and affect areas where trailer parking on the street is common practice, beneficial to the local economy or the only available option.[1208]

The *Road Transport (Safety and Traffic Management) Regulation 1999* allows councils to implement parking schemes that exempt local residents and their visitors from parking restrictions if they display a council issued permit.[1209] Councils can apply various permit schemes and various parking restrictions throughout their local government area. The permit schemes must however comply with guidelines issued by RMS. Recently released RMS guidelines have noted that councils should not issue parking permits for trailers or caravans. This means that local trailer owners cannot park these vehicles near their homes.[1210] We note that consideration could be given to amending the Permit Parking guidelines to allow trailer parking permits.[1211] However, councils have commented that this is not effective since trailer parkers simply move to a nearby street where the permit system does not apply.[1212]

The *Local Government Act 1993* allows councils to prohibit the parking of trailers by notice (signposting) in specific areas, such as council owned or administered land, parks and reserves, commons and other public places.[1213] Notices must not be used to regulate the use of a vehicle, including parking, on roads and roadside areas, which includes the road as well as footpaths, nature strips and shoulders.[1214] This is so that council issued notices do not encroach on the relevant roads legislation and confirms that RMS, rather than councils, has primary responsibility for the regulation of the road and roadside areas.[1215]

1205 *Road Rules 2008* (NSW), clause 200.
1206 Boat Trailer Discussion Report, pp 9-10.
1207 North Sydney Council submission, July 2014.
1208 Boat Trailer Discussion Report, p 10.
1209 *Road Transport (Safety and Traffic Management) Regulation 1999* (NSW), clause 124.
1210 Roads and Maritime Services, *Permit Parking,* version 3.0, November 2012, pp 10-11.
1211 Boat Trailer Discussion Report, p 10.
1212 Ibid.
1213 *Local Government Act 1993* (NSW), section 632.
1214 *Local Government Act 1993* (NSW), section 632(2A)(b).
1215 Boat Trailer Discussion Report, p 11.

The *Impounding Act 1993* allows a council officer to impound a vehicle if the officer believes, on reasonable grounds, the vehicle has been abandoned or left unattended.[1216] The legislation does not prevent councils from impounding registered vehicles however, most councils only use these powers in relation to unregistered vehicles. The legislation requires council officers to make reasonable efforts to contact the owner of and give them three days notice before impounding the vehicle. Councils have reported that notifying the owner mostly results in the vehicle being promptly moved.[1217]

The Impounding Act is effective for vehicles that have been 'abandoned' but is not clear regarding the definition of 'unattended'. A definition is given for an animal that has been left unattended, but not for vehicles.

10.3.2 Boat Trailer Working Group

Transport for NSW established a Boat Trailer Working Group to identify options for better management of boat trailer parking. The Working Group was chaired by the Office of Boat Safety and Maritime Affairs with representatives from Woollahra Municipal Council and City of Canada Bay Council as well as the Division of Local Government (now OLG).[1218] The working group released a report for comment in August 2013 that identified a number of options.

Legislative options

Councils contributing to the Boat Trailer Working Group suggested that a definition of unattended for vehicles (which includes boat trailers, caravans and signage trailers) should be considered. The definition could include the vehicle being left unmoved for a fixed period of time (such as three months).

In the working group's report OLG noted a number of potential issues with the proposal to be worked through during future policy development, including:

- It may extend to all parked vehicles, with ramifications for all vehicle owners, not just boat trailers.
- It would be a major policy change representing a significant extension of powers to councils.
- There is significant potential for overuse of the powers beyond their intention.
- Enforcement and compliance monitoring would be difficult meaning application of the legislation may be unclear and ambiguous – issues such as what constitutes 'being moved' and how an officer might determine whether a trailer had or had not 'moved', may be contentious.

1216 *Impounding Act 1993* (NSW), section 15.
1217 Boat Trailer Discussion Report, p 11.
1218 Transport for NSW, *Maritime Policy Agenda Progress Report*, August 2013, p 8.

- The proposed legislative change would allow a trailer owner to avoid the risk of impoundment by moving their trailer a small distance, but still remaining within the area, thus limiting the effectiveness of the change in addressing the problem.
- Extensive consultation would be required if such an amendment were to be considered, to determine the effects on other stakeholders (eg non-metropolitan councils, and other vehicle owners).[1219]

Non-legislative options

Options included in the working group's report included delegating powers to Councils to be able to deal directly with unregistered trailers and possible changes to the Impounding Act to enable Councils to act against trailers that are left unmoved on streets for months on end.

10.3.3 Sydney Harbour boat storage strategy

Transport for NSW, through the Office of Boat Safety and Maritime Affairs released the Sydney Harbour Boat Storage Strategy in August 2013. The Strategy indicates boat storage growth targets to allow government and industry to plan for the best mix of boating facilities to accommodate expected growth in the number of recreational vessels.[1220]

The strategy proposes providing assistance to councils for the establishment of off-street boat trailer parking sites. The strategy also discusses dry-stack boat storage facilities.[1221]

Other initiatives suggested by Transport for NSW in the strategy document are:

- planning reforms to encourage private sector investment in off-street boat storage
- part of a $20m boating safety and infrastructure program to be dedicated to providing off-street boat trailer storage.

10.3.4 Stakeholder concerns

North Sydney Council's submission to our Draft Report raised the issue of long-term parking as a serious and growing problem for the council. The council area has high demand for parking, particularly around public transport hubs, educational facilities and business precincts. Much of the available parking in the council area is on-street parking, and increasingly, this is being taken up by long-term parking of boat trailers, trailers, caravans and signage trailers.

1219 Boat Trailer Discussion Report, p 12.

1220 Transport for NSW, *Maritime Policy Agenda Progress Report*, August 2013, p 8.

1221 Transport for NSW, *Sydney Harbour Boat Storage Strategy*, August 2013, p 15, available at: http://www.transport.nsw.gov.au/sites/default/files/b2b/publications/sydney-harbour-boat-storage-strategy.pdf accessed on 15 October 2014.

The submission suggested two changes to legislation that would help address this issue:

- RMS could grant delegation to Councils under section 12 of the *Road Transport (Vehicle Registration) Act 1997* to issue penalty notices under section 18 of the Act which states that a person must not use an unregistered registrable vehicle on a road or on a road related area.
- That the NSW Government could amend the Road Rules so that it restricts the timeframe boat trailers, trailers, advertising trailers and caravans are allowed to park in areas identified in the "Schedule of Participating Councils". A "Schedule of Participating Councils" could be created within the relevant legislation that allows councils to decide if they will, or will not, be included in the schedule.[1222]

10.3.5 Our finding

We have considered North Sydney Council's submission and the current initiatives surrounding trailer parking and specifically boat trailer parking. Problems with long-term parking are a serious policy issue for this council and for other local government areas.

However, we have concluded that this is not a 'red tape' reduction issue. The question to be considered here is whether there is a legitimate need for further regulation and/or non-regulatory solutions, rather than whether there is currently unnecessary regulation. Therefore, we have not responded further to this issue in our report. We would also caution against the creation of unnecessary regulation in finding solutions to this legitimate problem in certain council areas.

10.4 Road access

10.4.1 The regulatory framework for road transport

Heavy vehicles

Vehicles can be loosely divided into two 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'. They include vehicles such as B-Doubles and Road Trains. RAVs face limitations on how they are able to access the road network.

[1222] North Sydney Council submission, July 2014.

The NSW road network

The network in NSW is divided into three broad categories explained in the Table below.

Table 10.1 NSW Road Hierarchy

Road Network	Responsibility	Description
State roads (including national road components)	NSW Government Australian Government	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.
Regional roads	NSW Government Local Government	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.
Local roads	Local Government	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.

Source: Transport for NSW, *NSW Freight and Ports Strategy*, November 2013, Table 3, p 178.

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.[1223] 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.

[1223] Austroads, *2010 Road Safety on Local Government Roads: Final Report No AP-R359-10*, 2010, Table 3.1, p 8.

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.

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 was to hand over responsibility for all aspects of heavy vehicle regulation other than licensing and registration to the new National Heavy Vehicle Regulator (NHVR) from February 2014 (see below).

National Heavy Vehicle Regulator (NHVR)

On 21 January 2013, the new NHVR was established (following a 2009 COAG agreement). The NHVR is responsible for administering the National Heavy Vehicle Accreditation Scheme and the Performance Based Standards, 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*,[1224] the NHVR was to take over coordination of road access requests from state road authorities, including RMS.[1225] NHVR officially took over this function from 10 February 2014.[1226] However, due to extensive processing delays by the NHVR, the NHVR has given RMS co-delegation powers to grant certain access permit applications for travel within state borders. These temporary arrangements are in place until agreement is made between State and Federal ministers to hand over all road access requests to the NHVR.[1227] This arrangement is to ease processing delays and is also in place in Victoria, South Australia and Queensland.[1228]

1224 *Heavy Vehicle National Law 2012* (Qld).

1225 Heavy Vehicle (Adoption of National Law) Bill 2013 (NSW). For more information, see also: NHVR, *National Heavy Vehicle Regulator*, available at: http://www.nhvr.gov.au accessed on 27 March 2013.

1226 NHVR, *One regulator, one rule book rolls out today*, 10 February 2014, available at: https://www.nhvr.gov.au/news/2014/02/10/one-regulator-one-rule-book-rolls-out-today accessed on 13 October 2014.

1227 Personal communication, telephone conversation with NHVR, 16 September 2014.

1228 National Heavy Vehicle Regulator, *NHVR and South Australia partner to ease permit delays,* 26 February 2014, available at: https://www.nhvr.gov.au/news/2014/02/26/nhvr-and-south-australia-partner-to-ease-permit-delays accessed on 3 March 2014.

10.4.2 Stakeholder concerns

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.[1229]

The Australian Trucking Association argued that the net effect of all councils and 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.[1230]

The Australian Logistics Council 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 vis' lines in or at dock entrances to alert pedestrians that heavy vehicles enter and exit the dock.[1231]

Central NSW Councils 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.[1232]

Road Engineering Capacity and Coordination of Access Decisions

Given the highly technical, yet infrequent nature of road access requests, the Australian Trucking Association 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.[1233]

1229 For example, see submissions from Australian Trucking Association and Australian Logistics Council, October 2012.
1230 Australian Trucking Association submission, October 2012, p 3.
1231 Australian Logistics Council submission, October 2012, p 2.
1232 Central NSW Councils submission, November 2012, p 2.
1233 The Australian Trucking Association submission indicates that this process can take over 6 months. Australian Trucking Association submission, October 2012, p 6.

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).[1234] 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).[1235]

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.[1236]

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.

1234 Ibid.

1235 Ibid.

1236 Anson, G and Giannakodakis, G, *Decision-makers' attitudes to assessing heavy vehicle access,* Paper presented at the 31st Australasian Transport Research Forum, 2008, p 7.

Previously, there has been little guidance available to councils about how to best consider these potential trade-offs and amenity issues. 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".[1237] 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.

State and National reforms

The introduction of a single national regulator has begun to address stakeholder concerns in this area. The NHVR intends to work closely with local government to address stakeholder concerns about council capacity for making access decisions. Current activities include:

- administering a national streamlined rulebook governing road access, fatigue management, mass dimensions and loading
- completing 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[1238]
- assisting councils in gazetting road access notices.

The NHVR has the following planned initiatives which have either been partially delivered or are in development:

- providing support and guidelines for councils making road engineering assessments, including the development of an online technical road assessment tool
- providing technical assistance to councils for specific assessments
- building a broader access management system, to identify gaps in the road access network which prevent single continuous journeys by RAVs.[1239]

1237 RMS, *NSW Route Assessment Guide for Restricted Access Vehicles*, 30 October 2012, pp 7-17, available at: http://www.rms.nsw.gov.au/documents/business-industry/heavy-vehicles/route-assessment-guidelines.pdf accessed on 15 October 2014.

1238 For links to guidebooks in these areas, see: NHVR, *National Heavy Vehicle Regulator*, available at: https://www.nhvr.gov.au/ accessed on 15 October 2014.

1239 For latest information on progress see: RMS, *National Heavy Vehicle Regulator*, available at: http://www.rms.nsw.gov.au/business-industry/heavy-vehicles/national-heavy-vehicle-regulator/local-councils.html accessed on 13 October 2014.

The NHVR is not processing permit applications for local government at this time. A meeting of State, Territory and Federal transport ministers in November 2014 will determine a plan for the further development of systems that will give the NHVR this capability.[1240] RMS will need to develop or change its systems to interface with any new NHVR system.[1241] Currently the NHVR has delegated to RMS the processing of permits for State controlled roads and councils are processing permits for local roads. RMS is concurrently tracking applications for interstate routes.[1242]

Both the Australian Trucking Association and the Australian Logistics Council 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 implemented this reform. Under the new National Heavy Vehicle Law councils are 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.[1243]

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.[1244] 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. The NSW Government, in its response to the ILGRP report, did not directly address road user charging.[1245]

1240 NHVR, *National Heavy Vehicle Regulator*, available at: https://www.nhvr.gov.au/news/2014/08/15/nhvr-improving-heavy-vehicle-safety-and-efficiency-three-ways-facilitate-innovate accessed on 3 September 2014. We note that the meeting is part of a regular schedule of meetings held by the Transport and Infrastructure Council, which operates under the COAG Council System and Best Practice Secretariat Operations. See: Transport Infrastructure Council, *Home*, available at: http://www.transportinfrastructurecouncil.gov.au/ accessed on 16 September 2014.

1241 Personal communication, telephone conversation with DPC, 3 September 2014.

1242 NHVR, *National Heavy Vehicle Regulator*, available at: https://www.nhvr.gov.au/road-access/access-management/transitional-arrangements-for-access-permit-applications accessed on 13 October 2014.

1243 *Heavy Vehicle National Law* (NSW), sections 156 and 641.

1244 ILGRP, *Revitalising Local Government*, October 2013, p 48, available at: http://www.localgovernmentreview.nsw.gov.au/accessed on 14 October 2014 (ILGRP Final Report).

1245 OLG, *Fit for the Future - NSW Government Response*, September 2014, available at: http://www.fitforthefuture.nsw.gov.au/ accessed on 14 October 2014 (Fit for the Future Response).

10.4.3 Our draft 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.[1246]

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 occurring. We note that the start date for full implementation of many of the NHVR's functions has already been delayed a number of times and the rollout is facing significant issues.[1247] 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. In our Draft Report, we believed there was 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.[1248]

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.[1249] 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.[1250]

1246 CIE Report, p 107.

1247 The Australian, *Truck fleets grounded in Labor permits chaos,* 25 February 2014, available at: http://www.theaustralian.com.au/national-affairs/truck-fleets-grounded-in-labor-permits-chaos/story-fn59niix-1226836459796# accessed on 3 March 2014.

1248 CIE Report, p 107.

1249 Ibid.

1250 The importance of working with councils to streamline access processes has been recognised by the NHVR. See: NHVR, *New South Wales to also provide permit processing assistance*, 21 February 2014 available at: https://www.nhvr.gov.au/news/2014/02/21/new-south-wales-to-also-provide-permit-processing-assistance accessed on 4 March 2014.

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.[1251]

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 recommended that the NSW Government fund 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 and the NHVR guidelines.

In our Draft Report, we suggested there were possibly two 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 with the NHVR. This would ensure that NSW councils are receiving timely advice and support on heavy vehicle access issues and that 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 service level agreement 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.[1252]

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 was aimed at speeding up the rate of implementation to ensure that NSW realises as much of the benefit of this reform as soon as possible.

1251 CIE Report, p 107.
1252 Ibid, pp 103-104.

10.4.4 Stakeholder feedback

We received strong support for our draft recommendation.[1253] Supporting submissions generally recognised that councils do not have the resources to regulate heavy vehicles on their own and need assistance in this area.[1254] Submissions also recognised the need for consistency between councils.[1255]

Other comments were made regarding the funding of roads that are capable of taking heavy vehicles, including:

- currently funds collected from high productivity vehicle access charges do not help cover the cost of road enhancements which creates a disincentive for councils to improve access[1256]
- there will need to be further allocation of funds to local government for increased road maintenance if access for heavy vehicles is increased.[1257]

The Australian Logistics Council indicated that there is a need for an interim unit to provide assistance to councils, as the NHVR has not yet met all of it objectives.[1258]

10.4.5 Our final recommendation

Despite the incremental progress of the NHVR to date, we conclude that there is still a significant risk that the take-up rate of reforms by NSW councils will be slower than optimal. For this reason we have retained our recommendation for an interim unit within NSW Government.

We note that the NHVR has now published guidelines for councils to use when assessing heavy vehicle access requests.[1259] We have revised our final recommendation to reflect this development. We consider that the interim unit should assist councils in implementing the NHVR's guidelines for assessing heavy vehicle access. This would help councils with timely participation in the reform process.

1253 For example, see submissions from City of Canada Bay Council, Environmental Health Australia, Eurobodalla Shire Council, Holroyd City Council, Ku-ring-gai Council and OSBC, July 2014.

1254 For example, see submissions from Albury City Council, Bankstown City Council, Shoalhaven City Council, Blacktown City Council, Marrickville Council and Penrith City Council, July 2014.

1255 Tweed Shire Council submission, June 2014.

1256 Bankstown City Council submission, July 2014.

1257 Tumbarumba Shire Council submission, July 2014.

1258 Australian Logistics Council submission, July 2014.

1259 NHVR, *Local government under the Heavy Vehicle National Law*, available at: https://www.nhvr.gov.au/resources/local-government-resources accessed on 15 October 2014.

In addition the interim unit would be well placed to assist councils with engineering assessments of infrastructure (such as roads, bridges and infrastructure that interfaces with state-owned infrastructure) in assessing heavy vehicle routes. This will help address capability deficiencies that councils currently have in this area.

Instead of working with individual councils, this unit could work with the proposed new Regional Roads Groups linked to the Joint Organisations proposed by the ILGRP (based on the Queensland model of Regional Roads and Transport Groups).[1260] According to the Panel, this model would provide a better platform for a strategic engagement between councils and RMS "on a broader network basis to prioritise freight productivity needs and initiatives".[1261] The NSW Government has recently supported the ILGRP's recommendation to adopt this model to improve strategic network planning and foster ongoing improvement of asset management through sharing expertise, as a priority for the proposed Joint Organisations.[1262]

Recommendation

35 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 engineering assessments of infrastructure, 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.

1260 ILGRP Final Report, p 51.
1261 ILGRP Final Report, p 52, Box 15.
1262 Fit for the Future Response, p 7.

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 (ie, 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 assessed 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: CIE Report, pp 105-107.

11 Companion animals 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 Current regulatory environment

11.1.1 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 City 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).[1263]
- 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.[1264]

[1263] Personal communication, telephone conversation with Dubbo City Council, 21 November 2012.

[1264] Newcastle City Council submission, November 2012.

- According to the Office of Local Government (OLG), councils are under no statutory obligation to accept or take care of pets after hours.[1265] However, at least one council has informed us that animal welfare organisations and police routinely (but wrongly) inform community members that councils are the responsible authority.[1266]
- 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.[1267]
- Difficulties for councils in enforcing fines and penalties against owners in breach of the *Companion Animals Act 1998* (NSW) (Companion Animals Act), due to insufficient identifying information in the companion animals register.[1268]
- Low registration rates, with approximately 50% of all pets in NSW unregistered.[1269] Only 62% of dogs and 44% of cats were fully registered in 2011.[1270] 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 and 2% of cats that entered pounds and animal welfare facilities were returned to their owners)[1271]
  - 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 OLG.

1265 Personal communication, email from OLG (formerly DLG), 8 January 2013. The Companion Animals Taskforce Final Report recommended that a Memorandum of Understanding template be developed for use by councils and NSW Police regarding enforcement of the *Companion Animals Act 1998* (NSW). The NSW Government has indicated that this recommendation will be progressed in 2014. It may help to resolve these issues.

1266 Personal communication, telephone conversation with Dubbo City Council, 21 November 2012.

1267 Newcastle City Council, *Complaints about dogs*, available at: http://www.newcastle.nsw.gov.au/services/pets_and_animals/complaints_about_dogs accessed on 4 September 2014.

1268 Wollongong City Council submission, November 2012, p 3.

1269 Although this still represents a 500% to 700% increase in the registration rates prior to the introduction of the Companion Animals Act.

1270 Companion Animals Taskforce Discussion Paper, p 17.

1271 Ibid, p 4.

Several stakeholders also noted issues with the current two-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.[1272]
- 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.[1273] We are aware of only one council – Sutherland Shire Council – that offers an online option for registration.[1274]

11.2 Other relevant reviews

OLG recently reviewed certain companion animal issues in NSW via the Companion Animals Taskforce. The Taskforce considered measures to lower companion animal euthanasia rates, improve breeding practices, improve the effectiveness of socially responsible pet ownership campaigns and improve the regulation of dangerous dogs.

Box 11.1 below outlines recent reforms resulting from the Taskforce review.

[1272] Personal communications, telephone conversation with Australian Veterinary Association, 8 January 2013; telephone conversation with Dubbo City Council, 21 November 2012.

[1273] Personal communication, telephone conversation with Australian Veterinary Association, 8 January 2013.

[1274] Sutherland Shire Council, *Registration*, available at: http://www.sutherlandshire.nsw.gov.au/My_Place/Animals/Registration accessed on 4 September 2014.

Box 11.1 Companion Animals Taskforce: Recent Reforms

- **May 2012 – August 2013** - The Taskforce released a Discussion Paper (May 2012) and a Final Report (Mar 2013). Received over 5,300 public submissions. The NSW Government released its response to the review, supporting most of the 38 recommendations in part or in full (Aug 2013).
- **October 2013** – The NSW Government passed the *Companion Animals Amendment Act 2013* (NSW) to implement a number of Taskforce recommendations, including:
  - Improving the regulation of dangerous dogs (eg, new classification categories, new public controls and seizure powers for councils and increased penalties).
  - Improving the ability of councils to enforce registration requirements (eg, improved administrative provisions for councils, increased penalties).
  - Annual benchmarking of registration fees to CPI (backdated to 2006) for animals not already registered. The current standard fee has therefore moved from $40 to $51.
  - Dedicated funding for 3 years to the school-based pet education program to preschool children and parents expecting a child.
  - A grants funding program for councils to assist them in delivering microchipping, registration and desexing programs. The programs will be targeted to problem areas.

The Taskforce considered a move to one-step registration of companion animals in its discussion paper, but recommended a return to annual registration in its Final Report. The NSW Government does not support annual registration of all cats and dogs. It has indicated that further consideration will be given to introducing annual fees for certain categories only (eg, dangerous dogs) to reflect the costs to the community of these animals.

Similarly, the Taskforce's Final Report noted strong community support for an online, self-service registration portal, as part of reforms aimed at improving the register's data accuracy. This reform has not been completed yet. OLG advises that the NSW Government has completed a comprehensive review as the first stage of redesigning the Companion Animals Register and registration system.

Sources:
NSW Companion Animals Taskforce*, Discussion Paper*, May 2012, available at: http://www.olg.nsw.gov.au/public/dogs-and-cats/companion-animal-taskforce accessed on 14 October 2014 (Companion Animals Taskforce Discussion Paper)

NSW Companion Animals Taskforce, *Report to the Minister for Local Government and the Minister for Primary Industries*, October 2012, available at: http://www.olg.nsw.gov.au/public/dogs-and-cats/companion-animal-taskforce accessed on 14 October 2014 (Companion Animals Taskforce Final Report); and various Press and Media Releases, available at http://www.olg.nsw.gov.au/public/dogs-and-cats/companion-animal-taskforce accessed on 14 October 2014.

Companion Animals Regulation 2008 (NSW), Schedule 1.

NSW Government, *Government Response to Companion Animals Taskforce Recommendations*, available at: http://www.olg.nsw.gov.au/sites/default/files/Government-response-to-Companion-Animals-Taskforce-recommendations.pdf accessed on 1 September 2014.

NSW Parliament, *Companion Animals Amendment Bill*, Second Reading Speech, 30 October 2013, available at http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/d9d50113b49c78afca257c0600140750/$FILE/ATTPVWI9.pdf/2R%20Companion%20Animals.pdf accessed on 28 November 2013.

Personal communication, email from OLG, 7 October 2014.

11.2.1 Current registration process

Currently, the microchipping and registration process is a two-step process:

1. Microchipping must happen before a puppy or kitten reaches 12 weeks of age, 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. New owners must take their pets to become registered at their local council. In most council areas, registration currently must happen in person during council hours. We are aware of only one council[1275] that currently offers online registration.

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 OLG
- OLG Guidance Notes do not allow for authorised identifiers to recoup a fee for doing so.[1276]

The old system of registration under the *Dog Act 1966* (NSW) (now repealed) 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).[1277]

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.[1278] 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.

1275 Sutherland Shire Council, *Registration*, available at: http://www.sutherlandshire.nsw.gov.au/My_Place/Animals/Registration accessed on 4 September 2014.

1276 OLG, *Guideline for Authorised Identifiers Guideline 2001/ID3*, October 2001, pp 9-10, available at: http://www.olg.nsw.gov.au/sites/default/files/guidelines-for-authorised-identifiers.pdf accessed on 14 October 2014.

1277 Companion Animals Taskforce Discussion Paper, p 15.

1278 Ibid, p 17.

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.[1279]

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 two-step registration process is a factor in not being able to return or rehome pets.[1280]

11.3 Optional one-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.[1281]

We made a draft recommendation that OLG allows for an optional one-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.

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 forms, or forwarding registration fees onto councils. In acting as registration agents, vets should receive fees reflecting the efficient costs of their registration task.

As noted in Box 11.1 above, the Taskforce's Final Report proposed a return to annual registration. The Taskforce argued that although this is a contentious recommendation, it is essential to improve register accuracy and to improve council capacity to fulfil their companion animal responsibilities.[1282]

1279 Ibid, p 4.
1280 Ibid, p 6.
1281 IPART, *Regulation Review – Licence Rationale and Design Draft Report*, October 2013 available at: http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design accessed on 16 October 2014.
1282 Companion Animals Taskforce Final Report, p 1.

In our Draft Report we did not agree with the Taskforce recommendation. 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 one-step registration process (particularly if combined with an online registration system, as discussed in the section below) will have preferable outcomes. These include increasing companion animal registration rates and increasing the overall pool of funding available for companion animal management.

A number of stakeholders responding to our Draft Report also opposed the return to annual registration proposed by the Taskforce.[1283] We note that the NSW Government's response to the Taskforce's Final Report indicates that it does not support annual registration of all cats and dogs.[1284]

11.3.1 Stakeholder feedback

Submissions expressed a range of views on our draft recommendation. Several stakeholders support an optional one-step registration process.[1285] Blacktown City Council states:

> A one step process would remove the ambiguity and duplication of data entry created by the current two-step process. It would also result in a greater proportion of animals being lifetime registered.[1286]

Some stakeholders noted that microchipping occurs when an animal is very young (up to 12 weeks) while desexing and registration usually occurs at six months of age. These stakeholders suggest that one-step registration at a young age may have unintended consequences.[1287] This may include fewer animals being desexed.

The City of Sydney Council argues that micro chipping and registration of all pets should occur at 12 weeks of age or at point of sale.[1288] Coffs Harbour City Council argues in favour of a two-step process because it spreads costs over a longer period of time and makes it easier for pet owners to afford.[1289]

1283 For example, see submissions from Penrith City Council, Shoalhaven City Council and Albury City Council, July 2014.

1284 NSW Government, *Government Response to Companion Animals Taskforce Recommendations*, available at: http://www.olg.nsw.gov.au/sites/default/files/Government-response-to-Companion-Animals-Taskforce-recommendations.pdf accessed on 1 September 2014.

1285 For example, see submissions from Blacktown City Council, Marrickville Council and Fairfield City Council, July 2014.

1286 Blacktown City Council submission, July 2014.

1287 For example, see submissions from Mosman Municipal Council, Coffs Harbour City Council and Marrickville Council, June/July 2014.

1288 City of Sydney submission, July 2014.

1289 Coffs Harbour City Council submission, June 2014.

Some stakeholders caution that allowing other organisations to act as registration agents could affect the integrity of information on the Companion Animals Register.[1290] Other stakeholders note that registration fees are used to fund companion animal management, not just the registration process. Therefore, if registration is performed by other agents, a mechanism is required to forward fees collected by an agent to the relevant council.[1291]

11.3.2 Our final recommendation

There is a risk an *obligatory* one-step process could have little impact on registration rates while lowering microchipping rates. We therefore consider an *optional* one-step process is preferable.

We have considered stakeholder responses to our Draft Report and have maintained the recommendation. Optional one-step registration will allow owners to choose the registration process that suits them.

We acknowledge that a mechanism will be needed to forward registration fees on to councils (less a fee for the registration agent's service) if registration and payment is not completed online. The feasibility of providing rebates for desexing after registration and microchipping, should also be looked into. This would be another way to ensure incentives for desexing are maintained regardless of whether a one-step or two-step registration process is used.

Recommendation

36 The Office of Local Government should allow for an optional one-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).

[1290] For example, see submissions from Environmental Health Australia, Camden Council and Shellharbour City Council, July 2014.

[1291] For example, see submissions from Ku-ring-gai Council, Tweed Shire Council, Warringah Council and Great Lakes Council, June/July 2014.

11.4 Online registration

There is currently no centralised system that allows for self-serviced online registration or updates to personal information (such as change 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.[1292]

We made a draft recommendation that OLG enables self-serviced online registration and updates to personal information. 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.

11.4.1 Stakeholder feedback

Submissions to our Draft Report indicated substantial support for our recommendation.[1293] Submissions also raised concerns about authentication of pet owner's identification with a self-service online register and argued that registration details should not be changed without verification.[1294] Other stakeholders support online self-services for registration and change of owner address or contact details. However, they do not support this for change of ownership[1295] or to modify records for animals under declaration as dangerous dogs.[1296]

Marrickville Council argues online registration should be restricted to animal welfare organisations and authorised users (as defined under the Companion Animals Act)[1297]. Coffs Harbour City Council notes that evidence of desexing is required for an owner to be eligible for a discounted registration fee. An online system needs to enable this evidence to be submitted.[1298]

11.4.2 Our final recommendation

We consider that there is scope to allow for online registration provided that there is no 'open access' to the Companion Animals central register. Data about animal owners should be kept private and not made publicly available.

1292 Personal communication, telephone conversation with Australian Veterinary Association, 8 January 2013.
1293 For example, see submissions from Holroyd City Council, Blacktown City Council, Ku-ring-gai Council, City of Canada Bay, Central NSW Councils and Tumbarumba Shire Council, July 2014.
1294 For example, see submissions from Environmental Health Australia and Camden Council, July 2014.
1295 Marrickville Council submission, July 2014.
1296 Warringah Council submission, July 2014.
1297 Marrickville Council submission, July 2014.
1298 Coffs Harbour City Council submission, June 2014.

In implementing this recommendation, OLG could consider enabling:

- a centralised, automated self-service portal with password encryption where animal owners could enter their details and this would be directly transferred into the centralised register, or
- an online portal or facility that allows animal owners to submit their details for subsequent incorporation by council officers into the existing centralised companion animals register.

The first option would require amendment to the Companion Animals Act. Currently, the Companion Animals 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).[1299]

The first option would also involve higher upfront costs in a re-designed IT system, but possibly lower administration costs to councils in processing registrations. It is possible that checking the accuracy of information which is directly entered into a central register may add to administration costs. Albury City Council considers that a central register is the most efficient system.[1300]

The second option would be more readily achievable and less expensive. This is evidenced by Sutherland Shire Council introducing an online companion animal registration and change of details system. Its system allows owners to scan and upload supporting documentation for registration.[1301] Whilst both options would reduce costs to the community as a result of not having to visit council chambers to register their pet, on balance we favour the second option.

In response to stakeholder concerns, we have maintained our recommendation with an amendment so it does not apply to declared dangerous, menacing or restricted dogs. This is because declared dogs are subject to control requirements. For example, for declared dangerous dogs this includes requirements to keep the dog in a prescribed enclosure and display warning signs on the property on which the dog is ordinarily kept.[1302] Owners of declared dogs must have their dog enclosures inspected by council and obtain a certificate of compliance in relation to the enclosure.[1303] Any change of owner's address for declared dogs therefore requires the additional scrutiny of an inspection by council.

1299 *Companion Animals Act 1998* (NSW), sections 89(2)(g) and 89(4).

1300 Albury City Council submission, July 2014.

1301 Sutherland Shire Council, *Registration*, available at: http://www.sutherlandshire.nsw.gov.au/My_Place/Animals/Registration/Online_Dog_and_Cat_Registration# accessed on 2 September 2014.

1302 *Companion Animals Act 1998* (NSW), sections 51 and 56.

1303 *Companion Animals Act 1998* (NSW) section 58H.

As noted in Box 11.1, our recommendation is consistent with the Companion Animals Taskforce's recommendation 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.[1304] The NSW Government supports this Taskforce recommendation and has completed a comprehensive review as the first stage of redesigning the Companion Animals Register and registration system.[1305]

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 6.3)

Recommendation

37 The Office of Local Government should allow for online companion animals registration (including provision to change owner address and contact details online for animals that are not under declaration).

Box 11.2 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: CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014, p 108-112 (CIE Report).

1304 Companion Animals Taskforce Final Report, pp 23-24.

1305 Personal communication, email from OLG, 7 October 2014. See: NSW Government, *Government Response to Companion Animals Taskforce Recommendations*, available at: http://www.olg.nsw.gov.au/sites/default/files/Government-response-to-Companion-Animals-Taskforce-recommendations.pdf accessed on 1 September 2014.

11.5 Preventative companion animals 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)[1306], and are also increasing for dogs (up 6% in the same period).[1307]

This issue has arisen due to a combination of factors, including:

- lax breeding practices by some breeders
- the ability of cats to breed very high numbers of offspring in a litter
- lower registration rates, particularly of cats, leading to less desexing to obtain the registration rebate for desexed animals
- the difficulty pounds have in rehoming cats, as dogs are the preferred adoption pets.[1308]

11.5.1 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.[1309]

Specific sections of the community or geographic areas within NSW can be a source of high companion animal compliance effort by councils.[1310] 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).

1306 Companion Animals Taskforce Discussion Paper, p 4.
1307 Ibid.
1308 Ibid.
1309 Personal communication, telephone conversation with Dubbo City Council, 21 November 2012.
1310 Companion Animals Taskforce Discussion Paper, pp 18, 28-29.

Box 11.3 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.

Source: Deloitte Australia, *Community Animal Welfare Scheme Programme 2010-11: Cost-benefit Case Study for Bathurst Regional Council – Final report*, 2011, as per OLG (formerly DLG), Companion Animals Taskforce Discussion Paper, p 19.

OLG 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.

OLG advises that it is currently undertaking a comprehensive review of communication strategies to encourage responsible pet ownership. It intends to implement a state-wide communication strategy to provide consistent messaging and communication approaches from councils and stakeholders.[1311] OLG is also encouraging a move away from the words 'Companion Animals' to describe policies in this area because it considers these words are poorly understood in the community. For instance, OLG now refers to its companion animals program and the Responsible Pet Ownership (RPO) program.[1312]

11.5.2 Our draft recommendation

We made a draft recommendation that OLG 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
- enhance community amenity and welfare by reducing the number of animals creating nuisances and/or public health issues.

1311 Personal communication, email from OLG, 7 October 2014.
1312 Ibid.

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[1313]
- development of community-wide and targeted socially responsible pet ownership education campaigns and materials.[1314]

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).[1315]

The NSW Government responded to the Taskforce recommendations by committing $900,000 over three years to the Responsible Pet Ownership Grants Program (2014/15 through to 2016/17).[1316] Under this program, individual councils may apply for up to $15,000 and a group of councils may submit a combined application for up to $50,000. OLG has published Guidelines which establish the requirements for applications.[1317]

11.5.3 Stakeholder feedback

Several submissions to our Draft Report support responsible pet ownership campaigns and targeted microchipping and desexeing programs, noting the programs or approaches adopted by different councils. For example:

- Sutherland Shire Council participates in National Desexing Network month of July[1318]
- Albury City Council previously developed a Companion Animal Management Plan with strategies to promote responsible pet ownership through public education and information[1319]
- Bankstown City Council has run free microchipping days as part of its education and compliance strategy[1320]

1313 Companion Animals Taskforce Final Report, pp 22-23 (Recommendation 13).
1314 Ibid, pp 13-14 (Recommendation 6); pp 25-28 (Recommendations 15-17).
1315 Companion Animals Taskforce Discussion Paper, pp 19-20.
1316 OLG, *Responsible Pet Ownership Grants Program*, available at: http://www.olg.nsw.gov.au/content/responsible-pet-ownership-grants-program-councils-deliver-targeted-microchipping accessed on 3 September 2014.
1317 OLG, *Responsible Pet Ownership Grants Program – Guidelines*, August 2014, available at: http://www.olg.nsw.gov.au/sites/default/files/Responsible%20Pet%20Ownership%20Grants%20Program%20-%20Guidelines.pdf accessed on 3 September 2014.
1318 Sutherland Shire Council submission, August 2014.
1319 Albury City Council submission, July 2014.
1320 Bankstown City Council submission, July 2014.

- City of Sydney Council offers: discounted desexing of cats for owners on a low income and concession card holders; animal registration promotion days; free dog training programs; and workshops/seminars on companion animal related topics.[1321]

11.5.4 Our final recommendation

We have made no change to this recommendation, noting stakeholder support and the NSW Government's recent commitment to the Responsible Pet Ownership Grants Program.

Recommendation

38 The Office of Local Government 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 11.4 CIE's analysis of IPART's recommendations

The NSW Government has historically supported responsible pet ownership programs including the Safe Pets Out There 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 Regional 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: CIE Report, pp 110-111.

11.6 Enforcement of companion animals fines and penalties

Stakeholders have indicated that a high volume of complaints are received by councils in regards to companion animals.[1322] This includes a high number of barking dog complaints.[1323] Hence, it is important that councils can actually enforce (ie, collect) fines and penalties, to provide a deterrent against nuisance animals.

1321 City of Sydney Council submission, July 2014.
1322 Personal communications, telephone conversation with Dubbo City Council, 21 November 2012; email from OLG (formerly DLG), 8 January 2013.
1323 Ibid.

11.6.1 Poor collection rates in companion animals 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.[1324]

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 six years.

Table 11.1 Trends in companion animal PIN collections by SDRO 2007-2012

Year	Total PINs Issued	PINs not paid[a]	Total PINs issued but not paid (as % of total issued)
2007	19,859	5,038	25.4%
2008	18,341	4,821	26.3%
2009	19,770	5,818	29.4%
2010	22,257	7,865	35.3%
2011	22,374	9,511	42.5%
2012	21,301	8,566	40.2%

a Raw numbers.

Note: Percentages are rounded to the nearest 1 decimal point.

Source: Data from SDRO, December 2012.

11.6.2 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.[1325]

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).

1324 Wollongong City Council submission, November 2012.
1325 Sutherland Shire Council submission, November 2012.

11.6.3 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[1326], as well as Sutherland Shire Council[1327], advised us that they have consistently asked that OLG 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 Maritime Services-issued photo identification card, for those who do not have a driver's licence).

11.6.4 Our draft recommendation

We recommended in our Draft Report that the companion animals registration form be amended to mandatorily capture an owner's date of birth and other unique identifiers. This was broadly supported by stakeholders.[1328] Albury City Council states:

> This will reduce the number of outstanding animal infringement notices and increase the ability of councils or the State Debt Recovery Office to identify and pursue enforcement procedures against offending animal owners.[1329]

Warringah Council suggests that the registration form should also capture a contact telephone number.[1330] Marrickville Council argues that a better approach would be to amend section 69G of the *Companion Animals Act 1998* (NSW) to require a person suspected of committing an offence under the Act to provide or display unique identifiers to an authorised officer.[1331]

OLG has advised that it is currently incorporating the need to collect additional identification for enforcement purposes within its redesign of the Companion Animals Register and registration system.[1332]

1326 Personal communication, telephone conversation with SDRO, December 2012.
1327 Sutherland Shire Council submission, November 2012.
1328 For example, see submissions from Great Lakes Council, Albury City Council, Warringah Council, City of Sydney Council and Fairfield City Council, July 2014.
1329 Albury City Council submission, July 2014.
1330 Warringah Council submission, July 2014.
1331 Marrickville Council submission, July 2014.
1332 Personal communication, email from OLG, 7 October 2014.

11.6.5 Our final recommendation

Amendment of the companion animals registration form is a simple administrative exercise that can improve rates of collection and enforcement of fines. In light of broad stakeholder support, we have maintained our recommendation.

Requiring persons suspected of committing an offence under the Act to provide identification to authorised officers may also improve fine collection and enforcement rates. This is consistent with section 204(2A) of the *Protection of the Environment Operations Act 1997* (NSW). We suggest that OLG also considers amending the Companion Animals Act to provide authorised officers with the power to require proof of name and address, consistent with the POEO Act.

Recommendation

39 The Office of Local Government 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.

Box 11.5 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: CIE Report, p 110.

11.6.6 Indexing companion animals fees to CPI

Registration fees are set by OLG and were increased on 1 January 2014 for the first time since 2006.[1333]

We made a draft recommendation that companion animal registration fees be indexed by CPI to maintain their value in real terms. The Companion Animals Taskforce made a similar recommendation which has been implemented through amendment of the *Companion Animals Regulation 2008* (NSW) (Companion Animals Regulation).[1334]

Stakeholder submissions to our Draft Report note this legislative amendment.[1335] Warringah Council suggests that fines under the *Companion Animals Act 1998* (NSW) should be similarly increased to act as a deterrent and to better cover regulatory costs.[1336]

Shellharbour City Council does not support increases to registration fees. It argues that fees should be capped or reduced to encourage registration of companion animals.[1337]

We support the recent amendment of the Companion Animals Regulation that enables companion animal registration fees to be adjusted for inflation. This is important as the revenue raised from these fees is used to fund local government's companion animal regulatory activities.

Recommendation

40 The Office of Local Government should amend the *Companion Animals Regulation 2008* (NSW) to enable fees to be periodically indexed by CPI.

1333 *Companion Animals Regulation 2008* (NSW), clause 17 and Schedule 1. Personal communication, email from OLG, 3 October 2014.
1334 Ibid. See also: Companion Animals Taskforce Final Report, p 21.
1335 For example, see submissions from Sutherland Shire Council and Blacktown City Council, July/ August 2014.
1336 Warringah Council submission, July 2014.
1337 Shellharbour City Council submission, July 2014.

12 Other areas

This chapter discusses a range of miscellaneous issues raised in submissions relating to the following areas:

- approvals for footway restaurants
- approvals for community events
- approval processing times
- landowner's consent for Crown land.

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 Approvals for footway restaurants

Councils may grant approval to allow persons to use part of the footway of a public road for the purposes of a restaurant (ie, cafes or restaurants with outdoor tables and chairs on a footpath).

This approval is granted under section 125 of the *Roads Act 1993* (NSW) (the Roads Act). An approval may be granted subject to any conditions determined by the council.[1338] The maximum approval time is currently prescribed as seven years under the Roads Act.[1339]

We understand that councils have been issuing approvals for 12-month,[1340] two-year[1341] and three-year periods.[1342] We consider that this practice is likely to impose additional (and unnecessary) costs on businesses.

1338 *Roads Acts 1993* (NSW), section 125(2).

1339 *Roads Act 1993* (NSW), section 125(4).

1340 Newcastle City Council, *Outdoor Dining Policy*, April 2011, p 6, available at: http://www.newcastle.nsw.gov.au/__data/assets/pdf_file/0004/148585/Policy_-_Outdoor_Dining_Policy_April_2011.pdf accessed on 4 September 2014.

1341 Tweed Shire Council issues 2 x 2 year leases. Tweed Shire Council submission, June 2014.

1342 Gosford City Council, *Guidelines for Business Use of Public Footpath*: *Policy A5.09*, p 6, available at: http://www.gosford.nsw.gov.au/ accessed on 4 September 2014.

One stakeholder considered that 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.[1343]

If restaurants invest in any structures (eg, bollards, marquees or platforms) then they must finance these with less certainty than they could under a longer term approval. 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 their surrounds and outdoor dining is increasingly popular.

12.1.1 Our final recommendation

In our Draft Report, we recommended that the Roads Act be amended to allow councils to offer longer term (eg, 10-year) approvals to footway restaurant businesses.[1344] We considered that councils should routinely issue longer term approvals unless there was a good reason not to. We anticipated the following benefits:

- greater certainty for businesses
- lower costs for businesses and councils due to reduced administrative costs associated with having to renew approvals every seven years or less.

Stakeholders generally supported our draft recommendation.[1345] The OSBC noted that the increase of approval terms from 7 to 10 years would give greater certainty and reduce administrative burden for businesses.[1346]

1343 Personal communication, telephone conversation with Sutherland Shire Council, 4 March 2013. See also, submissions from Sutherland Shire Council and Hurstville City Council, October/November 2012.

1344 We note that in our Draft Report, we referred to "leases". Where appropriate, we have revised to refer to "approvals" to be consistent with section 125 of the *Roads Act 1993* (NSW).

1345 For example, see submissions from Eurobodalla Shire Council, Environmental Health Australia, Blacktown City Council, Ku-ring-gai Council, Holroyd City Council, Central NSW Councils, Parramatta City Council, The Hills Shire Council, Penrith City Council, July 2014.

1346 OSBC submission, July 2014.

A number of councils raised concerns that 10 year approvals should not be mandatory and that councils should retain the ability to exercise discretion.[1347] Our recommendation does not place any limitations on the ability of councils to determine appropriate approval periods and conditions. Councils are not prevented from imposing shorter approval terms.

In our Draft Report, we noted that the NSW Government could also consider setting a minimum approval term for footway restaurants. On balance, we consider it best not to set a minimum term. If a council has a good reason to provide a shorter term approval, setting a minimum may result in the approval being refused if a shorter period is not available.

Some stakeholders commented that our recommendation would not materially affect them.[1348] Tweed Shire Council noted that only a small percentage of restaurant operators conduct business for a period greater than seven years.[1349]

We maintain our view that businesses will benefit from the ability to secure longer term approvals of footways for restaurants. A longer term approval (eg, 10 years) will help businesses to secure finance and invest adequately in the project. This will have benefits to small businesses that commonly operate such restaurants. Councils should move, where possible, towards issuing longer term approvals to increase business security and minimise administrative costs.

In addition, we understand that a common issue with footway restaurant approvals is ensuring that any structures built allow access to utility service providers.[1350] This should be a strict condition of any longer term approval. Councils should ensure that approval conditions include adequate access provisions for utility services.[1351]

Recommendation

41 The NSW Government should amend section 125 of the *Roads Act 1993* (NSW) to extend the approval term for footway restaurants to 10 years and councils should ensure that approval conditions enable adequate access by utility providers.

1347 For example, see submissions from Shoalhaven City Council, Shellharbour City Council, Willoughby City Council, Mosman Municipal Council, City of Canada Bay Council, Warringah Council, Bankstown City Council, Albury City Council and Fairfield City Council, June/July 2014.

1348 For example, see submissions from Wyong Shire Council, Tweed Shire Council, Coffs Harbour City Council, City of Ryde Council, June/July 2014.

1349 Tweed Shire Council submission, June 2014.

1350 Personal communication, telephone conversation with Sutherland Shire Council, 4 March 2013.

1351 *Roads Act 1993* (NSW), section 125(2).

Box 12.1 CIE's analysis of this recommendation

CIE found that this recommendation would:

- produce a net benefit of $20,000 per year (ie, 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 approvals for footway restaurants this recommendation could have a greater impact producing larger net benefits and further reduce red tape.

Source: CIE, *Local Government Compliance and Enforcement - Quantifying the impacts of IPART's recommendations*, October 2014, pp 113-115 (CIE Report).

12.2 Approvals for community events

Stakeholders have raised concerns about what they consider to be an overly onerous approvals process for holding community events.[1352] Approvals relating to community events represent a challenge under the existing planning and local government legislation, as they 'trigger' the requirement for multiple approvals.

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) (LG Act), *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.[1353]

Wollongong City Council argued that this process was too onerous for most community groups, leading to a lower number of community events being held.[1354] This can result in reduced community "social fabric". Marrickville Council echoed similar concerns and noted that the delay caused by multiple approvals was a key concern of community groups.[1355]

1352 Wollongong City Council submission, November 2012; Personal communication, telephone conversation with Marrickville Council, April 2013.
1353 Wollongong City Council submission, November 2012.
1354 Ibid.
1355 Personal communication, telephone conversation with Marrickville Council, April 2013.

An individual stakeholder raised similar concerns about the time wasted in having to lodge a development application (DA) every year for a recurrent annual event that has been running for 34 years.[1356] The DA process includes the need to submit a Transport Management Plan, which is time-consuming and repetitive to prepare.[1357] The stakeholder suggested that councils ask for DAs only every five 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.

We consider that 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.

12.2.1 Our final recommendation

In our Draft Report, we recommended that councils issue longer-term DAs for periods of three to five years for recurrent local community events.

Stakeholders generally supported our recommendation.[1358] The OSBC commented that longer-term DAs would give greater certainty and reduce administrative burden for organisations hosting events.[1359] The NSW Business Chamber noted that issuing longer-term DAs for recurrent community events would provide large benefits to businesses in regional areas that participate in street fairs.[1360]

A number of councils noted that they have already adopted the practice of issuing longer term DAs.[1361] Marrickville Council's measures are detailed in the Box below.

1356 Williams K submission (Murrambateman Field Days), September 2012.

1357 Ibid.

1358 For example, see submissions from Coffs Harbour City Council, Shellharbour City Council, Willoughby City Council, Eurobodalla Shire Council, Environmental Health Australia, Ku-ring-gai Council, Holroyd City Council, City of Canada Bay Council, Tumbarumba Shire Council, NSW Business Chamber, Marrickville Council, Central NSW Councils, Warringah Council, Parramatta City Council, Bankstown City Council, Albury City Council, Fairfield City Council, City of Sydney Council, June/July 2014.

1359 OSBC submission, July 2014.

1360 NSW Business Chamber submission, July 2014.

1361 For example, see submissions from Blacktown City Council, Albury City Council and Parramatta City Council submission, July 2014.

Box 12.2 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 with Marrickville Council, April 2013.

Some councils expressed concerns that discretion should be left to councils and that events should be assessed on a case-by-case basis.[1362] Our recommendation does not place any limitations on council discretion. Councils may continue to choose to adopt shorter DA terms.

Lismore City Council suggested that, alternatively, approvals for community events could be simplified under the *State Environmental Planning Policy (Infrastructure) 2007*.[1363] We have not recommended this as we consider that councils should retain their discretion to manage local community events. However, councils could still simplify approvals for community events under their Local Environmental Plans, as suggested by The Hills Shire Council.

The Hills Shire Council has specified a number of temporary uses of land as 'exempt' in The Hills Shire Council's *Local Environmental Plan 2012*, as summarised in the Box below.[1364]

Box 12.3 The Hills Shire Council's Local Environmental Plan 2012

Note 1. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* specifies exempt development under that Policy. The Policy has state-wide application. This Schedule contains additional exempt development not specified in that Policy.

Note 2. Exempt development may be carried out without the need for development consent under the Act. Such development is not exempt from any approval, licence, permit or authority that is required under any other Act and adjoining owners' property rights and the common law still apply.

Temporary use of land

The temporary use of land for any of the following purposes for a maximum period of 14 days (whether or not consecutive days) in any period of 12 months:

(a) market

(b) circus

(c) auction

(d) community event.

Source: The Hills Shire Council, Local Environmental Plan 2012, available at http://www.thehills.nsw.gov.au/Local-Environment-Plan.html#.U_QnWvN-9Fo accessed on 20 August 2014.

1362 For example, see submissions from Willoughby City Council and City of Ryde Council, June/July 2014.

1363 Lismore City Council submission, July 2014.

1364 The Hills Shire Council submission, July 2014.

We understand that Marrickville Council is also contemplating amending its Local Environmental Plan to specify some events as exempt development, subject to a standard set of conditions.[1365]

Drawing on the examples of The Hills Shire Council and Marrickville Council, we consider that there could be merit in other councils adopting the following measures:

- 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 longer-term development consents for recurrent community events for up to three to five years.
- Exempting some specified short term temporary uses of land in their local environmental plans (eg, market, circus, auction).

As discussed in earlier chapters of our report, we note that the Planning White Paper proposes reforms to the DA process, expansion of exempt and complying developments and reducing concurrences. For example, a 'one stop shop' is proposed to be established for concurrences and approvals as a single point of contact for councils and businesses to improve consistency across NSW.[1366] We expect that these reforms would also have an impact on facilitating easier and faster approvals for community events.

Recommendation

42 Councils should adopt measures to simplify and streamline the approvals process for local community events. This could include:

- specifying some temporary uses of land as exempt development in local environmental plans, or
- issuing longer-term development consents for periods of three to five years for recurrent local community events (subject to lodging minor variations under section 96 of the *Environmental Planning and Assessment Act 1979* (NSW)).

1365 Marrickville Council has deferred this issue until completion of Marrickville Council's Public Domain Study project. That project includes investigating appropriate polices and controls relating to events. Personal communication, email from Marrickville Council, 19 August 2014.

1366 NSW Government, *A New Planning System for NSW - White Paper*, April 2013, p 7, available at: http://www.planning.nsw.gov.au/white_paper accessed on 14 October 2014 (Planning White Paper).

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
- reduce costs to councils.

CIE was 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: CIE Report, pp 115-116.

12.3 Approval processing times

In our Draft Report, we recommended that OLG collect data on the time taken for section 68 approvals under the LG Act to be processed by councils and that the data be collated and reported as an indicator of performance to reduce delays.

Councils are currently not required to report on the time taken to process section 68 approvals. Councils are required to report on the time taken to process development applications (DAs) to the Department of Planning and Environment (DPE) (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.[1367]

However, a significant number of stakeholders disagreed with our draft recommendation. Several councils submitted that data collection itself is a form of red tape that can lead to increased costs for all parties.[1368] A number of councils commented on the resources, time and administrative costs that would be required[1369] and questioned whether the data would add value.[1370]

After considering the stakeholder responses we received to our Draft Report, we have decided not to make a final recommendation about reporting on section 68 approval processing times.

1367 HIA submission, November 2012.

1368 For example, see submissions from Bankstown City Council, Willoughby City Council, City of Canada Bay Council, Newcastle City Council and Mosman Municipal Council, June/July 2014.

1369 For example, see submissions from Willoughby City Council, Mosman Municipal Council, City of Ryde Council, Central NSW Councils and Warringah Council, June/July 2014.

1370 Tweed Shire Council submission, June 2014.

12.4 Landowner's consent for Crown reserves

A number of stakeholders raised concerns that current processes for dealing with Crown land have been having a negative impact on businesses and the local community, particularly the issue of obtaining landowner's consent for Crown reserves.[1371]

The Crown Lands Division is responsible for the sustainable and commercial management of Crown land.[1372] The Crown reserve system includes many of the State's town squares and local parks, heritage sites, buildings, community halls, nature reserves, coastal lands, waterway corridors, sport grounds, racetracks, showgrounds, caravan parks, camping areas, travelling stock routes, rest areas, walking tracks, commons, community and government infrastructure and facilities.[1373] Crown reserves are generally managed by reserve trust boards, the Crown Lands Division, councils or State Government departments.[1374] Where Crown reserves are managed by councils on behalf of the Crown, landowner's consent is required to be obtained from the Crown (administered by the Crown Lands Division).[1375]

Sutherland Shire Council considered that delay costs are being placed on businesses and the community.[1376] It noted that the process can cause significant delays while the Crown Lands Division considers whether or not to grant owner's consent.[1377] Sutherland Shire Council suggested that councils could be delegated consent powers for land for which they are responsible.[1378] Alternatively, land could be transferred to the relevant local council.[1379]

For the 2013/14 financial year, the average processing time for council requests for landowner's consent was 34 days and 80% of applications were approved.[1380]

We recognise that the process may cause confusion and delays for businesses and the community when landowner's consent is not provided in a timely manner. This issue has recently been considered in the crown lands management and planning system reviews (see sections below).

1371 For example, see submissions from Sutherland Shire Council, The Hills Shire Council, Randwick City Council and Wollongong City Council, November 2012.

1372 NSW Trade & Investment, *Crown Land – About Us*, http://www.lpma.nsw.gov.au/crown_lands/about_crown_land accessed on 4 September 2014.

1373 Ibid.

1374 Ibid.

1375 *Crown Lands Act 1989* (NSW) sections 102 and 103. See also: NSW Land and Property Management Authority, *Policy for Landowner's Consent for Development on Crown Land*, August 2010, p 3, available at: http://www.lpma.nsw.gov.au/ accessed on 4 September 2014.

1376 Personal communication, telephone conversation with Sutherland Shire Council, 4 March 2013.

1377 Sutherland Shire Council submission, November 2012.

1378 Ibid.

1379 Ibid.

1380 Personal communication, email from Crown Lands Division, 21 October 2014.

Crown lands management review

The NSW Government recently conducted a comprehensive review into Crown land. That review examined the overall management of Crown lands including legislation, financial management, governance, and business structures. The Final Report was released in 2013.[1381] The NSW Government has published its response supporting or supporting-in-principle most of the recommendations made in the report.[1382] The NSW Government published the Crown Lands Legislation White Paper in early 2014 (see Box below).

Box 12.5 Comprehensive review of NSW Crown lands management

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 has been completed.

The Review started in June 2012, with the aim of improving management of Crown land and increasing the benefits and returns from Crown land to the community.

The Review report has been considered by Government and the Government's response to the report is now available at http://www.lpma.nsw.gov.au/crown_lands/comprehensive_review_of_nsw_crown_land_management.

The Crown Lands Legislation White Paper contains proposals to develop one new piece of legislation that will replace eight existing Acts, streamline existing provisions, simplify the management of Crown reserves and reduce red tape.

Source: NSW Trade and Investment, *Comprehensive review of NSW Crown Land Management*, available at http://www.lpma.nsw.gov.au/crown_lands/comprehensive_review_of_nsw_crown_land_management accessed on 14 October 2014.

The Crown Lands Legislation White Paper proposes a new management structure for Crown reserves which would allow local councils to manage some Crown land under the local government legislation, rather than under the Crown Lands Act.[1383] This could potentially remove the need for councils to obtain landowner's consent in future.

1381 NSW Trade and Investment, *Crown Lands Management Review Report 2013*, available at: http://www.lpma.nsw.gov.au/crown_lands/comprehensive_review_of_nsw_crown_land_management accessed on 23 June 2014.

1382 NSW Trade and Investment, *Crown Lands Management Review Summary and Government Response*, available at: http://www.lpma.nsw.gov.au/crown_lands/comprehensive_review_of_nsw_crown_land_management accessed on 23 June 2014.

1383 NSW Trade & Investment, *Crown Lands Legislation – White Paper*, 2014 (Crown Lands Legislation White Paper) p 5, available at: http://www.lpma.nsw.gov.au/__data/assets/pdf_file/0009/196434/Crown_Lands_White_paper_accessible.pdf accessed on 9 September 2014.

The Crown Lands Legislation White Paper also proposes to streamline consent and notification requirements to ensure that the most effective consultation mechanisms are supported and unnecessary bureaucracy is removed.[1384] In particular, it proposes to streamline processes to enable landowner's consent to be given more quickly - see Box below.

Box 12.6 Crown Lands Legislation White Paper

5.3 Landowner's consent

There are many situations where multiple consents, including planning approval, are required for particular activities. For example, an application to build a jetty can involve landowner's consent from Crown Lands Division to lodge a development application, as well as approvals from Fisheries NSW (in relation to fish habitat protection), Roads and Maritime Services (in relation to navigation) and the council (planning approval). A tenure over the land in question would then need to be granted by Crown Lands Division.

The current situation results in unnecessary delay and frustration for proponents as well as duplication of effort by councils and government agencies.

To address this, streamlined processes will be introduced to enable landowner's consent to be given more quickly. This approach could apply to low-impact activities, for example, the erection of pump sheds, shade sails over playgrounds, and rainwater tanks, provided these are consistent with the existing use of the land. It could also be used where detailed assessments of a proposal are already carried out by councils or other government agencies as part of the consent process.

Source: NSW Trade & Investment, *Crown Lands Legislation White Paper*, p 18, available at http://www.lpma.nsw.gov.au/crown_lands/comprehensive_review_of_nsw_crown_land_management accessed on 20 August 2014.

Submissions to the Crown Lands Legislation White Paper closed in June 2014. Those submissions will inform the development of the new legislation.[1385] Over 600 public submissions were received and the new legislation is not scheduled to be tabled until 2015.[1386]

We have decided not to make a recommendation in relation to concerns about delay costs arising due to landowner's consent, as we consider that the reforms proposed under the Crown Lands Legislation White Paper will address this issue.

1384 Crown Lands Legislation White Paper, p 6.
1385 Crown Lands Legislation White Paper, p 6.
1386 The Land, *Crown lands off the table until 2015,* available at: http://www.theland.com.au/news/agriculture/general/news/crown-lands-off-the-table-until-2015/2710029.aspx accessed on 9 September 2014.

We note that the new Crown lands legislation will be consistent with the proposed new planning framework.[1387]

Planning systems review

The Planning White Paper has proposed to reduce the number of development applications requiring multiple agency concurrence, approval or referrals.

The Planning White Paper has indicated that a 'one stop shop' will be established for concurrences and approvals as a single point of contact for councils and businesses to improve consistency across NSW.[1388]

We consider that the proposed 'one stop shop' will also help to address stakeholder concerns about delays in obtaining landowner's consent for Crown reserves.

1387 Crown Lands Legislation White Paper, p 4.
1388 Planning White Paper, p 7.

Appendices

A Terms of Reference

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.

1

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.

B Extension letter

NSW GOVERNMENT | Premier & Cabinet

2013-234015

Mr James Cox PSM
Chief Executive Officer and
Full-time Tribunal Member
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

13 JUN 2013

Dear Mr ~~Cox~~ Sir

I write regarding your letters of 8 April and 15 April 2013 forwarding draft reports for the reviews of Licensing and Local Government Compliance and Enforcement which were commissioned by the Government.

Your work to date on these reviews is appreciated and has the potential to help the Government identify red tape savings that will benefit business and the community. I have reviewed the draft reports and note the wide range of potential reforms that have been identified. I consider, however, that the reports would benefit from further discussion with NSW government agencies before being released for public consultation. I note that, following discussions with my Department, IPART has commenced consultation with relevant NSW government agencies on specific draft recommendations, and will make any revisions deemed necessary, before resubmitting the draft reports for further review.

In light of the additional consultation requirements, please provide draft reports in July 2013 followed by final reports in October 2013.

Should you have any queries please contact Mr Loris Strappazzon, Executive Director, Better Regulation Office on 9228 4039.

Yours sincerely

Chris Eccles
Director General

C Consideration of the Productivity Commission's leading practices

Table C.1 Assessment of Productivity Commission's leading practices

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Regulatory and governance frameworks			
▾ *Statutory best practice regulation principles* Leading Practice 2.1 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.	Yes	Chapter 3 'Improving the regulatory framework at the State level'	
▾ *Local Better Regulation Office* Leading Practice 2.2 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.	No	Chapter 2 'A new partnership between State and local government'	The Partnership Model offers a more cost effective and efficient mechanism.
▾ *Prioritising regulatory activities delegated to local government* Leading practice 2.3 Given the broad range of regulatory functions which compete for resources against other functions undertaken by local governments in the interests of local communities, a short list of well-defined regulatory priorities would help to ensure that local governments are devoting sufficient resources to the achievement of the regulatory objectives of higher levels of government.	No		A shortlist of priorities would not assist councils. The application of the Partnership Model arrangement is a better way to achieve the same outcome.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
▾ *Maintaining up-to-date registers of state laws which require local governments to play a regulatory role* Leading Practice 3.1 No jurisdiction has established a comprehensive list of the laws for which local government plays a role in administration, enforcement or referral. A complete and current list of those laws which require local governments to play a regulatory role would reduce overall compliance burdens for business and facilitate a better understanding of the regulatory workloads of local governments.	Yes	Chapter 3 'Improving the regulatory framework at the State level'	We have recommended the Stenning register of local government regulatory functions be maintained to manage the stock of local government regulation.
▾ *Transparency* Leading Practice 3.3 Publishing local laws on the internet improves the transparency of local government, whether the laws are published in a central register or on local websites. There is currently good use of web publishing for local laws across the jurisdictions. This could be made a legislative requirement if compliance or timeliness of publication became an issue in the future.	No	Chapter 6 'Improving regulatory outcomes'	This is already occurring in NSW. See discussion of best practice findings.
Leading Practice 3.4 It is leading practice to make publicly available all quasi-regulation that provides guidance on how to comply with legal requirements or how local governments will assess applications. These quasi-regulatory instruments include policies, guidelines, fact sheets and codes.	No	Chapter 6 'Improving regulatory outcomes'	This is already occurring in NSW. See discussion of best practice findings.
Leading Practice 3.5 The maintenance of a database of all local laws in each jurisdiction would help to facilitate the management of red tape and review of the stock of regulation. Such databases are maintained by Queensland and Western Australia. The practice of listing all laws on one webpage, as in Tasmania and the Northern Territory, is appropriate for jurisdictions that do not have many local laws in total.	Yes	Chapter 3 'Improving the regulatory framework at the State level'	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.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Leading Practice 3.6 The NSW Ombudsman has a memorandum of understanding with the NSW Department of Local Government to share information on complaints, the issues complained of, which local governments such complaints relate to and, as far as practicable, how complaints were disposed of. This practice supports probity and good governance.	No	Chapter 3 'Improving the regulatory framework at the State level'	This Leading Practice is already in action in NSW. We consider that the data could be better used.
▾ *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.	Yes	Chapter 3 'Improving the regulatory framework at the State level'	
Leading Practice 3.8 Developing tools to help local governments undertake simple impact assessments would improve regulatory outcomes.	Yes	Chapter 3 'Improving the regulatory framework at the State level'	
Leading Practice 3.2 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.	No		This is already occurring in NSW.
▾ *Enhancing Competition* Leading Practice 3.9 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.	No		NSW does not have local laws[a]

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
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.	Yes	Chapter 3 'Improving the regulatory framework at the State level'	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.
▾ *Reviewing the stock of local government regulation* 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.	No		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.	No		This is already occurring in NSW – an example of this is our review.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Leading practice 3.13 Keeping a watching brief on the aggregate number and content of local laws and licensing/registration requirements would enable state and territory governments to regularly assess, say every ten years, whether existing instruments are relevant and to identify a subset that warrants further review.	No		This is already occurring in NSW - through our concurrent Licence Rationale and Design review and through the Stenning register of local government regulatory functions. These mechanisms will allow for periodic reassessment.
▾ *Reviewing and appealing local government decisions and procedures* Leading practice 3.14 Having a graduated review and appeal system available for matters relating to local government decisions and procedures provides a way for affected parties to obtain 'natural justice' (procedural fairness) and a merits review (a review of the outcome of the decision), while also reducing costs and formalities. Augmenting appeal paths with internal review mechanisms, such as are already in place for local government decisions in most jurisdictions, is likely to reduce costs for business.	Yes	Chapter 5 'Improving the regulatory framework at the local level'	
Leading Practice 3.15 Enabling Small Business Commissioners to: – have a mediating role between local government and businesses, as they do in New South Wales, South Australia and Western Australia – investigate systemic issues raised through complaints would provide business with a path of redress that is less formal, time-consuming and expensive than judicial appeals but more independent than an internal review.	No	Chapter 5 'Improving the regulatory framework at the local level'	This is already occurring in NSW.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
▾ *Taking account of all costs and benefits in decision making* Leading Practice 3.16 While the principle of subsidiarity suggests that local government is likely to be the most effective and efficient regulation maker for local issues, when impacts extend beyond the local government area, higher-level decision making — such as by a state, territory or regional body — is more likely to deliver an overall net benefit to the community. It may be appropriate for state or territory governments to use separate regional bodies with well-defined regulatory responsibilities which cross local government boundaries. Planning panels, inter-council coordination organisations and catchment management authorities provide examples with differing degrees of effectiveness across the jurisdictions.	No	Chapter 4 'Enhancing regulatory collaboration amongst councils'	This is generally already occurring in NSW.
▾ *Consider greater harmonisation* Leading Practice 3.17 There is a case for state, territory and local governments to assess the mechanisms available to harmonise or coordinate local regulatory activities where the costs of variations in local regulation exceed the benefits.	Yes	Chapter 2 'A new partnership for State and local government' See also Chapter 4 'Enhancing regulatory collaboration amongst councils' and	

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Capacities of local governments			
▾ *Ensuring local government regulatory capacity*			
Leading Practice 4.1 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.	Yes	Chapter 3 'Improving the regulatory framework at the State level'	
▾ *Assistance with setting fees* Leading Practice 4.2 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.	Yes	Chapter 3 'Improving the regulatory framework at the State level'	
Leading Practice 4.3 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.	Yes	Chapter 3 'Improving the regulatory framework at the State level'	
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	Chapter 3 'Improving the regulatory framework at the State level'	We support the provision of guidance material on efficient cost setting for local government regulatory fees to State agencies and councils.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
▾ *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	Chapter 3 'Improving the regulatory framework at the State level'	
▾ *Assistance with administering and enforcing regulation* Leading Practice 4.6 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	Yes	Chapter 3 'Improving the regulatory framework at the State level'	
▾ *Capacity development and back-up* Leading practice 4.7 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.	Yes	Chapter 2 'A new partnership for State and local government' See also Chapter 9 'Public health, safety and the environment' (eg, Swimming Pools and Boarding Houses)	Training has been considered as part of the Partnership Model.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Leading practice 4.8 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.	No	Chapter 2 'A new partnership for State and local government'	Training has been considered as part of the Partnership Model.
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	Chapter 2 'A new partnership between State 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	Chapter 6 'Improving regulatory outcomes'	This is already occurring in NSW. See discussion of best practice findings.
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	Chapter 4 'Enhancing regulatory collaboration amongst councils'	This has also been considered by the ILGRP and LG Acts Taskforce. The NSW Government has generally indicated support for their recommendations.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Leading Practice 5.1 Local government coordination or consolidation requires a genuine and clear agreement among local governments to achieve regulatory efficiency objectives, particularly to: – Reduce regulatory duplication or unwarranted inconsistency among local governments. – Improve the competency and capacity of local governments to effectively undertake their regulatory functions. The agreement may be stand-alone, or mediated through a coordinating body or under legislation.	Yes	Chapter 4 'Enhancing regulatory collaboration amongst councils'	This has also been considered by the ILGRP. The NSW Government has generally indicated support for their recommendations.
Leading Practice 5.2 Regulatory efficiency can be improved by including express provisions in local government Acts: – to permit joint local government activities to address regulatory efficiency objectives – to enable a joint local government entity to be established to undertake regulatory functions in an efficient manner. In addition, state and Northern Territory governments could provide administrative guidance to clarify the scope of the provisions, including that coordination and consolidation is relevant to more than just service delivery.	Yes	Chapter 4 'Enhancing regulatory collaboration amongst councils'	This has also been considered by the ILGRP and LG Acts Taskforce. The NSW Government has generally indicated support for their recommendations.
Leading Practice 5.3 Legislative provisions that impede local governments from coordinating and consolidating in effective ways run contrary to leading practice.	Yes	Chapter 4 'Enhancing regulatory collaboration amongst councils'	This has also been considered by the ILGRP and LG Acts Taskforce. The NSW Government has generally indicated support for their recommendations.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Leading Practice 5.4 Suitable state government incentives and support to address regulatory efficiency improve the outcomes from local government coordination and consolidation.	Yes	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	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	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	Chapter 7 'Planning'	See discussion in relation to developing suites of standard conditions of consent. Standard conditions of consent could cover construction site issues.
Leading practice 7.3 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.	No		The Building Professionals Board is currently planning regulation to reduce compulsory inspections for lower risk buildings, and increase them for higher risk construction. The

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
			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. Fair Trading became the State's plumbing regulator on 1July 2012. NSW has adopted the Plumbing Code of Australia as the technical standard which incorporates risk based elements.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Parking regulation			
Leading practice 8.1 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. 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.	No		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&A Act and Regulation.
Heavy vehicle regulation			
Leading practice 8.2 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.	Yes	Chapter 10 'Parking and Road Transport'	Interim measure until this task is fully taken over by the National Heavy Vehicle Regulator.
Leading practice 8.3 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).	Yes	Chapter 10 'Parking and Road Transport'	

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Food safety regulation			
Leading Practice 9.1 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.	Yes	Chapter 9 'Public health, safety and the environment'	The Food Authority is reviewing this issue as part of its current internal review.
Leading Practice 9.2 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 Food Authority, the South Australian Government and the Municipal Association of Victoria.	No		NSW has already instituted this Leading Practice.
Leading Practice 9.3 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).	Yes	Chapter 9 'Public health, safety and the environment' See also Chapter 5 'Improving the regulatory framework at the local level' (on mutual recognition)	
Leading Practice 9.4 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).	No		The current Food Model in NSW is leading practice according to many stakeholders and provides sufficient guidance to councils. The Food Authority has food safety programs in place for its licenced premises – this is

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
			not a role for councils.
Leading Practice 9.5 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.	No		NSW has already instituted this Leading Practice.
Leading Practice 9.6 Food businesses and consumers benefit from a transparent food regulation process. Examples include: – providing information explaining the basis for food safety policy — particularly the reasons why some businesses are treated differently — to assist local governments and other parties in understanding the food safety system. The Food Authority makes this information available to the public – state governments providing information on various food safety regulatory activities of local governments, including fees and charges imposed, the frequency of inspection activities and the results of food safety enforcement actions, as is the case in New South Wales, Queensland, South Australia and Western Australia.	No		NSW has already instituted this Leading Practice.
Regulation of cooling towers and warm water systems			
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 two states — South Australia and Tasmania — are moving towards this for public health and safety functions.	Yes	Chapter 2 'A new partnership model for State and local government'	This is captured through application of the Partnership Model

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
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.	Yes	Chapter 2 'A new partnership model for State and local government'	This is captured through application of the Partnership Model
Regulation of swimming pools			
Leading Practice 10.3 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.	No		NSW has already instituted this Leading Practice.
Leading Practice 10.4 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.	No	Chapter 2 'A new partnership model for State and local government'	This is captured through application of the Partnership Model.
Regulation of brothels			
Leading Practice 10.5 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.	No		NSW Government is currently considering a licensing scheme for brothels.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Regulation of skin penetration premises			
Leading Practice 10.6 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.	No	Chapter 2 'A new partnership model for State and local government'	This is captured through application of the Partnership Model.
Regulation of premises selling alcohol			
Leading Practice 10.7 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.	No		There were no concerns raised by stakeholders.
Leading Practice 10.8 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.	No	Chapter 2 'A new partnership between State and local government'	There were no concerns raised by stakeholders. This already appears to be occurring in NSW through the Office of Liquor, Gaming & Racing.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Environmental regulation			
Leading Practice 11.1 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.	No		This has been considered in the NSW Planning System review.
Leading Practice 11.2 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.	No		This is currently being reviewed by a Coastal Ministerial Taskforce. Stage 1 of their reforms were implemented in January 2013.
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.	Yes	Chapter 2 'A new partnership model for State 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	No		These leading practices are likely to be implemented as part of the reforms under the NSW Planning System review.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
– facilities that enable electronic submission of applications – the wider adoption of track-based assessment.			
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	Chapter 2 'A new partnership model for State and local government'	This is partly addressed by the Partnership Model. Other components of these reforms are being implemented through the current NSW Planning System review.
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		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		This has been considered in the NSW Planning System review.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
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	Chapter 6 'Improving regulatory outcomes'	See discussion of best practice findings.
Leading Practice 12.6 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.	No		This is already occurring in NSW.
Leading Practice 12.7 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.	No		This should be achieved through the current NSW Planning System review reforms.
Leading Practice 12.8 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.	No		DPE has already addressed this and in NSW this falls under State significant development.

Leading practice	Included in our recommendations (Yes/No)	Discussed in chapter	Comment
Leading Practice 12.9 Following the guidelines proposed by the Local Government Planning Ministers Council to reduce the regulatory burden on home-based business, local governments can adopt: – a self-assessment process (with prescriptive criteria) to determine whether development approval is required – outcome-based criteria to ensure that home-based businesses do not adversely affect the amenity of the community where they operate. 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.	No		This was not raised directly in our review. These issues have been considered in the NSW Planning System review.

a Productivity Commission Performance Benchmarking Report, pp 83-84.

Source: Leading practices identified in the Productivity Commission, Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator, July 2012, available at: http://www.pc.gov.au/projects/study/regulation-benchmarking accessed on 14 October 2014 (Productivity Commission Performance Benchmarking Report).

D Other issues raised by stakeholders

The table below contains how we have considered other issues raised by stakeholders.

Table D.1 Other issues raised by stakeholders not addressed in our report

Issue	Stakeholder/s	Why no recommended action by IPART
Ongoing assessment of performance		
The use of surveys of communities and business to assess individual council performance against a set of OLG (formerly DLG) developed indicators.	N/A	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.
Planning		
Restrictions on radio and other related radio transmission structures which exceed federal standards.	Coalition of Radio Amateur Experimenters, The Wireless Institute of Australia, Hornsby and Districts Amateur Radio Club (HADARC), Oxley Region Amateur Radio Club and 6 individuals (Boyd, Lundell, Sandford, Gibling and Daniel).	DPE advises that it has considered representation from stakeholders regarding requests to lift restrictions on radio, and other related radio transmissions, 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.
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).	Mobile Carriers Forum.	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.
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 two arborists (council and private) to be onsite at times during work (presumably for tree preservation purposes).	HIA	Ryde City Council has denied that two 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.
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.	Bega Chamber of Commerce and Industry	This is a policy issue rather than a regulatory concern about local government compliance and enforcement.

Issue	Stakeholder/s	Why no recommended action by IPART
Introduce deemed approval to reduce development assessment times	NSW Business Chamber	Delays will be addressed by planning reforms.
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.	Urban Taskforce	Should be addressed by planning reforms and cultural change.
DPE 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&A Regulations lists minimum submission requirements, there is insufficient detail and clarity in what is required	Liverpool City Council	This could be an example of the sort of work the dedicated team could do in implementing the Partnership Model.
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 Director General of Planning if necessary	Sutherland Shire Council	Classification of community and operational lands has been considered by the LG Acts Taskforce and the crown lands management review.
Building and Construction		
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.	N/A	Costing analysis suggested this recommendation may not result in net overall benefits.
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.	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 OLG's (formerly DLG) *Model Asbestos Policy for NSW Councils*. We therefore consider it is too soon to say

Issue	Stakeholder/s	Why no recommended action by IPART
	Notably, these submissions were all made after the establishment of the HACA and the charter, but prior to the release of OLG's (formerly DLG) *Model Asbestos Policy for NSW Councils* (November 2012).	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)	The Coastal Residents Incorporated	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 two supporting documents to assist councils with coastal zone and floodplain management. Stakeholder concerns are likely to be addressed through the initiatives from this review.
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.	This issue was raised by several council stakeholders eg, Great Lakes Council, Lismore City Council, Shoalhaven City Council. According to Shoalhaven City Council, the burdens imposed on developers of the dual consent process include: 1. the costs of making two 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.	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).

E Onsite Sewage Management Systems

This Appendix provides some further background information to our best practice finding 16 in Chapter 6 relating to onsite sewage management systems (onsite systems).

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.[1389]

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. However, 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.

Given the large volume of onsite system approvals and the need for ongoing regulation to protect public health and the environment, we consider that broader adoption of our best practice finding 16 has the potential to provide substantial red tape benefits.

The following sections set out the regulatory challenges posed by onsite systems due to the:

- high volume of systems/approvals needed
- risks to public health and the environment posed by non-complying systems
- fragmented regulatory responsibilities for managing systems.

It also details other recent reviews in this regulatory area.

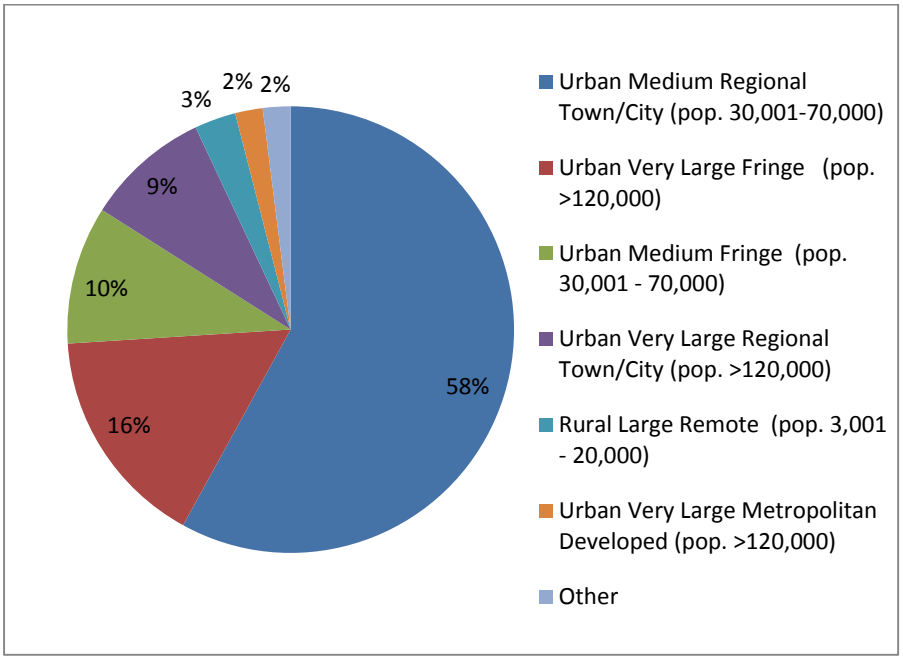
[1389] In 2001, standard septic tanks represented about 80% of onsite systems in NSW: OLG, *On-site Sewage Management Risk Assessment System Handbook*, (Draft) April 2001, p 2-9, available at: http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_osras.asp accessed on 20 November 2013 (OSRAS Handbook).

E.1.1 High volume of approvals

The largest number of section 68 approvals granted or renewed by councils each year is for onsite systems.[1390] According to our recent licence survey, there were a total of 93,275 approvals to operate an onsite system in force during 2011/12.[1391] However, the number of systems in NSW has previously been estimated to be over 284,000.[1392]

Difficulties with regulating onsite systems can be exacerbated for particular councils by the clustering of systems in certain geographical areas. This may affect council's capacity to adequately regulate and inspect systems. The Figure below demonstrates clustering of systems across council types.

Figure E.1 Distribution of Section 68 (c6) Approvals to Operate a System of Sewage Management, total in force 30 June 2012



Data source: Analysis of IPART Review of Licence Rationale and Design local council licence survey data (2012).
Definition of council types is from the IPART local government survey database, which groups councils based on geography and population size.

1390 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, Regulation Review – Licence Rationale and Design Draft Report, October 2013 available at: http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design accessed on 16 October 2014.

1391 Ibid.

1392 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: http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Environmental%20Health%20Bathurst%202001.pdf accessed on 2 December 2013.

Regional councils issue the majority of approvals to operate (67%). Regional councils near waterways and with related industries (eg, 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.[1393]

Urban fringe councils issue 26% of approvals to operate. These councils often experience resource pressures due to rapid growth, impacting on their regulatory capacity.[1394]

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.[1395] Such councils are responsible for large land masses, and can have high travel costs and limited budgets and staff.[1396]

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.[1397]

E.1.2 Risks to public health and the environment

The potential consequences of failing to properly regulate onsite systems are serious. 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).[1398] The cumulative effects of numerous failing systems can be significant.[1399] For example, in 1997, over four 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

1393 For example, Eurobodalla Shire Council, Port Macquarie-Hastings Council and Wagga Wagga City Council.

1394 Personal communications, telephone conversation with Metropolitan Water Directorate, 29 July 2013, telephone conversation with IPART Water team, 31 July 2013.

1395 Liverpool Plains Shire Council submission, October 2012.

1396 Wentworth Shire Council submission, October 2012.

1397 Personal communication, telephone conversation with IPART Water team, 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, email from Randwick City Council, 17 October 2013.

1398 NSW Parliament, Legislative Assembly, Committee on Environment and Regulation, *Inquiry into the Regulation of Domestic Wastewater*, Report 1/55, November 2012, pp 17-19, available at: http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/54fe1a9d8f5b5843ca257b73002682e9/$FILE/Report%20on%20the%20Regulation%20of%20Domestic%20Wastewater%20FINAL.pdf accessed on 25 November 2013 (Domestic Wastewater Inquiry Report).

1399 OSRAS Handbook, p 2-1.

which leaked raw sewage into the waterway which fed into Wallis Lake.[1400] In 2000, the then Division of Local Government estimated that around 70% of systems failed to meet environmental and health protection standards.[1401]

E.1.3 Regulatory responsibilities

Councils have the primary regulatory role for licensing onsite systems. For example, 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[1402]
- keep an up-to-date register of all onsite systems in their area[1403]

Councils are encouraged to develop and implement sewage management policies.[1404] The LG Act allows councils to charge a fee for approval applications or renewals, and for undertaking inspections to fulfil their ongoing monitoring role.[1405]

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).[1406] NSW Health Certificates of Accreditation require periodic servicing for certain systems which pose higher risks than other systems due to using more complicated technology.[1407] For example, quarterly servicing by a service contractor is required for Aerated Wastewater Treatment Systems (AWTS).[1408] The servicing can be undertaken either by a representative of the system manufacturer / distributor, or a service contractor "acceptable" to the

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1400 Domestic Wastewater Inquiry Report, p 17.

1401 OLG, *Easy Septic Guide,* 2000, p 7, available at: http://www.olg.nsw.gov.au/public/my-home/onsite-sewage-management-septic-tanks accessed on 14 October 2014.

1402 OSRAS Handbook, p 2-12.

1403 *Local Government Act 1993* (NSW), section 113.

1404 OLG, *Environment and Health Protection Guidelines: On-Site Sewage management for Single Households*, January 1998 (Silver Book), p 10 and Section 2, available at: http://www.olg.nsw.gov.au/sites/default/files/Onsite-sewage-management-guide.pdf accessed on 18 November 2013. See also: City of Sydney Council, *Submission to Domestic Wastewater Inquiry*, 2012, p 1, available at: https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/C14732C8E8F5535DCA2579980078CC7B accessed on 19 November 2013.

1405 *Local Government Act 1993* (NSW), sections 80, 107 and 608.

1406 *Local Government (General) Regulation 2005* (NSW), clauses 40-41.

1407 NSW Health AWTS Certificate, as discussed in OLG (formerly DLG), *Sewage and Wastewater,* available at: http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_policyindex.asp?areaindex=PLCYADV&documenttype=8&mi=6&ml=6&paid=33 accessed on 18 November 2013.

1408 For example, see NSW Health certificates of accreditation for various AWTS systems, NSW Health, Certificate of Accreditation, available at: http://www.health.nsw.gov.au/environment/domesticwastewater/accreditations/awts_013.pdf and http://www.health.nsw.gov.au/environment/domesticwastewater/accreditations/awts_007.pdf accessed on 18 November 2013.

council.[1409] Councils impose this servicing requirement on landowners as a condition of section 68 approvals.[1410] The Table below outlines the regulatory framework for the majority of onsite systems, being those used by households.

Table E.1 Regulatory process for onsite systems

Regulatory step	Responsible body	Low risk technology	High risk technology (eg, AWTS)
Accreditation (of system design and manufacture)[a]	NSW Health	✓	✓
s68 Approval to Install issued to landowner	Council	✓	✓
One-off Inspection (ensuring system installed in accordance with approval)[b]	Council	✓	✓
s68 Approval to Operate issued to landowner (ongoing approval renewed at intervals determined by council)	Council	✓	✓
Periodic servicing of system[c]	Service contractor	X	✓
Periodic inspections of system (to ensure system continuing to operate properly)	Council	✓	✓

a *Local Government (General) Regulation 2005* (NSW), clauses 40-41.

b *Local Government (General) Regulation 2005* (NSW), clause 34. Personal communication, email from Port Macquarie-Hastings Council, 6 September 2013.

c Only high risk technologies (represented by the final column must be serviced periodically during their operation. For example, NSW Health requires quarterly servicing by a service contractor for Aerated Wastewater Treatment Systems (AWTSs): http://www.health.nsw.gov.au/environment/domesticwastewater/accreditations/awts_013.pdf and http://www.health.nsw.gov.au/environment/domesticwastewater/accreditations/awts_007.pd accessed on 18 November 2013.

1409 NSW Health AWTS Certificate, as discussed in OLG (formerly DLG), *Sewage and Wastewater,* available at: http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_policyindex.asp?areaindex=PLCYADV&documenttype=8&mi=6&ml=6&paid=33 accessed on 18 November 2013.

1410 For example, Port Macquarie-Hastings Council passes on the condition in the section 68 approval to operate: Personal communication, email from Port Macquarie-Hastings Council, 6 September 2013.

The Office of Local Government (OLG) 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'.)[1411] These are the technical standards used in the regulation of onsite systems. OLG 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[1412]
- a handbook to assist councils to develop an information management system for onsite systems[1413]
- model conditions for approval to operate an onsite system, for use in section 68 approvals[1414]
- easy septic guide for householders[1415]
- general website information for councils and system operators.[1416]

E.1.4 Other reviews

There are a number of other reviews that are ongoing or recently concluded that have considered matters related to the regulation of onsite 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.[1417]

1411 In 2004, it was indicated that the Silver Book and OSRAS Handbook would be revised: OLG, *Circular to Councils: Sewage Management (SepticSafe Program) Update,* 30 July 2004, available at: http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Circulars/04-37.pdf accessed on 14 October 2014.

1412 OSRAS Handbook, pp 1-2 – 1-3.

1413 NSW Government, *On-Site Sewage Information Management System*, available at: http://www.dlg.nsw.gov.au/DLG/Documents/information/SSIMS.pdf accessed on 14 October 2014.

1414 NSW Government, *Model Conditions to Operate an Onsite Sewage System*, available at: http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_policyindex.asp?areaindex=PLCYADV&documenttype=8&mi=6&ml=6&paid=33 accessed on 20 November 2013.

1415 OLG, *Easy Septic Guide,* 2000, available at: http://www.olg.nsw.gov.au/public/my-home/onsite-sewage-management-septic-tanks accessed on 14 October 2014.

1416 OLG *On-site sewage management – septic tanks,* available at: http://www.olg.nsw.gov.au/public/my-home/onsite-sewage-management-septic-tanks accessed on 14 October 2014.

1417 Domestic Wastewater Inquiry Report, pp iv-v.

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.[1418]

Urban Water Regulation review

The Metropolitan Water Directorate recently conducted a joint review of the *Water Industry Competition Act 2006 (NSW) (WIC Act)* and regulatory arrangements for water recycling under the *LG Act*.[1419]

The NSW Government:

- released a Discussion Paper in November 2012, to discuss current and potential future frameworks to accommodate the growing diversity of the NSW urban water sector
- a Position Paper in February 2014 presenting the preferred approach to reform key elements of the urban water regulation in NSW.

On 18 June 2014, the Minister for Natural Resources, Lands and Water (Minister) tabled the *Water Industry Competition Amendment (Review) Bill 2014* into the NSW Parliament. The Minister noted that[1420]:

> Smaller schemes that do not trigger the threshold will not fall into a regulatory void. Sewerage systems will be regulated under section 68 of the Local Government Act and the requirements of the Public Health Act will apply in relation to reticulated drinking water systems and drinking water suppliers.

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[1421] and it seems that this exemption will continue to apply.

1418 NSW Government, *NSW Government Response to Inquiry into the Regulation of Domestic Wastewater,* 2013, available at: http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/54fe1a9d8f5b5843ca257b73002682e9/$FILE/Gov.%20resp.%20to%20Rep.%20on%20Regulation%20of%20Domestic%20%20Wastewater%20.pdf accessed on 6 November 2013.

1419 NSW Government, Metropolitan Water Directorate, *Urban Water Regulation Review: Position Paper*, February 2014, available at: http://engage.haveyoursay.nsw.gov.au/document/show/1093 accessed on 14 March 2014.

1420 NSW Parliament, Parliamentary Debates, Mr Kevin Humphries, 18 June 2014 available at: https://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/9d507ab3127de421ca257d4e001e3f0b/$FILE/2R%20Water.pdf accessed on 18 September 2014.

1421 *Water Industry Competition (General) Regulation 2008* (NSW), Schedule 3, clause 9.

F Meetings/consultations with regulators and other stakeholders

Issues Paper submissions

Table F.1 Stakeholders that made submissions to the Issues Paper

Stakeholder
Advanced Building Certifiers
Anonymous – Individual (1)
Anonymous – Individual (2)
Association of Accredited Certifiers
Australian Hotels Association
Australian Institute of Building Surveyors
Australian Logistics Council
Australian Trucking Association
Banyard, R.
Bega Chamber of Commerce and Industry
Boyd, R.
Business Council of Australia
Cacciotti, J.
Caltex Australia
Coalition of Radio Amateur Experimenters
Coastal Residents Incorporated
Colong Foundation for Wilderness
Daniels, J.
Development and Environmental Professionals' Association – Robertson, I.
Fitness Australia
Gibling, J.
Homelessness NSW
Hornsby and Districts Amateur Radio Club
Housing Industry Association
Hutcheson, J.
Jewell, M. (Stanton Precinct, North Sydney)
Live Performance Australia
Local Government and Shires Association of NSW
Lundell, H.

Stakeholder
Mobile Carriers Forum
NSW Business Chamber – Orton, P.
Oxley Region Amateur Radio Club
Restaurant and Catering Industry Association
Richards, F.
Rolfe, H.
Sanford, N.
Scarlet Alliance (Australian Sex Workers Association)
Tamworth Business Chamber
The Wireless Institute of Australia
Urban Taskforce Australia
Vescio, J. (Provincial Planning)
Williams, K. (Murrambateman Field Days)

Table F.2 Councils that made submissions to the Issues Paper

Stakeholder
Central NSW Councils
Albury City Council
Ashfield Council
Campbelltown City Council
City of Sydney Council
Newcastle City Council
Coolamon Shire Council
Gosford City Council
Great Lakes Council
Holroyd City Council
Hurstville City Council
Lake Macquarie City Council
Leichardt Municipal Council
Lismore City Council
Liverpool City Council
Liverpool Plains Shire Council
Orange City Council
Pittwater Council
Port Stephens Council
Randwick City Council
Shellharbour City Council
Shoalhaven City Council
Strathfield Council
Sutherland Shire Council
Upper Hunter Shire Council
Warringah Council

Stakeholder
Wentworth Shire Council
Wingecarribee Shire Council
Wollongong City Council

Table F.3 State agencies that made submissions to the Issues Paper

Stakeholder
Department of Planning and Infrastructure (now the Department of Planning and Environment) and the Building Professionals Board (BPB) joint submission
NSW Environment Protection Authority
Fair Trading
Food Authority
NSW Ombudsman
NSW Small Business Commissioner

Roundtable participants

Table F.4 Public roundtable participants, 4 December 2012

Participant
Association of Accredited Certifiers
Australian Institute of Building Surveyors
Australian Logistics Council
Caltex
Campbelltown City Council
Coles
Division of Local Government (now Office of Local Government)
Holroyd City Council
Housing Industry Association
Liverpool City Council
Local Government and Shires Association (now Local Government NSW)
Newcastle City Council
NSW Business Chamber
NSW Department of Planning and Infrastructure (now Department of Planning and Environment)
Fair Trading
Food Authority
NSW Small Business Commissioner (now Office of Small Business Commissioner)
Randwick City Council
Restaurant and Catering Industry Association
Shoalhaven City Council
Sutherland Shire Council
Urban Taskforce Australia

Participant
Wentworth Shire Council
Wollongong City Council

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 F.5 Stakeholder meetings/consultations held during the course of this review

Stakeholder
Australian Veterinary Association
Building Professionals Board
Better Regulation Office
Blue Mountains City Council
Bryon Bay Shire Council
City of Sydney Council
Companion Animals Taskforce
Crown Lands Division
Development and Environmental Professionals' Association
Division of Local Government (now Office of Local Government)
Department of Planning and Infrastructure (now Department of Planning and Environment)
Dubbo City Council
Environmental Defenders Office
Eurobodalla Council
General Managers' Forum (from Bankstown, Botany Bay, Campbelltown, Canterbury, Penrith, Randwick, The Hills, Sutherland and Wollongong councils)
HIA
Independent Local Government Review Panel
Local Government Acts Taskforce Secretariat
Local Government Manager's Association
Local Government Manager's Association - Governance Network Forum
Local Government NSW (formerly, Local Government and Shires Association of NSW)
Marrickville Council
Metropolitan Water Directorate
National Heavy Vehicle Regulator
National Transport Commission
Fair Trading
Food Authority
NSW Ministry of Health
NSW Ombudsman
NSW Small Business Commissioner (now Office of Small Business Commissioner)

Stakeholder
Office of Environment & Heritage
Office of State Revenue
Port Macquarie-Hastings Council
Productivity Commission
Property Council of Australia
Scarlet Alliance
Transport for NSW
UK Department of Business Innovation and Skills – Better Regulation Delivery Office
Urban Taskforce
Victorian Competition and Efficiency Commission
Whitehead Environmental Consultants
Wollondilly Shire Council

Draft Report submissions

Table F.6 Stakeholders that made submissions to the Draft Report

Stakeholder
Anonymous - Individual (1)
Anonymous – Individual (2)
Anonymous – Individual (3)
Australian Logistics Council
Australian Property Institute
Bennett, R
Coles
Environmental Health Australia
Master Builders Association of NSW
NSW Aboriginal Land Council
NSW Business Chamber
NSW Farmers Market Pty Ltd
Outdoor Recreation Industry Council NSW
Owners Corporation Network of Australia
Real Estate Institute of NSW
Scarlet Alliance
United Services Union
Urban Taskforce

Table F.7 Councils that made submissions to the Draft Report

Stakeholder
Central NSW Councils
Albury City Council
Bankstown City Council
Bega Valley Shire Council
Blacktown City Council
Botany Bay City Council
Camden Council
Cessnock City Council
City of Canada Bay Council
Newcastle City Council
City of Ryde Council
City of Sydney Council
Coffs Harbour City Council
Eurobodalla Shire Council
Fairfield City Council
Gosford City Council
Great Lakes Council
Holroyd City Council
Hornsby Shire Council
Ku-ring-gai Council
Lismore City Council
Marrickville Council
Mosman Municipal Council
North Sydney Council
Parramatta City Council
Penrith City Council
Shellharbour City Council
Shoalhaven City Council
Sutherland Shire Council
The Hills Shire Council
Tumbarumba Shire Council
Tweed Shire Council
Warringah Council
Willoughby City Council
Wyong Shire Council

Table F.8 State agencies that made submissions to the Draft Report

Stakeholder
Building Professionals Board
NSW Department of Family and Community Services
NSW Environment Protection Authority
Food Authority
Office of Small Business Commissioner (formerly, NSW Small Business Commissioner)

G Table of changes between Draft and Final Reports

The following table sets out the changes between our draft and final recommendations.

Table G.1 Recommendations

	Draft Recommendation		Final Recommendation
	Chapter 2		
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: o a council hotline to provide support and assistance o a password-protected local government online portal o guidelines, advice and protocols o standardised compliance tools (eg, forms and templates) o coordinated meetings, workshops and training with councils and other stakeholders.	1	Subject to cost benefit analysis, the NSW Department of Planning and Environment 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 – risk-based approach to regulation supported by a compliance and enforcement policy – use and publication of reported data to assess and assist council performance – dedicated consultation forum for strategic collaboration with councils – ability for councils to recover their efficient regulatory costs – system of periodic review and assessment of the partnership agreement – dedicated local government unit to provide: o council hotline to provide support and assistance o password-protected local government online portal o guidelines, advice and protocols o standardised compliance tools (eg, forms and templates) o 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).	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 Recommendation 1).

	Draft Recommendation		Final Recommendation
	This recommendation was not made in the Draft Report. It is a new recommendation.	3	State agencies administering legislation with regulatory responsibilities for local government, such as the NSW Ministry of Health, NSW Office of Liquor, Gaming and Racing, Office of Local Government, and Roads and Maritime Services, should adopt relevant elements of the Partnership Model.
	Chapter 3		
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 – 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 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 – collaboration with local government to inform development of the regulatory proposal – if establishing a jointly provided service or function, agreement with local government as to the objectives, design, standards and shared funding arrangements – 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*	5	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 – giving statutory force to the NSW *Guide to Better Regulation*

	Draft Recommendation		Final Recommendation
	(November 2009) and enshrining principles in legislation.		(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 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. – Develop simplified guidance for the development of local government policies and statutory instruments.	7	The Department of Premier and Cabinet should: – Develop a Regulators' 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 Department of Premier and Cabinet's regulators group. – Develop simplified cost benefit analysis guidance material or a resource kit 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, and on risk-based compliance.
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	8	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

	Draft Recommendation		Final Recommendation
	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.		State and local government regulators. – The model policy should be consistent with the proposed Regulators' 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.
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.	9	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 .
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.	10	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) – 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. The guidance material should also include ways to address affordability issues through hardship provisions, if required.

	Draft Recommendation		Final Recommendation
	Chapter 4		
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 *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. Whichever forms of council collaboration are used in future, consideration should be given to whether the Act should specify how and in what form the collaborative arrangements 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.	12	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 availability of repayable funding arrangements 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.

	Draft Recommendation	Final Recommendation
	Chapter 5	
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 *Local Government Act 1993* (NSW) should be reviewed and amended in consultation with councils 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; installation of amusement devices; installation and operation of manufactured homes; stormwater drainage approvals – allow for longer duration and automatic renewal of approvals – provide more standard exemptions or minimum requirements from section 68 approvals, where possible, in areas such as: footpath restaurants; A-frames or sandwich boards; skip bins; domestic oil or solid fuel heaters; 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.

	Draft Recommendation		Final Recommendation
	Draft Recommendation 12 in the Draft Report was separated into three recommendations for the Final Report.	14	The *Local Government Act 1993* (NSW) should be amended to enable councils to recognise section 68 approvals issued by another council (ie, mutual recognition of section 68 approvals), subject to published local requirements, for example with mobile food vendors and skip bins. Councils should be able to recover the costs of compliance associated with approvals granted by another council.
	Draft Recommendation 12 in the Draft Report was separated into three recommendations for the Final Report.	15	The *Local Government Act 1993* (NSW) should be amended to 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 the Office of Local Government's (OLG) website; consolidate activities within one LAP per council; and OLG to provide a model LAP in consultation with councils.
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.	16	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.
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	17	Councils should support the use of alternative and internal review mechanisms (for example, the NSW Ombudsman, Office of the NSW Small Business Commissioner, and private providers of alternative dispute resolution services) to provide business and the community with a path of redress for complaints (not

	Draft Recommendation		Final Recommendation
	penalty notices) that is less time-consuming and costly than more formal appeal options.		including complaints concerning penalty notices) that is less time-consuming and costly than more formal appeal options.
	Chapter 6		
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.	18	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 2015.
	Chapter 7		
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.	19	The Department of Planning and Environment, 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 use for different forms of development.
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.		*This recommendation was moved to Chapter 8 for the Final Report.*

	Draft Recommendation	Final Recommendation
	Chapter 8	
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).	20 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 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.	21 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.
	This recommendation was not made in the Draft Report. This is a new recommendation.	22 NSW Fair Trading, in its consumer building guide or other appropriate material, and the Building Professionals Board, in its mandatory contracts between certifiers and clients or other appropriate material, should refer consumers of building services to the Building Professionals Board's register of accredited certifiers and register of disciplinary action.
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.	23 Councils seeking to impose conditions of consent above that of the National Construction Code must conduct a cost benefit analysis 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'	24 Certifiers should be required to inform councils of builders'

	Draft Recommendation		Final Recommendation
	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.		breaches if they are not addressed to the certifier's satisfaction by the builder within a fixed time period. Where councils have been notified: – if the breach relates to the National Construction Code (NCC), the council should be required to respond to the certifier in writing within a set period of time. – if the breach is not related to the NCC, the council should be required to respond to the certifier in writing within a set period of time, and if they do not respond within the specified period, then the certifier can proceed to 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.	25	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.
	This recommendation appeared in Chapter 7 of the Draft Report. It was moved to Chapter 8 for the Final Report.	26	The NSW Government (eg, the Department of Planning and Environment) should enable building owners to submit Annual Fire Safety Statements online for access by councils and the Commissioner of the Fire and Rescue Service.
	Chapter 9		
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.	27	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 taken into account by other councils when considering if inspection is warranted.
24	The NSW Food Authority, in consultation with councils, should stipulate a maximum frequency of inspections by councils of	28	The NSW Food Authority, in consultation with councils, should provide guidance on reducing the frequency of routine

	Draft Recommendation		Final Recommendation
	retail food businesses with a strong record of compliance to reduce over-inspection and costs.		inspections by councils of retail food businesses with a strong record of compliance to reduce over-inspection and costs.
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.	29	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 system of notification for all food businesses that avoids 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 a standard inspections template for use by all councils in NSW, to enhance the consistency of inspections across the State.
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	30	The Office of Local Government should: – develop a 'model' risk-based inspections program to assist councils in developing their own programs under the *Swimming Pools Act 1992* (NSW) – promote and assist councils to use 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) within five years from commencement of the amendments to determine whether the benefits of the legislative changes clearly outweigh the costs – review councils' regulatory performance and inspection fees prescribed by the *Swimming Pools Regulation 2008* (NSW), including whether inspection fees recover councils' efficient

	Draft Recommendation		Final Recommendation
	years to determine whether the benefits of the legislative changes clearly outweigh the costs.		costs – undertake regular reviews of its guidance material for councils and pool owners to ensure this material is current, reflects best practice, and that it incorporates learning from implementation of amendments to the *Swimming Pools Act 1992* (NSW).
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).	31	NSW Fair Trading should undertake regular reviews of the boarding house guidance material for councils and boarding house operators to ensure this material is current, reflects best practice, and that it incorporates learnings from implementation of 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.	32	The Department of Planning and Environment, in consultation with the NSW Environment Protection Authority 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 complying developments.

	Draft Recommendation		Final Recommendation
	Chapter 10		
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.	33	Councils should either: – solely use the State Debt Recovery 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 retain 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.	34	The Office of Local Government should review and, where necessary update, its free parking area agreement guidelines (including model agreements) for use in agreements with private companies, State agencies and owners corporations. 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: 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.	35	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 engineering assessments of infrastructure; 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.

	Draft Recommendation	Final Recommendation
	Chapter 11	
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).	36 The Office of Local Government should allow for an optional one-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).	37 The Office of Local Government should allow for online companion animals registration (including provision to change owner address and contact details online for animals that are not under declaration).
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.	38 The Office of Local Government 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.	39 The Office of Local Government 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.

	Draft Recommendation		Final Recommendation
36	DLG should amend the *Companion Animals Act 1998* (NSW) to enable fees to be periodically indexed by CPI.	40	The Office of Local Government should amend the *Companion Animals Regulation 2008* (NSW) to enable fees to be periodically indexed by CPI.
	Chapter 12		
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.	41	The NSW Government should amend section 125 of the *Roads Act 1993* (NSW) to extend the approval term for footway restaurants to 10 years and councils should ensure that approval conditions enable 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.		*This recommendation was deleted for the Final Report.*
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).	42	Councils should adopt measures to simplify and streamline the approvals process for local community events. This could include: – specifying some temporary uses of land as exempt development in local environmental plans, or – issuing longer-term development consents for periods of three to five years for recurrent local community events (subject to lodging minor variations under section 96 of the *Environmental Planning and Assessment Act 1979* (NSW)).

The table below sets out the changes between our draft and final findings.

Table G.2 Findings

	Draft finding		Final finding
	Chapter 6		
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.	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.
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.	2	Greater use of existing networks such as the Australasian Environmental Law Enforcement and Regulators neTwork and Hunter & Central Coast Regional Environmental Management Strategy provide greater resources, consistency of approach and build expertise or capability in undertaking council environmental compliance activities.
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	3	Councils would benefit from the use of the following self-assessment tools: – the Hunter & Central Coast Regional Environmental Management Strategy (HCCREMS) Practical Systems Review tool for local government to evaluate the capability and performance of compliance systems – the HCCREMS Electronic Review of Environmental Factors 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 Environmental Protection Agency, to provide a framework for using performance data to achieve better regulatory outcomes – the NSW Environment Protection Authority's (EPA) online "Illegal Dumping: A Resource for NSW Agencies" tool/guide

	websites.	available through Australasian Environmental Law Enforcement and Regulators network and EPA websites.
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).	Publication of more significant individual local government regulatory instruments on a central site, funded by the NSW Government, 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, Development Control Plans, Local Approvals Policies and Local Orders Policies).
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.	The use of 'SmartForms' by councils reduces costs to businesses and councils by enabling online submission and payment of applications directly to councils.
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.	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 or the Queensland Local Government Toolbox (www.lgtoolbox.qld.gov.au), can reduce the regulatory burden on businesses and the community.
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.	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.
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).	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.	9 Memoranda 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.	10 Councils engaging independent panels or consultants where development applications 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.	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 development application 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).	12 Councils can use order powers under the *Environmental Planning & Assessment Act 1979* (NSW) (eg, under section 121O) to allow modifications to developments in appropriate circumstances. This avoids 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.	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.	14 Broadening the scope of the Office of Local Government's (OLG) current Promoting Better Practice program would strengthen its assessment of regulatory performance. Greater promotion of OLG's better practice findings amongst all councils would improve regulatory outcomes.

This finding was not made in the Draft Report. This is a new finding.	15 The establishment of Regional Illegal Dumping Squads helps councils to combat illegal dumping across member council boundaries using a strategic coordinated approach in partnership with the NSW Environment Protection Authority.
This finding was not made in the Draft Report. This is a new finding. See also discussion in Appendix D of the Draft Report.	16 Councils could regulate onsite sewage management systems more efficiently by: – implementing risk-based regulation and efficient revenue policies to better manage limited resources – working together regionally to swap knowledge of contractors (eg, the Septic Tank Action Group) to address issues with variable quality servicing – developing standardised service report templates for services undertaken by contractors to streamline processes and improve consistency of reporting – issuing approvals to install and operate onsite sewage management systems together in one package of approvals to reduce paperwork and administrative costs.

Abbreviations and acronyms

ABCB	Australian Building Codes Board
ABLIS	Australian Business Licence and Information Service
ADHC	NSW Ageing, Disability and Home Care
ADR	Alternative Dispute Resolution
AELERT	Australasian Environmental Law Enforcement and Regulators network
AFSS	Annual Fire Safety Statement
AWTS	Aerated Wastewater Treatment Systems
BASIX	Building Sustainability Index
BCA	Building Code of Australia
BPB	NSW Building Professionals Board
CIE	Centre for International Economics
COAG	Council of Australian Governments
DA	Development Application
DCP	Development Control Plan
DLG	NSW Division of Local Government (now OLG)
DoPI	NSW Department of Planning and Infrastructure (now DPE)
DPC	NSW Department of Premier and Cabinet
DPE	NSW Department of Planning and Environment
EHC	Electronic Housing Code
EPA	NSW Environment Protection Authority

FACS	NSW Department of Family and Community Services
Fair Trading	NSW Fair Trading
Food Authority	NSW Food Authority
FPAR	Food Premises Assessment Report
FRP	Food Regulation Partnership
GAV	General Access Vehicle
HCCREMS	Hunter & Central Coast Regional Environmental Management Strategy
HIA	Housing Industry Association
ILGRP	Independent Local Government Review Panel
IPR framework	Integrated Planning and Reporting framework
LBRO	Local Better Regulation Office
LAP	Local Approvals Policy
LCD	Legislative Compliance Database
LEP	Local Environmental Plan
LG Acts Taskforce	Local Government Acts Taskforce
LGU	Local Government Unit
LOP	Local Orders Policy
MIDGOC	Mid North Coast Group of Councils
MoU	Memorandum of Understanding
NCC	National Construction Code
NHVR	National Heavy Vehicle Regulator
NSW	New South Wales
NSW Health	NSW Ministry of Health
OEH	NSW Office of Environment and Heritage
OLG	NSW Office of Local Government (formerly DLG)

OLGR	NSW Office of Liquor, Gaming and Racing
OSBC	Office of NSW Small Business Commissioner
PCA	Principal Certifying Authority
PBP program	Promoting Better Practice program
QRS Initiative	Quality Regulatory Services Initiative
RAV	Restricted Access Vehicle
RIA	Regulatory Impact Analysis
RIS	Regulation Impact Statement
RID squad	Regional Illegal Dumping squad
RMS	NSW Roads and Maritime Services
ROC	Regional Organisation of Councils
Scarlet Alliance	Australian Sex Workers Association
SDRO	NSW State Debt Recovery Office
SEPP	State Environmental Planning Policy
STAG	Septic Tank Action Group
ToR	Terms of Reference
UK	United Kingdom
VBC	Victorian Building Commission
VCEC	Victorian Competition and Efficiency Commission
WMP	Waste Management Plan