COMMERCIAL IN CONFIDENCE

FINAL REPORT

Local Government Compliance and Enforcement

Quantifying the impacts of IPART's recommendations

Prepared for
The Independent Pricing and Regulatory Tribunal of NSW

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THE CENTRE FOR INTERNATIONAL ECONOMICS
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1 Background

The Task

IPART has been asked to undertake a red tape review of local government compliance and enforcement activity. As part of this task the CIE has been asked to:

- provide estimates of the regulatory burden reduction (including red tape reduction) for NSW business and the community from the implementation of IPART's recommendations;
- provide estimates of the budget implications for government from the implementation of IPART's recommendations; and
- assess whether IPART's recommendations would produce net benefits to NSW.

Our approach

The major focus of IPART's recommendations is on systematic changes to governance arrangements and delivery models, such as the relationship between the NSW Government and local councils and approaches to sharing services across councils. Measuring the impacts from such changes is more challenging than for more tangible recommendations. Reflecting this, our approach has been to:

- group recommendations together where they impact on the same problem area;
- quantify the magnitude of each problem area drawing on discussions with businesses and councils, published studies and data sources; and
- quantify the extent to which IPART's recommendations will reduce the problem.

Coverage of red tape

The Better Regulation Office has released *Guidelines for Estimating Savings under the Red Tape Reduction Target*. This sets out a narrow view of red tape that allows for:

- administrative costs
- substantive compliance costs
- fees and charges, and
- delay costs.

Red tape costs do not include reductions in the value that households or businesses would otherwise gain from undertaking an activity. For example, a regulation that prohibited development of an area would not be red tape according to this definition.

Nevertheless, this regulation may have net costs to NSW. In many instances these costs are larger than the red tape costs.[1]

The allocation of fees and charges as red tape may also mean that there are net public benefits from increasing red tape where charges are less than an efficient level. Principles for setting fees and charges have been set out by the Productivity Commission in its 2001 *Inquiry into Cost Recovery by Government Agencies.*

Reflecting these concerns, we focus attention on the net costs or benefits of the recommendations while also considering the pattern of these and hence the change in red tape.

Incidence of impacts

In order to provide estimates of budget impacts (for councils and the NSW Government) and red tape impacts, it is necessary to consider the direct incidence of each problem and how this is changed by the recommendations. The initial incidence of a cost change will not be the final incidence. For example:

- a direct reduction in council costs will be passed on to businesses or households either through reductions in fees and charges, rates or improved services; or
- a reduction in business costs may be passed on to other businesses or households through lower prices.

Our approach focuses on the initial incidence of impacts.

Because the recommendations are often systemic, budget implications are difficult to identify and will depend on how the recommendation is implemented. For example, moving services online can be done in different ways. We have used past examples of government costs as the basis for estimates, where possible. There are also a number of areas where the benefits and costs are not easily identified because the baseline — what would happen in the absence of the recommendation — is not clear. This is particularly the case for road and transport recommendations, whose merits will depend on the resourcing of the National Heavy Vehicle Regulator.

This report

This report proceeds as follows.

- Chapter 2 sets out the summary of findings.
- Chapters 3–16 set out impacts of specific recommendations. Recommendations are grouped as follows:
  - chapter 3 — Planning
  - chapter 4 — Achieving better local government regulation

1 The CIE 2012, *Prioritisation of regulatory reforms,* prepared for the Queensland Office of Best Practice Regulation.

- chapter 5 — Supporting better local government implementation of regulation and improving local government enforcement of regulations
- chapter 6 — Transparent local government fees and charges
- chapter 7 — Streamlining approvals under the *Local Government Act*
- chapter 8 — Improving the ability to share services
- chapter 9 — Improving dispute resolution
- chapter 10 — Improving the outcomes
- chapter 11 — Building and construction
- chapter 12 — Environment
- chapter 13 — Public health
- chapter 14 — Parking
- chapter 15 — Road transport
- chapter 16 — Companion animals
- chapter 17 — Other

2 Impacts of IPART's recommendations in total

Table 2.1 summarises the total impact across all of IPART's recommendations for those that we were able to put monetary estimates on red tape changes and cost changes to the NSW Government and local councils.

2.1 Impacts of IPART's recommendations

Item	Total
	$m/year
Reduction in red tape for businesses and individuals	177.7
Savings to local councils	41.9
Savings to NSW Government	1.3
Other impacts	-0.9
Net benefits[a]	**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: Table includes costs and benefits only for those recommendations for which quantification is possible.
Source: CIE.

The recommendations that account for the largest part of the reduction in red tape and net benefits are the following.

- Preventing councils from imposing conditions of consent above what is required by the National Construction Code — consistency across councils has significant benefits for builders that work across multiple LGAs ($36 million per year).
- Sharing of services in regulatory areas could reduce council costs by $30 million per year.
- Implementing a partnership arrangement between the NSW Department of Planning and Environment (DPE) and local governments would reduce red tape by around $19 million per year and have net benefits of $18 million per year. There are substantial additional benefits (which have not been quantified) possible from continued improvement in planning with the excessive costs associated with planning coming to around $300 million per year.
- Recommendations that could improve road access for heavy vehicles could lead to red tape reductions of $59 million per year. Again, potentially the gains are far larger with heavy vehicle access restrictions estimated to cost $366 million per year in NSW.

The estimates above only include reductions in red tape arising from the existing stock of regulations. IPART has also recommended strengthening regulatory impact assessment processes, which would ensure that new red tape is not added at the same time as existing red tape is removed. Based on recent experience with adding additional regulations whose red tape exceeds the benefits of the regulation, we estimate that this

could lead to reduced red tape in the order of $48 million per year on average over the next decade and $21 million per year in net benefits for NSW.

A summary of the findings across recommendation groups is set out in table 2.2 where numbers are available.

2.2 Impact of each of IPART's recommendations by group

	Reduction in red tape for businesses and individuals	Savings to local councils	Savings to state government	Other impacts	Net benefits[a]
	$m/year	$m/year	$m/year	$m/year	$m/year
Planning including a new partnership between State and local government	19.4	2.3	-3.9		**17.9**
Supporting better LG implementation of regulation	30.9	8.6	7.0		**46.5**
Transparent LG 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				**10**
Building and construction	36.0				**36.0**
Building, Annual Fire Safety Statements	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[a]	**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

Impact of each of IPART's recommendations

3 Planning

3.1 IPART recommendations for planning

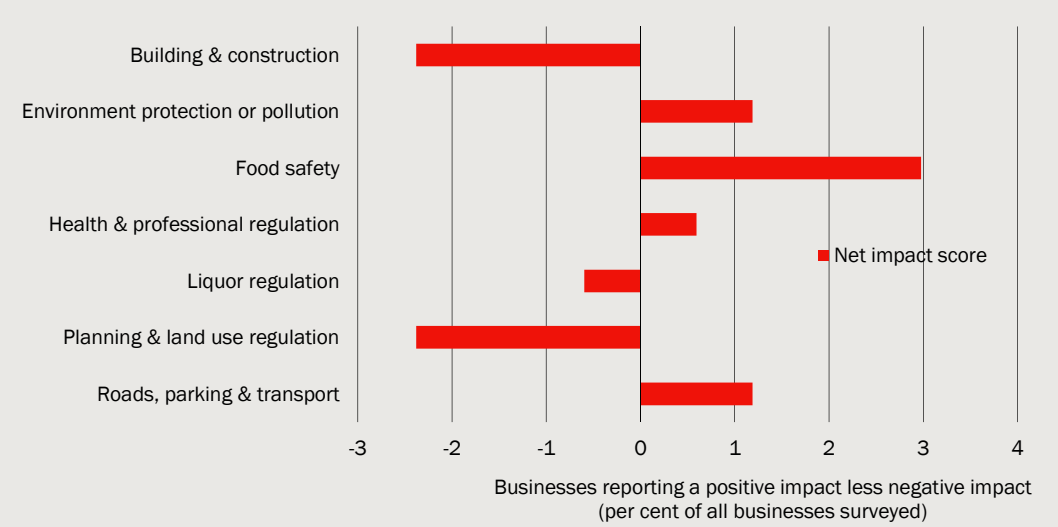
- Subject to cost benefit analysis, the NSW Department of Planning & Environment (DPE) should engage in a partnership model with local government, similar to the Food Regulation Partnership, to enhance the capacity and capability of councils to undertake their regulatory functions. This should include:
  - enshrine the partnership model in legislation
  - clear delineation of regulatory roles and responsibilities
  - a risk-based approach to regulation with a compliance and enforcement policy
  - use and publication of reported data to assess and assist council performance
  - a dedicated consultation forum for strategic collaboration with councils
  - ability for councils to recover their efficient regulatory costs
  - a system of periodic review and assessment of the partnership agreement
  - a dedicated local government unit to provide:
    - a council hotline to provide support and assistance
    - a password protected local government online portal
    - guidelines, advice and protocols
    - standardised compliance tools (eg, forms and templates)
    - co-ordinated meetings, workshops and training with councils and other stakeholders.
- 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 utilise for different forms of development.

Size and nature of the problem

Planning and building control are the key areas of concern for business in their interactions with local government, according to a survey of businesses conducted by the Productivity Commission (chart 3.2). The net impact of each regulatory area measures the number of businesses responding that the most relevant area for them had a positive

impact less those indicating a negative impact, as a share of all businesses. For the worst areas (planning and building), over 2 per cent more businesses indicated a negative impact than a positive impact (for example, 5 per cent indicating a negative impact against 3 per cent indicating a positive impact). This is particularly striking as most businesses only interact infrequently with the planning system.

3.2 Impact of local government regulations on businesses in NSW



Note: The survey covers 168 businesses. Each business is asked to identify the area of most impact for them and then whether local government has a positive or negative impact on their business.

Data source: Productivity Commission survey of small and medium sized businesses.

Planning regulation can have widespread impacts on business and individuals through:

- limiting the use of land for particular purposes and often their highest value purpose;
- delaying development;
- imposing costs on development through requirements for approval to be given;
- imposing costs on development through development charges (either state or local council);
- reducing the value of development through development consent conditions; and
- imposing costs associated with disputes.

These costs reflect concern over mitigating third party impacts associated with development, although planning requirements often extend well beyond what would fit within this justification. For example, development approval can be required for changes that would not impact neighbours, such as changes to internal structural walls. Partly, the complexity of the planning system across local government areas reflects the objective of allowing for different community preferences across areas.

The third party impacts of focus in planning cover environmental impacts such as noise, waste, biodiversity and pollution. Much of local government interaction with business and individuals to achieve environmental objectives occurs through the development approval process. This can include through enforcement of State Environmental Planning Policies (SEPPs), Local Environment Plans, tree preservation orders, development control plans and development consent conditions.

Local government interactions with business on environmental regulation tend to occur either in relation to development applications or in response to complaints about a business's impact on the environment. Even relatively simple developments by nature (for example, new single dwellings and seniors living developments) can be subject to numerous environmental issues and community concern.[2]

More generally, business concerns with local government involvement in environmental regulation typically relate to:

- inconsistency in, or lack of, enforcement of regulatory requirements;
- confusion over the role of multiple environmental agencies within an area, inconsistent agency boundaries, and overlapping or time consuming negotiations with those agencies;
- unpredictable environmental outcomes, or approaches to achieving outcomes, required by local councils as part of development approvals;
- environmental implications of neighbouring approved developments;
- local council requirements/costs for environmental offsets associated with developments; and
- single-focus, blinkered objectives of some environmental legislation.[3]

The total amount of development activity for which development approval is sought in NSW is in the order of $19 billion per year (table 3.3) Reflecting the substantial amount of economic activity, changes in the costs of development can have large impacts.

3.3 Development statistics in NSW

Item	2008-09	2009-10	2010-11
	$m	$m	$m
Development applications determined	19 830	17 028	19 256
Approved	18 525	15 657	18 040
Refused	1 305	1 371	1 216
Complying development certificates	862	2 982	1 827

Source: NSW Planning Local Development Performance Reports.

Planning does not come without benefits. Developer charges can lead to a more efficient pattern of development where appropriately levied, by making new development pay the costs associated with infrastructure necessary to support it. Planning can also mitigate third party impacts arising from development through coordinating forms of development such as industrial and residential.

While the costs of the problems associated with the planning system are difficult to precisely quantify, it is clear that the impacts are large and that NSW is viewed as worse than other states.

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2 NSW Planning and Infrastructure, 2012, *Local development performance monitoring 2010-11,* February 2012, page 48.

3 Productivity Commission, 2012, *Performance benchmarking of Australian business regulation: the role of local government as regulator.* Research Report Volume 1, July 2012, page 392.

- The 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[4]
- Developers surveyed by The CIE in 2010 indicated that they applied a risk premium for operating in NSW of an additional 1 per cent to their gross margin.[5] 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 (table 3.4). In some instances, the 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.

3.4 Time taken for determination of development applications

Item	2008-09	2009-10	2010-11
	Days	Days	Days
Mean gross time	152	170	158
Lowest time	18	12	11
25th percentile time	56	43	47
Median time	108	89	97

Note: The times are weighted by the value of each development application determined by the council. The mean gross time across councils is also weighted by value determined by each council.

Source: The CIE analysis based on NSW Planning Local Development Performance Reports.

Taking the information gathered above, we can generate some estimate of the costs associated with the current level of performance of the planning system in NSW. The costs associated with a poorly performing planning system for businesses and individuals are likely to be in the order of $300 million per year (table 3.5). This is a conservative estimate, as it only considers the cost of NSW relative to other states for the risk premium and does not factor in costs associated with development value being reduced through planning consents. For example, the CIE has found that zoning may reduce the value obtainable from land that is restricted in its use, either through reducing the density of development allowed, restricting use (particularly to industrial uses) and requiring larger block sizes than people want.[6]

The Productivity Commission has also noted overly prescriptive development conditions, such as requiring parenting rooms with specific detailed requirements in retail developments and requiring chain-wire fencing to be black or dark green and excluding

4 The CIE 2011, *Taxation of the housing sector*, prepared for the Housing Industry Association, September, Table 3.3.

5 The CIE 2010, *The benefits and costs of alternative growth paths for Sydney,* prepared for NSW Planning, December.

6 The CIE 2010, *The benefits and costs of alternative growth paths for Sydney,* prepared for NSW Planning, December; The CIE and ARUP 2012, *Costs and benefits of alternative growth scenarios for Sydney focusing on existing urban areas,* prepared for NSW Planning, August; The CIE 2011, Taxation of the housing sector, prepared for the Housing Industry Association, September, Table 3.3.

solid colorbond fencing.[7] A number of individual submissions have also noted the negative impact that development consent conditions can have on business operations.

There are additional costs to businesses and individuals for which it is not clear whether they have net public benefits or costs and hence whether they are excessive. For example, the costs of documentation to support development applications are likely to range from $187 to $374 million per year and there are also costs associated with development fees, which are often extensive. In some instances these will be net costs. For example, the Productivity Commission notes an example of a NSW council requiring 17 separate documents and 8 copies of scaled drawings for developments over 45m high.[8] We do not include these costs as excessive costs.

3.5 Costs of the NSW planning system

Item	Low	High
	$m/year	$m/year
Excessive costs due to poorly functioning planning system		
Risk premium for NSW development over other states [a]	187	187
Developer legal costs[b]	17	17
Holding costs [c]	56	100
Reduced value from development	Not valued	Not valued
Total	**260**	**305**
Other costs associated with the planning process for developers		
Costs associated with documentation [d]	187	374
Costs associated with fees [e]	164	164
Other costs associated with the planning process for councils (not net of fees)		
Council town planning costs [f]	258	258
Council building control costs [f]	134	134
Of which, council legal costs... [g]	17	17

[a] This is based on a 1 per cent risk premium applied to the total value of NSW DAs averaged over 2008/09 to 2010/11. [b] Legal cost savings are based on developers expending the same amount of legal costs as councils and each section 82A appeal requiring half the cost of a full appeal. Note that developer costs could differ from council costs depending on whether the unsuccessful party pays legal costs. [c] The low estimate of holding costs is based on the reduced delay from moving from the average time to the median time and the high estimate is based on moving to the 25th percentile time for approvals. We allow returns of 7 per cent to be reduced by one quarter during the extra delay period, reflecting that in many instances land will continue to be used for some purpose while delays occur. This is likely to be conservative as for larger developments often achieve no return while delays occur. [d] Costs associated with documentation are based on 1-2 per cent of total DA costs. CIE 2011, Taxation of the Housing Sector found that consultants costs were 1.3 per cent for Greenfield and 7.1 per cent for infill. The Productivity Commission inquiry into Planning, Zoning and Assessments found costs of $83,000 on average for retail developments, equivalent to 1.3 per cent for a $5 million development. [e] Based on revenue for town planning and building control from the NSW Office of Local Government Special Schedule 1, provided by NSW OLG . [f] Council town planning and building control costs are from the NSW Office of Local Government Special Schedule 1, provided by NSW OLG. [g] Council legal costs are based on $/appeal costs from 2005/06 and 2006/07 from NSW Planning Local Development Performance reports. These have been inflated to 2012 dollars and multiplied by the average number of appeals for 2008/09 to 2010/11, which is lower than for 2005/06 and 2006/07. Costs for section 82A appeals are not known and have been based on 50 per cent of the cost of a standard appeal. These should not be added to other costs, as they are likely to be incorporated into either town planning or building control costs.

Note: Totals may not add due to rounding.
Source: The CIE.

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7 Productivity Commission 2011, Planning, Zoning and Assessments, Research report, p. 307.

8 Productivity Commission 2011, Planning, Zoning and Assessments, Research report, p. 307.

Impact of IPART's recommendations

IPART's recommendations would be expected to reduce some of the costs involved in the planning system by:

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

It would likely result in additional costs to the NSW Government, through resourcing to better support the partnership agreement.

In some areas, local planning and development assessment could be considered to already meet some of the proposed elements of a partnership agreement (table 3.6). While at face value this might be the case, planning would not meet the full intent of the recommendations. For example, while guidelines might be available, these are difficult to follow for local councils. Note that this table does not cover other areas of planning such as development consents and tree preservation.

3.6 Current planning arrangements and the partnership model

Element of the partnership model	LEPs	DAs
Dedicated consultation forum	Annual planning forum in Sydney and regional forums	Annual planning forum in Sydney and regional forums
Clear delineation of regulatory roles and responsibilities	Arguably roles are not well defined. Local governments develop LEPs but these require approval by State Government and local planning is expected to meet broader strategic planning, such as the Sydney Metropolitan Strategy.	Responsibilities are split but are defined by projects of State Significance being assessed by the NSW Government and other projects by local councils. Within local councils, assessment can follow various assessment pathways. Delineation not clear in some areas (eg. liquor licensing)
Risk-based approach to regulation	To some extent. Zoning tends to be less restrictive in areas where impacts are likely to be lower but there is substantial room for improved zoning arrangements that better balance costs and risks. DPE has a standard LEP.	To some extent and varies across councils. Exempt and complying development goes through a simpler process. Major projects go through a more extensive process than standard DAs. For a given DA the complexity of assessment increases with the size and risks associated with the DA. Likely to be many areas where the costs are unnecessarily high given the risks associated with the DA.
Legislated commitment to partnership model	No	No
Use and publication of reported data	No. Not clear what data would be reported.	Yes. DPE publishes Local Development Performance Monitoring reports annually
Legislated ability to set fees and charges	Yes. Fees can be charged for those seeking amendments to LEPs (such as rezoning)	Yes. Fees can be charged for DAs (with a statutory limit) and for infrastructure (s94,94A and State Infrastructure Contributions)
Periodic review of partnership agreement	No.	No
Dedicated local government unit	No, but most roles provided by DPE including regional offices for assistance with LEPs, guidelines advice and protocols, standard LEP developed. Considerable scope to improve quality of interactions, guidance and consistency	No, but many of the roles are provided by DPE. This includes development assessment guidelines (there are 302 guidelines listed by topic on the DPE website) Considerable scope to improve quality of interactions, guidance and consistency

Source: CIE, based on review of DPE website.

It is difficult to ascertain the extent to which the recommendations could reduce the costs imposed by the planning system measured above. If we use the introduction of the Food Partnership Agreements as an example, this:

- was expected to lead to an improvement in outcomes through reducing foodborne illness by 2 per cent[9]. This would mean that it had a higher impact in reducing the excess illness — for planning the excess costs/delays are in the order of 20 per cent of the total costs[10], which would imply a 10 per cent reduction in *excess costs* from the application of the food model;
- savings through joint development of tools and training of $300 000 per year[11]; and
- led to an improvement in consistency of 3.2 per cent to 6.2 per cent across councils[12].

Based on this, we allow for a minimum impact of the recommendation to avoid 3.2 per cent of the excess costs, reflecting the lower bound of the improvement in consistency. We use an upper bound of 10 per cent, based on the expected improvement in outcomes (adjusted to be equivalent to a reduction in excessive costs) from the Food Partnerships business case. If this is the case then the estimated cost reductions would be as set out in table 3.7. There would be a cost to the NSW Government of $3.0 million per year to fund a similar arrangement to the NSW Food Authority for planning. Because DPE has staff in regional areas they may be able to somewhat reduce this cost through use of existing staff and offices. The cost is higher than the NSW Food Partnerships model because across NSW there are around 1000 full time equivalents involved in planning and development activities within councils compared to 152 in food activities. The specific costs that will eventuate will clearly depend on details of the partnership system and these cost figures are only preliminary estimates.

There may be additional costs if the NSW Government provides a flying squad to assist councils in processing development applications or making planning amendments. The Victorian flying squad has allocated $2.8 million over 3 years to assist rural and regional

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9 NSW Food Authority 2005, Local Government Interface Program — Implementing the NSW Food Regulation Partnership model, Business Case 2006–2011, p. 30.

10 The CIE 2011, *Taxation of the housing sector*, prepared for the Housing Industry Association, September found that overall risk premiums were around 5 per cent for Sydney of which 1 per cent was excessive to risk premiums applied by developers in other states. I.e. excessive costs were 20 per cent of total costs for this cost component. Note that excessive delay costs are a higher share of total delay costs. The minimum of 20 per cent is used to provide an upper bound for the range.

11 NSW Food Authority 2005, Local Government Interface Program — Implementing the NSW Food Regulation Partnership model, Business Case 2006-2011, p. 33.

12 The CIE calculations are based on The Social Research Centre 2012, *Evaluating the food regulation partnership: survey of multi-outlet retail food businesses,* January. This survey found that 4 per cent of businesses considered that consistent had significantly improved, 12 per cent that consistency had somewhat improved, 12 per cent that consistency had improved a little and 6 per cent that consistency had worsened somewhat. We allow for improved significantly to represent a 50-80 per cent reduction in inconsistency, improved somewhat to represent a 10-30 per cent reduction and improved a little to represent a 5-10 per cent reduction. Based on this, the average reduction in inconsistency is 3.2 per cent to 6.2 per cent.

councils in these areas,[13] amounting to $0.65 per person per year in these local government areas. This funding is typically used to pay for consultants to assist councils. In this respect it is alleviating a funding constraint on local governments that restricts them from hiring consultants directly and assists them in locating consultants with the required skill sets.

If we apply a similar rate of funding per person for NSW rural and regional areas this would lead to funding of $1.7 million per year. The costs of providing this for the NSW Government would be offset through reduced costs to councils or lead to improved services provided by councils. We base the estimate of impacts on the former occurring.

3.7 Impacts of improving performance and consistency in planning

Item	Low	High	Mid
	$m/year	$m/year	$m/year
Reduction in red tape for businesses and individuals [a]	8.3	30.5	19.4
Savings to local councils [b]	0.9	3.8	2.3
Savings to NSW Government [c]	-3.0	-4.7	-3.9
Net benefits	**6.2**	**29.5**	**17.9**

[a] The changes in red tape costs are based on reducing the estimated excess costs of a poorly operating NSW Planning system by between 3.2 per cent and 10.0 per cent. The lower bound is the change in foodborne illness expected from the introduction of a similar arrangement for the food sector, the upper bound is an upper estimate of the change in consistency in food arrangements after this model was introduced. [b] The change in council costs reflects reduced legal fees based on 3.2 per cent to 10.0 per cent plus a reduction in costs for development of planning tools similar to that estimated in the food model business case. [c] The change in NSW Government costs is based on the Food model of $0.85 million per year adjusted for the higher resourcing required for planning issues. The estimate is based on 90 per cent of costs being fixed and 10 per cent increasing with full time equivalents, reflecting that some part of the partnership model requires training costs. The upper estimate includes $1.7 million per year for a flying squad.

Note: Numbers may not add to net benefits because of rounding.
Source: The CIE.

The net benefits and reductions in red tape estimated above could be considered conservative if the improved relationship between the NSW Government and local councils leads to improved regulatory outcomes outside of delays and uncertainty, such as related to less restrictive intervention in business activities through development consents. These have not been included because the recommendations do not seek to change the pattern of land use arising from council restrictions.

IPART has also made a specific recommendation related to planning.

- DPE should identify which development consent conditions may be applied across council areas and which conditions will vary across council areas. DPE should then develop a standardised and consolidated set of development consent conditions for councils to utilise for different forms of development.

Standardising and limiting development consent conditions

Standardising development consent conditions could:

- improve the drafting of conditions to ensure that they are clear and enforceable. A number of submissions commented on issues around drafting of conditions;

13 http://www.dpcd.vic.gov.au/planning/projects-and-programs/rural-planning-flying-squad.

- reduce council costs through making it easier for councils to apply standard conditions; and
- reduce the ability of councils to apply inappropriate conditions. This would only occur if DPE limits the conditions that council can apply.

The impacts of this recommendation will reflect the degree of consistency obtained across councils and the limitations put on councils. There are benefits to standardisation and consistency regardless of whether this limits council discretion. The drafting of a standardised set of development consents would cost in the order of $20,000 for a council or $3 million across 152 councils. If undertaken across NSW this exercise would involve less resources and could save over $2 million. A number of council groups such as the Hunter and Central Coast Regional Environmental Management Strategy have already undertaken similar exercises, so the cost savings would be somewhat lower than this.[14]

There are likely to be greater benefits from restricting what councils can and cannot put into development consent conditions.

- For example, Randwick Council has suggested a sets 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 above at $187 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.[15](The Productivity Commission has persuasively argued that deregulation of trading hours more generally would benefit consumers, increase competition and increase retail employment.[16])

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.

Conclusions

IPART's recommendations would go some way to reducing the sizeable problems related to local government's role in land use planning and development and could generate net benefits of $18.9 million per year mainly through reducing red tape to businesses and individuals (table 3.8). There could be substantial additional benefits and red tape reductions from limiting the development consent conditions that councils can apply, which cannot be quantified until specific limitations are identified by DPE.

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14 HCCREMS 2012, Developing quality conditions of consent, Guidelines.

15 Retail Trading Act 2008.

16 Productivity Commission 2011, *Economic structure and performance of the Australian retail industry,* Chapter 10.

3.8 Impacts of planning recommendations

Item	Partnership
	$m/year
Reduction in red tape for businesses and individuals	19.4
Savings to local councils	2.3
Savings to NSW Government	-3.9
Net benefits	**17.9**

Note: Items may not sum tot totals because of rounding. Partnership model costs are average of high and low.
Source: CIE.

4 Achieving better local government regulation

4.1 IPART's recommendations for achieving better local government regulation

- The Department of Premier and Cabinet should revise the NSW *Guide to Better Regulation* (November 2009) (the Guide) 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; and
  - development of an implementation and compliance plan.
- The NSW Government should establish better regulation principles with a statutory basis. This would require:
  - amendment of the *Subordinate Legislation Act 1989* or new legislation, and
  - giving statutory force to the NSW Guide to Better Regulation (November 2009) and enshrining principles in legislation.

Size and nature of the problem

A well functioning regulatory impact assessment process ensures that new regulation is subjected to rigorous scrutiny before it is implemented. This process should help to ensure that government objectives are achieved in the most efficient way possible and that only regulation that is in the best interests of the community is passed into law.

A recent Productivity Commission report into regulatory impact analysis (RIA) processes in Australia found that:

> "RIA requirements in all Australian jurisdictions are reasonably consistent with OECD and COAG guiding principles. However, shortcomings in system design and a considerable gap between agreed RIA principles and what happens in practice are reducing the efficacy of RIA processes."[17]

The Productivity Commission identified a number of barriers to RIA improving regulatory outcomes. These included:

- a lack of commitment to RIA processes, this includes:
  - a top-down approach to policy making by some Ministers;
  - reliance on exclusions from RIA requirements; and
  - a lack of incentives for agencies to develop RIA capacity;
- the administrative burden of RIA process;
- inadequate analysis for many proposals with significant impacts, this includes a lack of robust quantification on the impacts; and
- lack of transparency in the implementation of RIA, this includes:
  - inadequate stakeholder engagement and infrequent publication of RIAs; and
  - exemptions and non-compliance are not routinely reported or explained.[18]

The proposition that there is too much red tape in NSW is widely accepted across government, business and the community. This in itself is an indicator that existing processes could be improved.

Since the red tape target was announced in September 2011, 148 pieces of (new and amending) primary legislation have received assent. No Better Regulation Statements have been published for these legislative changes and it is not clear if any have been undertaken. Not all of these Acts are relevant to this review. We counted at least 26 Acts that amend an Act identified by either the Productivity Commission or Stenning and Associates as containing a regulatory role for local government or are new Acts that contain a regulatory role for local government.[19]

A Better Regulation Statement is required only for *significant* new and amending regulatory proposals. Nevertheless, there are a significant number of Acts that appear to impose some significant costs (including red tape), as well as some benefits. Of the 26 Acts we identified as being relevant to this review, the following clearly have significant enough impact to warrant a Better Regulation Statement:

- *Boarding Houses Act 2012*
- *Forestry Act 2012*
- *Liquor Amendment (3 Strikes) Act 2011*
- *Liquor Amendment (Kings Cross Plan of Management) Act 2012*
- *Marine Pollution Act 2012*

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17 Productivity Commission, 2012, *Regulatory Impact Analysis: Benchmarking*, November, p. 2.

18 Productivity Commission, 2012, *Regulatory Impact Analysis: Benchmarking*, November, pp. 7-13.

19 See Stenning and Associates, *Register of regulatory functions undertaken by Local Government in NSW*, Final Report, October, pp. 14-16.

- *Plumbing and Drainage Act 2011*
- *Swimming Pool Amendment Act 2012*
- *Tattoo Parlours Act 2012.*

A 'bottoms up' approach to measuring the red tape burden and the net cost to the community imposed by these legislative changes would involve undertaking a full cost-benefit analysis of each of the Acts. This is not possible with the resources available for this project. Nevertheless, our analysis suggests that the *Swimming Pool Amendment Act* alone could impose red tape costs on the community of around $17.8 million per year. When the potential benefits of the legislation are taken into account, the net cost to the community could be around $7.8 million per year.

It seems unlikely that all primary legislation that is not subjected to a Better Regulation Statement would impose the same costs as the *Swimming Pool Amendment Act*. If in total, the eight significant Acts relevant to local government imposed costs around double the *Swimming Pool Amendment Act*, an additional $53.3 million of red tape costs may have been added over the past 18 months, with a net cost to the community of around $23.4 million.

This suggests that weaknesses in the RIA process could potentially increase red tape costs by around $35.5 million per year, with a net cost to the community of around $15.6 million per year.

A well functioning RIA process should minimise the red-tape burden on the community. An alternative 'tops down' indicator of the red tape burden caused by weaknesses in the RIA process is the total red tape burden on the community. If the NSW Government's red tape reduction target of $750 million is around 20 per cent of total red tape, this implies that the total red tape burden on the community could be around $3.75 billion. If each piece of legislation imposing a red tape burden on the community lasts on the statute books for 20 years on average, this implies that the red tape burden added each year could be around $187 million, including both state and local government regulatory functions. This 'tops down' analysis suggests that the 'bottoms up' estimate above is relatively conservative.

Impact of IPART's recommendations

The Productivity Commission identifies a number of leading practice approaches to make RIA more effective and efficient. IPART's recommendations pick up on some of these themes. In particular, IPART's recommendations are likely to:

- improve the commitment to RIA principles — enshrining RIA principles in legislation could reasonably be expected to improve the level of commitment by Ministers and agencies to the RIA process; and
- improve stakeholder engagement — the requirement to consider and consult on a range of issues relevant to Local Government should improve Local Government engagement in the policy development process.

However, it is not clear that the recommendations would improve the quality of analysis underpinning RIAs and the extent to which RIAs will be published and hence meet the Productivity Commission's leading practices relating to transparency. There is already a requirement that Better Regulation Statements and Regulatory Impact Statements are published. The extent to which RIAs are published in practice is not clear.

There are other ways in which the RIA process in NSW deviates from leading practice identified by the Productivity Commission that are not addressed by IPART's recommendations. These include:

- the former Better Regulation Office's (now Department of Premier and Cabinet's) lack of operational independence from government;
- no clearly defined criteria for exempting new or amending regulations from the RIA process;
- no two-stage process in the preparation of a Better Regulation Statement;
- no requirement for Ministers to explain the reason for exempt or non-compliant proposals proceeding;
- no requirement for a post-implementation review for all exempt and non-compliant proposals;
- no requirement for Cabinet Office to provide RIA information and all adequacy assessments to Cabinet irrespective of compliance; and
- no periodic independent evaluation of RIA oversight functions.

IPART's recommendations in this area seek to prevent new state regulations enforced by local government from imposing unnecessary costs on the community. Reform in this area is critical. Inadequate regulatory impact assessment processes in NSW help to explain the prevalence of red tape in the NSW economy.

The benefits of IPART's recommendations depend on the extent to which they prevent new regulatory proposals that are not in the best interests of the community from passing into law. Clearly, it is not possible to know with any certainty what proposals will be put forward in the future and the extent to which the strengthened RIA processes will prevent ones that impose a net cost on the community from passing into law.

Nevertheless, the 18 month period since the announcement of the red tape reduction target provides some insight on the 'business as usual' scenario. If this period is typical, the additional red tape added each year could be around $35.5 million and the net cost to the community could be an additional $15.6 million per year (see above).

Since this red tape accumulates over time, the increase in red tape in the 'business as usual' scenario could average around $192 million per year over the next ten years and the annual net cost on the community could average $84 million.

If IPART's recommendations could prevent even one quarter of these additional costs, the red tape savings delivered by these recommendations could average up to $48 million per year over the next ten years. When the potential community benefits of regulatory proposals (the increase in pool safety in the case of the *Swimming Pool Amendment Act*) are taken into account, the net benefit to the community from IPART's recommendation could average around $21 million per year over the same period.

Strengthening existing RIA processes may impose some minor additional costs on government. However, the additional benefits are likely to exceed these costs significantly.

Conclusions

Improvements in the regulatory process for state regulations enforced by local government could avoid further significant increases in red tape (table 4.2). If improvements in the regulatory process are somewhat successful then they may reduce red tape by as much as $48 million per year on average over the next ten years and generate net benefits of $21 million per year over the same period. The difference reflects that some level of community costs would be incurred in the absence of regulation.

4.2 Impacts of achieving better LG regulation

Item	Total
	$m/year
Reduction in red tape for businesses and individuals	48
Savings to local councils	Na
Savings to NSW Government	Increase in costs
Net benefits	**21**

Note: Since the benefits accumulate over time, the benefits reported in the table are expressed as an average over a ten year period. These benefits are not, however, included in the totals as they reflect avoidance of future red tape, rather than a reduction in the existing stock.

Source: The CIE.

Strengthening the regulatory impact assessment system in NSW could deliver significant red tape reductions and net benefits to the community by preventing new state regulations enforced by local government that impose costs on businesses and the community from making it onto the statute books. Nevertheless, these recommendations do not reduce the existing stock of red tape and therefore these benefits should not count towards the red tape reduction target.

5 *Supporting better local government implementation of regulation*

5.1 IPART recommendations for local government implementation

- 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; and
  - develop simplified guidance for the development of local government policies and statutory instruments, and risk-based regulation.
- 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; and
  - 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.
- 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 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.
- 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; and
  - be used by state agencies in policy development of regulations to avoid creating duplications or overlaps with new or amended functions or powers.
- State agencies, administering legislation with regulatory responsibilities for local government, such as 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.

IPART's recommendations cover the breadth of regulation involved in compliance and enforcement including development of a:

- Compliance code — which is a statutory code of practice;
- Enforcement policy —sets out the general principles and approaches which regulators should follow for enforcement activities; and
- A modern, consolidated and effective suite of compliance and enforcement powers and sanctions to enable regulators to conduct enforcement functions consistently, effectively and proportionately.

Size and nature of the problem

Inconsistent enforcement of state government regulation across local government areas could manifest in various ways, including:

- inadequate enforcement in some LGAs — this could lead to poor outcomes for the community; or
- excessive enforcement in some LGAs — this could include through excessive reporting or inspections and impose unnecessary costs on business and the community.

Poor outcomes for the community or unnecessary costs on business and the community can result from inconsistency of enforcement *within* a local council and *across* local councils.

Survey evidence suggests that enforcement of regulation is a significant problem for NSW businesses. According to the NSW Business Council's 2012 Red Tape Survey, 44 per cent 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'.[20] 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.[21]

20 NSW Business Chamber, 2012 Red Tape Survey, p. 12.

21 NSW Business Chamber, 2012 Red Tape Survey, p. 13.

Local government was also rated the most complex state-based regulatory authority to deal with, with more than 57 per cent of respondents rating the complexity of dealing with local government as either high or moderate. Local government was also the most utilised state-based regulatory authority, with 77 per cent of respondents having dealings with local government in the past year.[22]

There are also concerns that the enforcement powers and sanctions available for council officers are inconsistent, non-transparent and lack flexibility of use. This is partly due to the myriad of regulations under which local councils conduct compliance and enforcement activities, and the duplication in the enforcement powers and sanctions available for use by the local council. Local councils reported a preference to use powers under the POEO Act because they are more efficient and effective to use relative to powers under the LG Act.

Impact of IPART's recommendations

Compliance code

While the measures proposed by IPART are unlikely to solve the problems of inconsistent enforcement completely, they could reasonably be expected to contribute to better outcomes.

A Regulators' Compliance Code (now replaced with the Regulators' Code) has been implemented in the United Kingdom. The Code was part of a broader program to achieve targets of:

- a 25 per cent reduction in the administrative burden imposed on business by data requirements; and
- a 33 per cent reduction in the administrative burden on business as a result of routine inspections.

An Impact Assessment estimated that the Code could contribute between zero and 10 per cent towards meeting these targets.[23] It seems reasonable to assume that the guidance material recommended by IPART could make the same contribution to red tape reduction as the UK Regulators' Code.

The NSW Government's target is to reduce red tape by $750 million per year. If around 20 per cent of this target relates directly to local government regulation, this suggests the target would be around $150 million per year specific to local government. If the Regulators' Code contributed between 0 and 10 per cent towards achieving this target — as estimated in the UK — it could lead to red tape reductions of between zero and $15 million per year. Based on the mid-point of this range, the red tape reduction from IPART's recommendation could be around $7.5 million per year.

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22 NSW Business Chamber, 2012 Red Tape Survey, p. 14.

23 Better Regulation Executive, 2007, *A Code of Practice for Regulators — A Consultation: Consultation on the Regulators' Compliance Code and the scope of the Code and the Principles of Good Regulation*, Annex F, May, p. 10.

The UK study also estimated that there would be costs associated with the Regulators' Code. One-off costs for regulators to make relevant changes were estimated at around £33.2 million in total. This was mainly made up of the following.

- Implementing a risk-based approach was estimated to cost £4.2 million for a total cost of around £21 million across all regulators.
- A review to diagnose necessary changes across all regulators was estimated to cost around £7.2 million in total.
- Reviewing forms and data requirements was estimated to cost around £5 million across all regulators.

There were also estimated to be cost savings for regulators of around £37.3 million per year, associated with undertaking fewer inspections. However, it was recommended that these resources were re-directed to providing advisory services, resulting in no annual net impact on government.

It is not clear the extent to which the UK cost estimates are applicable for NSW. There are more council areas (373[24]) and a more complicated council structure in the UK. If the pattern matches the UK then there would be significant one-off costs and then ongoing cost reductions. The cost of creating a regulators' code would likely be small (less than $100 000), but with much higher costs for engaging with councils and educating councils about its use.

Model enforcement policy

Model enforcement policies for local government can provide consistency in enforcement of non-compliance, enable transparency and proportionate enforcement action.[25]

There are number of enforcement policies currently in place:

- the NSW Ombudsman released 'good practice' enforcement guidelines in 2002 to address difficulties local councils were having in promptly, consistently and effectively responding to allegations of unlawful activities. [26]
- many NSW local councils have established their own council specific enforcement policy.[27]
- the Local Government Association of South Australia has developed a *Model Council Enforcement Policy (2009).*
- NSW Food Authority has developed a Compliance and Enforcement Policy. Included is an enforcement toolbox which ranked powers and sanctions in order of graduating severity.[28]

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24 http://www.local.gov.uk/local-elections-2012

25 Local Government Association of South Australia, 2009, *Model Council Enforcement Policy.*

26 NSW Ombudsman, 2002, *Enforcement guidelines for councils.* *http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0009/4212/Enforcement-guidelines-for-councils.pdf*

27 For example Hurstville City Council, Parramatta City Council, Mosman Council, City of Canada Bay, Warringah Council.

- UK's Enforcement Concordat was adopted by 96 per cent of all central and local governments[29]

Regarding the enforcement policy, the Productivity Commission states that

> Accessible advice and guidance (including compliance and enforcement manuals) can reduce the time spent by small businesses understanding regulations and lead to better compliance outcomes. Compliance and enforcement strategies can impact on costs for businesses and regulators and/or facilitate greater achievement of the underlying objectives of the regulation. [30]

The number of enforcement policies in place demonstrates demand for model information policies. IPART's recommendation for the NSW Ombudsman to develop and maintain a more detailed model enforcement policy eliminates the cost to local councils to develop their own enforcement policy (provided local councils are willing to use the model enforcement policy developed by the NSW Ombudsman).

We have not quantified the cost to a local council to develop an enforcement policy, nor the cost to the NSW Ombudsman to develop a model enforcement policy. However having a single model policy that can be adopted by all local councils will reduce cost to local councils and has the potential to reduce cost to businesses and community from improvements in enforcement consistency and transparency *across* and *within* local councils.

Modern, consolidated, effective suite of compliance and enforcement powers

A review of enforcement regimes in the United Kingdom (the Macrory Review) found regimes to be ineffective with an over-reliance on criminal prosecution, a lack of flexibility and a lack of appropriate tools to effectively take enforcement action. The review recommended introducing an alternative system of civil sanctions, or an 'extended sanctioning toolkit' for regulatory offences in order to enable regulators to set up a modern, targeted, fit for purpose sanctioning regime. [31]

IPART's recommendation for a modem, consolidated and effective suite of compliance and enforcement powers and sanctions is similar to the recommendations of the Macrory Review in the United Kingdom.

An Impact Assessment was conducted on the new policy developed based on recommendations from the Macrory Review which included new civil sanctions to

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28 NSW Food Authority, NSW Food Authority Compliance and Enforcement Policy (including Appendix A) http://www.foodauthority.nsw.gov.au/_Documents/industry_pdf/compliance-enforcement-policy.pdf

29 Better Regulation Executive, 2007*, A Code of Practice for Regulators — A Consultation: Consultation on the Regulators' Compliance Code and the scope of the Code and the Principles of Good Regulation*, Annex F, May, p. 5.

30 Productivity Commission, 2013, *Regulator Engagement with Small Business: Issues Paper.* Released January 2013. Page 6

31 Department for Business Enterprise and Regulatory Reform, 2008, *Impact Assessment: Regulatory Enforcement and Sanctions Bill: revised for the House of Commons.* Page 25.

enable flexible and proportionate enforcement response. Under the current enforcement mix, the enforcement cost to an individual regulator was estimated to be £2.15 million. This included the cost of prosecutions, formal cautions, statutory notices sand warning letters. The enforcement cost to a regulator under the new policy was estimated to be £1.5 million, or a 30 per cent reduction in enforcement cost.

The range of alternative civil sanctions and useful enforcement tools is greater in NSW than was available in the United Kingdom prior to the *Regulatory and Enforcement Sanctions Act (2008)*. To reflect this we have assumed IPART's recommendation will reduce the total cost of enforcement in NSW by between 10 to 20 per cent.

The total cost of enforcement of local government regulations for all NSW local councils was $104 million in 2011-12.[32] Assuming a cost reduction between 10 and 20 per cent, IPART's recommendation will reduce the cost of enforcement activities to regulators by between $10.4 and $20.8 million per year, with a midpoint estimate of $15.6 million per year. This includes a reduction to local council of approximately $8.6 million and reduction in state government costs of approximately $7 million (table 5.2).[33] In addition the use of a modern, consolidated set of enforcement tools will reduce red tape to businesses by approximately $23.4 million. [34]

Local Orders Policies (LOPs)

The Local Government Acts Taskforce in its review of the *Local Government Act 1993* found that few councils have adopted LOPs and are instead specifying orders within their compliance and enforcement policies. Given this shift in process, the Taskforce questions the need to retain the ability of councils to make LOPs. [35]

A key cost of a LOP is the drafting and renewal process which must occur within 12 months of a council election held every four years. Section 160 of the Local Government Act 1993 specifies the requirements for public notice and exhibition of draft local policy. The requirements include public notice of a draft LOP after it is prepared, public exhibition of the draft LOP for no less than 28 days, and a minimum period of 42 days in which submissions can be made to the council.

An exact number of LOPs in place across NSW is not known, however there are at least twenty local councils with LOPs in place across NSW.[36] Assuming a lower limit of 20

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32 NSW Division of Local Government, *Financial Data Collection 2011-12.*

33 Distribution of cost savings to business, local and state government is based on the distribution of net benefits to businesses, local and state government as estimated UK Department for Business Enterprise and Regulatory Reform, 2008, *Impact Assessment: Regulatory Enforcement and Sanctions Bill: revised for the House of Commons.* Page 24.

34 Distribution of cost savings to business, local and state government is based on the distribution of net benefits to businesses, local and state government as estimated UK Department for Business Enterprise and Regulatory Reform, 2008, *Impact Assessment: Regulatory Enforcement and Sanctions Bill: revised for the House of Commons.* Page 24.

35 Local Government Acts Taskforce, 2013, *A new Local Government Act: discussion paper*. Page 56

36 This includes local councils with LOPs that are currently in place or appear to be passed the sunset clause date but remain on the local council website. Local councils include Bankstown,

LOPs and an upper limit of 40 LOPs in place, the reduction in annual administration cost from the abolishment of LOPs is between $32 500 and $65 000 per year with a midpoint estimate of $49 000 (table 5.2).[37]

Register of local government regulatory functions

The purpose of the register is to provide a detailed stocktake of the current regulatory functions of local government to provide local and state agencies with necessary information to avoid duplication and overlap between current regulatory functions with new or amended functions or powers.

The benefit of the register is contingent on:

- state agencies having readily and user-friendly access to the register;
- the probability that state agencies use the register to cross-check for each addition/amendment to local government regulatory functions;
- maintenance of the register with new or amended functions; and
- the register containing sufficient information for the state agencies to determine the scale and extent of current regulatory functions, and how currently regulatory functions align with the objectives of the overlying regulation/legislation.

Cost of register

The cost to manage the volume of regulation and maintain the register is estimated between $14 000 and $20 000 (excluding GST) per year. The cost to develop the register into an online, searchable database, to enable state agencies to use the register in policy development of regulations is estimated to cost between $65 000 and $95 000.[38]

Assuming the register is developed into an online system to enable readily and user-friendly access for state agencies, the estimated annualised cost (over 10 years) is between $23 000 and $33 500.

Benefit of register

The Productivity Commission identified five benefits of developing a central register of local government functions:

Blue Mountains, City of Canterbury, Corowa Shire, Fairfield, Glen Innes Severn Council, Kogarah City Council, Parramatta City Council, Queanbeyan City Council, Rockdale City Council, Singleton Council, Temora Shire Council, The Hills Shire Council, Tumut Shire Council, Upper Hunter Shire Council, Wagga Wagga, Walgett Shire Council, Weddin Shire Council, Wingecarribee Shire Council and Wyong Shire Council.

37 Annual administrative cost includes cost to prepare draft LOP (assuming 4 staff days and hourly rate of $34.70) cost of public consultation (cost of 1 local council staff member for 4 weeks), and cost to community of submission process (assumes 10 members of the public prepare a submission which requires 1.5 hours of leisure time at an hourly rate of $17.35).

38 Stenning Associates, 2012, *Register of regulatory functions undertaken by Local Government in NSW: Final report*. Pages 45-47.

- better business understanding of their compliance obligations
- clarity for state and local governments
- more information for state and local governments in discussing and setting priorities
- a better understanding of regulatory burdens placed on business
- a clearer understanding of whether local governments are resourced adequately to fulfil their regulatory roles.[39]

The benefit of the register is a function of its use by local and state agencies, namely how it is used by state agencies and the extent of its use. The register includes details such as what issue the local government function relates to (e.g. contaminated land, buildings and parking) and the role of the function (e.g. approvals, licencing, directions). At this stage the register does not contain sufficient information to be used to identify regulatory duplication or overlap. As Stenning and Associates notes:

> However, it is not possible from the Register alone to identify where unnecessary burdens are imposed or where regulatory duplication or overlap exists, either between local government regulatory functions or between local government and state government regulatory functions. This is because the Register does not provide information on the magnitude of the impact those regulatory functions have on business and the community, nor does it cover state government regulatory functions.[40]

The value of the register might be increased if additional information is included to address the lack of information on the magnitude as noted by Stenning and Associates above, and also information on the scale and complexity of the regulatory function. For example, planning and development regulatory functions required approximately 1000 FTEs across NSW local councils whilst food regulation required approximately 150 FTEs in 2011-12.

It seems evident that a reduction in overlap and duplication of local government regulatory functions will result in a positive benefit. However, as noted previously the register is not sufficient to achieve this outcome without additional information and/or development of processes to use the information which is highlighted by Stenning and Associates:

> The Register alone is necessary, but not sufficient to generate the benefits envisaged by the Commission. Rather, for the full benefits to be achieved, the Register needs to be combined with other quantitative and qualitative information on how local government applies its regulatory functions, the burdens on businesses and councils that arise and the priority areas of concern.[41]

It is not possible to quantify the benefits of the register as the benefit is a function of how the register is used and by whom which is currently uncertain. There are likely to be reductions in red tape to business and cost to local councils from improved

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39 Productivity Commission, 2012, *Performance benchmarking of Australian business regulation: the role of local government as regulator*. Research Report Volume 1. Page 81.

40 Stenning Associates, 2012, *Register of regulatory functions undertaken by Local Government in NSW: Final report*. Page 43.

41 Stenning Associates, 2012, *Register of regulatory functions undertaken by Local Government in NSW: Final report*. Page 2.

understanding of the regulation that is relevant to each party. There are also likely to be red tape reductions and cost savings if the register is combined with effective processes and other quantitative and qualitative information in policy decision making processes for new and amended regulation.

State agencies adopt relevant elements of the Partnership Model

State agencies such as NSW Health, Office of Local Government, Office of Liquor Gaming and Racing and Roads and Maritime Services administer legislation with regulatory responsibility for local government relating to health, swimming pools, liquor, gaming and racing, and roads.

IPART has recommended that state agencies, administering legislation with regulatory responsibility for local government (except in the areas of planning, building and the environment), should adopt relevant elements of the partnership model, such as:

- clear guidance on the roles and responsibility 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; and
- periodic review of regulatory arrangements, including the relationship with councils.

The regulatory task for councils in the areas of health, swimming pools, liquor, gaming and racing, and roads is relatively small compared to food safety, planning and the environment. For example, in the area of health, councils are the regulator for less than 7000 businesses operating public swimming pools, warming/cooling towers and skin penetration procedures.

IPART has not recommended formal application of the full partnership model by state agencies (excluding DPE and EPA) due to large costs and resources to establish and the relatively small regulatory task in these areas.

There is overlap between this recommendation and other targeted recommendations made by IPART in the areas of public health, environment and road transport that relate to risk-based regulation, provision of information and technical assistance and periodic review of regulation activities. For example, IPART has also recommended that an interim unit within RMS provides assistance to councils with heavy vehicles access decisions and related matters.

The impact of IPART's recommendation has not be quantified:

- to avoid double counting of impacts with other targeted recommendations made by IPART that overlap with this recommendation; and
- 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. For example, NSW Health has released additional guidelines and templates on its website to improve communication with businesses, individuals and councils in relation to their

respective regulatory requirements and OLG has developed guidance material for regulation of swimming pools.

Conclusions

Achieving better implementation of regulations could reduce red tape in the order of $30.9 million per year (table 5.2). There may also be cost savings for local government through development of a Compliance Code, Enforcement Policy, consolidation of enforcement powers and sanctions and register of local government regulatory functions. There will be an upfront cost to the NSW Government through funding to develop a regulators' compliance code (BRO) and develop and maintain a more detailed model enforcement policy (NSW Ombudsman).

5.2 Impacts of achieving better LG implementation of regulation

Item	Compliance Code	Enforcement Policy	Enforcement toolkit	Local Orders Policies	Register of LG functions	State agencies adopt model
	$m/year	$m/year	$m/year	$m/year	$m/year	$m/year
Reduction in red tape for businesses and individuals	7.5	Yes	23.4	Yes	Likely reduction	unclear
Savings to local councils	Yes	Yes	8.6	0.049	Likely savings	unclear
Savings to NSW Government	Increase cost	Increase cost	7.0	Yes	-0.02 to -0.03	unclear
Net benefits	**7.5**	**Yes**	**39.0**	**Yes**	**Likely to be positive**	**unclear**

Source: CIE.

6 *Transparent local government fees and charges*

6.1 IPART recommendations for local government fees and charges

- 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 government 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.

Size and nature of the problem

According to the BRO guidelines, any decrease in regulatory fees and charges is considered a red tape reduction. However in many circumstances, user fees and charges for the regulatory services provided by council can actually lead to more efficient outcomes if set at an appropriate level. Cost recovery arrangements can improve efficiency by:

- ensuring those that benefit from the regulatory regime pay for it — this encourages them to consider the cost of the resources involved in operating the regulatory regime in making their economic decisions, thereby improving the allocation of resources.[42] There is also an equity dimension associated with the 'beneficiary pays' principle. Funding arrangements where the beneficiaries of the regulatory regime pay for it reduces the burden on general ratepayers, many of whom may not consume regulated products;[43]
- instilling cost consciousness within councils and in users — where user charges reflect the cost of providing the service, this increases the accountability of the council to users and can create an incentive to improve efficiency;[44] and

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42 Productivity Commission, 2001, *Cost Recovery by Government Agencies*, Inquiry Report, Report No. 15, 16 August, pp. 14-16.

43 Productivity Commission, 2001, *Cost Recovery by Government Agencies*, Inquiry Report, Report No. 15, 16 August, p. 15.

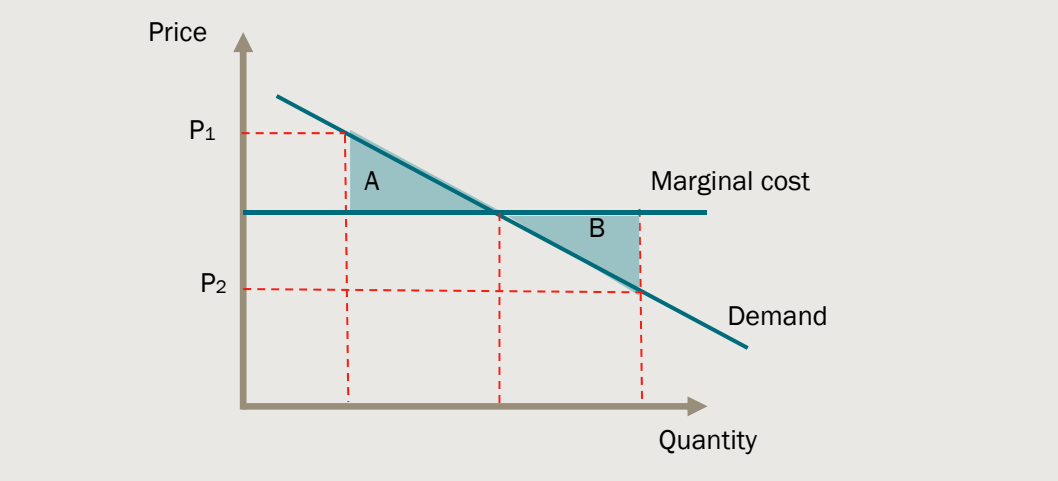
44 Productivity Commission, 2001, *Cost Recovery by Government Agencies*, Inquiry Report, Report No. 15, 16 August, pp. 95-96.

- providing councils with a source of revenue — user fees and charges are a transfer between users and the council, rather than a net cost to the community. Funding regulatory services through user fees and charges reduces the call on other revenue sources (such as rates) or in some cases help councils maintain an acceptable quality of service as well as remain financially viable.

However, to achieve any efficiency benefits from regulatory fees and charges they must be carefully designed and set at the right level. In its 2001 *Inquiry into Cost Recovery by Government Agencies*, the Productivity Commission noted that where cost recovery arrangements are not designed with economic efficiency in mind, user charges may be a less efficient means of revenue collection than general taxation revenue (that is the associated efficiency losses could exceed the efficiency gains from the reduction in tax collection).[45]

The welfare loses associated with user fees and charges being set at the wrong level is shown in chart 6.2, where the optimal fee for regulatory services is at the marginal cost of providing the service. A higher fee (such as P_1) would reduce demand for the regulatory services below the optimal level and result in a net welfare loss to the community (Area A). Alternatively, a fee set at a level below marginal cost (such as P_2) would reduce the red tape costs on business and/or the community (as defined in the NSW Government guidelines). But it would result in the demand for regulatory services being higher than the optimal level and therefore higher costs on councils, which must be recovered through an alternative source. This would also result in a net cost to the community (Area B).

6.2 Market for regulatory services



Source: The CIE.

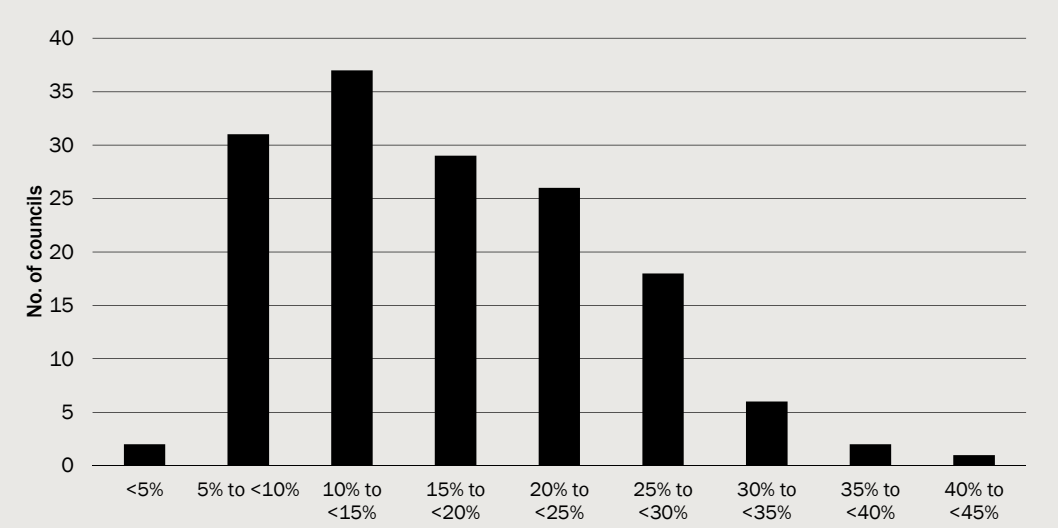
In 2010-11, NSW councils are estimated to have collected around $1.6 billion in user fees and charges (this includes regulatory fees and charges as well as user charges for other services provided).[46] The proportion of council revenue obtained from user fees and

45 Productivity Commission, 2001, *Cost Recovery by Government Agencies*, Inquiry Report, Report No. 15, 16 August, p. LV.

46 Division of Local Government, 2012, *Comparative Information 2010/11*, p. 57.

charges varied between 1.3 per cent and 43.3 per cent (see chart 6.3 for the frequency distribution). There are a range of factors that would account for this variation, including variation in the type and quality of non-regulatory services provided by councils and variation in the geography and demography across councils. Nevertheless, there is also significant variation across councils within each OLG Group. This suggests there may be significant differences in councils' approaches to setting user fees and charges, including regulatory fees and charges.

6.3 User charges as a share of total council revenue — frequency distribution



Data source: DLG, Comparative information 2010/11, CIE analysis.

The Division of Local Government (former OLG) has provided some estimates of compliance and enforcement costs across local government areas and associated revenues. The quality of the data is questionable and there appears to be inconsistent reporting across councils. Nevertheless, the data suggest there is significant variation in the level of cost recovery for these functions by councils. Assuming that the average across councils is the optimal level of cost recovery for each function and an elasticity of demand of 0.5, our analysis suggests that the potential welfare losses associated with incorrectly set regulatory fees and charges could be around $33 million per year.

Impact of IPART's recommendations

Guidance material would undoubtedly help councils to set fees and charges at an appropriate level. However, the extent to which this guidance material would improve outcomes depends on whether councils will actually use it. This is not immediately clear, although it seems unlikely that providing guidance material in itself will change councils' cost recovery policies to any significant extent.

A requirement for local government to publish the rationale for regulatory fees and charges (including both the level and any changes) could increase transparency and encourage councils to consider this issue in more detail.

The efficiency cost from incorrectly set regulatory fees and charges could be around $33 million per year (see above). If the fees and charges guidance material can reduce these costs by even 10 per cent, the benefit from this recommendation would be around $3.3 million per year.

The red tape benefits are not clear because reducing the welfare cost may mean increasing some fees and reducing others.

A systematic review of all local government regulatory fees and charges could be relatively costly. However, if compliance with the guidelines replaces existing approaches to setting fees, this could potentially reduce administrative costs for councils.

Conclusions

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 (table 6.4). Whether or not this leads to a red tape reduction will depend on whether fees increase on average or decrease from any changes resulting from this guidance, noting that fees are a part of red tape.

6.4 Impacts of transparency of fees and charges

Item	Value
	$m/year
Reduction in red tape for businesses and individuals	Not clear
Savings to local councils	Not clear
Savings to NSW Government	Not clear
Other impacts	3.3
Net benefits	**3.3**

[a] Net benefits are the total of reduction in red tape, savings to local councils, savings to NSW Government and other impacts.
Source: The CIE.

7 *Streamlining approvals under the Local Government Act*

7.1 IPART recommendations for streamlining approvals

- 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.
- 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 sun setting clauses; require Ministerial approval only for amendments of substance; centralise LAPs in alphabetical order in one location on OLG's website; consolidate activities within 1 LAP per council; and OLG 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), 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.

Size and nature of the problem

The *Local Government Act* section 68 identifies a set of activities for which local government approval is required. These include water, sewerage and stormwater activities, use of community land, use of public footpaths and various other activities.

There are around 120,000 new approvals for these activities every year made by councils (table 7.2).[47]

Councils can and do set out general conditions for exemption of the requirement to obtain approval. For example, a council might indicate that approval is not required for a wood heater where its flues are sufficiently high. Exemptions are set out in local approvals policies. These currently expire 12 months after the declaration of the poll for each set of council elections.

There appear to be many areas where councils are not enforcing approvals, probably because the risks of the activity are too low.

There is also overlap between section 68 approvals and approval required under the *Roads Act, Environmental Planning and Assessment Act*, section 46 of the *Local Government Act* and licencing of plumbers under the *Home Building Act* (table 7.3). In many instances these mean that the section 68 approval requirement is redundant or is having limited impact.

7.2 Approvals under section 68 of the *Local Government Act*

Area of approval	No. of annual approvals	Area of approval	No. of annual approvals
Approval to Place Waste in a Public Place	44,225	Approval to Engage in a Trade or Business	750
Approval to Operate a System of Sewage Management	25,580	Approval to Install a Domestic Oil or Solid Fuel Heating Appliance other than a Portable Appliance	622
Approval to Install Alter Disconnect or Remove a Meter Connected to a Service Pipe	6,922	Approval to Install or Operate Amusement Devices	548
Approval to Use a Vehicle Stall or Stand to Sell any Article in a Public Place	4,807	Approval to Install a Manufactured Home Moveable Dwelling or Associated Structure on Land	516
Approval to Connect a Private Drain or Sewer with a Public Drain or Sewer	4,313	Approval to Direct or Procure a Theatrical Musical or other Entertainment for the Public	448
Approval to Carry Out Sewerage Work	3,997	Approval to Operate a Caravan Park or Camping Ground	292
Approval to Carry Out Stormwater Drainage Work	3,972	Approval to Draw or Sell Water from a Council Water Supply or a Standpipe	219
Approval for Filming	3,570	Approval to Construct a Temporary Enclosure for the Purpose of Entertainment	182
Approval to 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	Approval to Deliver a Public Address or Hold a Religious Service or Public Meeting	172
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	3,203	Approval to Operate a Manufactured Home Estate	29
Approval to Dispose of Waste into a Sewer of the Council	2,827	Approval to Transport Waste Over or Under a Public Place	23

47 Provided by IPART for 2011/12.

Area of approval	No. of annual approvals	Area of approval	No. of annual approvals
Approval to Play a Musical Instrument or Sing for Fee or Reward	2,150	Approval for Domestic Greywater Diversion	21
Approval to Place a Waste Storage Container in a Public Place	1,472	Approval to Operate Public Car Park	17
Approval to Carry Out Water Supply Work	1,429	Approval to Place or Display Items on a Road or in a Public Place	1,590
Approval to Set Up Operate or Use a Loudspeaker or Sound Amplifying Device	1,369	Approval to Place or Display Items on a Road or in a Public Place (A-frames)	1,232

Note: Data have been extrapolated from those councils that responded to all councils. Data only includes new applications. Councils have also reported renewals and the stock of licences, which are not used for this cost estimation. Data is for 2011/12.

Source: IPART survey as part of its licence review.

7.3 Duplication with other acts

Area of approval	Alternative approval	Area of approval	Alternative approval
Approval to Install Alter Disconnect or Remove a Meter Connected to a Service Pipe	Home Building Act (licences plumbers)	Approval to Install or Operate Amusement Devices	WorkCover
Approval to Connect a Private Drain or Sewer with a Public Drain or Sewer	Home Building Act (licences plumbers)	Approval to Install a Manufactured Home Moveable Dwelling or Associated Structure on Land	EP&A Act
Approval to Carry Out Sewerage Work	Home Building Act (licences plumbers)	Approval to Place or Display Items on a Road or in a Public Place	Road Act and s46 of LG Act
Approval to Carry Out Stormwater Drainage Work	Home Building Act (licences plumbers)	Approval to Place or Display Items on a Road or in a Public Place	Road Act
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	Roads Act	Approval to Place or Display Items on a Road or in a Public Place	Road Act and s46 of LG Act
Approval to Carry Out Water Supply Work	Home Building Act (licences plumbers)		
Approval to Carry Out Water Supply Work	Home Building Act (licences plumbers)		

Source: The CIE.

Obtaining approval from councils can involve a simple form that would require 5 minutes to complete to more extensive requirements. Those that are most onerous are:

- requirements for installation on onsite sewage management systems can include geotechnical reports at a cost of $1500 to $2000 and approval to operate can require ongoing inspections;
- requirements for construction standards and public liability insurance (typically $10 million) related awnings and signboards outside shops[48] — public liability cover

48 Public liability is also required for some other council section 68 approvals, such as stormwater drainage.

of $10 million costs around $1750 per year per business more than public liability cover of $5 million; and

- fees and charges related to applications, which may reflect the costs to councils of processing applications.

Councils may also impose restrictions on activities directly, such as allowing no A-frame signboards, restricting where skip bins can be placed or restricting areas for busking.

The total costs related to section 68 approvals reflect:

- time costs to undertake the application for businesses and people;
- administration costs for sending applications (where electronic provision is not available);
- financial costs associated with providing documentation for approval;
- fees and charges associated with applications; and
- council costs (where fees and charges do not fully recover council costs).

There are also costs associated with overly onerous conditions and restrictions, including reduced business profitability. These would not fall within the typical definition of red tape costs but can be often be more significant in their impacts on businesses than administration costs.[49] Insufficient information is available to quantify these impacts.

Approximate estimates of these costs are shown in table 7.4, suggesting red tape costs in the order of $15 million per year. Financial costs for requirements to obtain approval and fees and charges are likely to be the most costly part of the section 68 approval process. In aggregate, these numbers amount to red tape costs of just over $100 per approval.

7.4 Costs of section 68 approvals

Item	Cost
	$m/year
Time costs for applications [a]	2.1
Time costs for inspections [b]	0.4
Administrative costs associated with applications [c]	0.2
Financial costs for requirements [d]	6.2
Fees and charges [e]	6.0
Total cost	**14.9**

[a] Reflects an average of 30 minutes to complete application and a rate of $34.70 per hour. There is substantial variation across items. [b] Based on 10 per cent of approvals requiring inspections and an hour for inspections. [c] Based on $1.65 per application reflecting stamp costs, paper costs, envelope costs, printing costs and mailing time. [d] Based on costs of public liability costs of $10 million versus $5 million for use of footpath/roads and costs of geotechnical reports applied to 20 per cent of onsite sewage management activities. [e] Based on average fees across all items of $50. In some cases fees are much higher (up to $1500 for approval of an operator to provide skip bins) and in other cases no fees are applied.

Note: The number of approvals is from table 7.4

Source: The CIE.

49 For example, see The CIE 2012, *Prioritisation of regulatory reforms,* prepared for the Queensland Office of Best Practice Regulation. This work found that the largest costs of poor regulation were not red tape costs..

Impact of IPART's recommendations

The costs for applications under section 68 of the *Local Government Act* are concentrated in areas where there is a reasonable ground for regulation. Costs are low to negligible where approval would have been required under another act, although to avoid confusion removal of duplication is still warranted in these instances. The focus of IPART's recommendations is to streamline the approvals processes for section 68 activities through providing standard exemptions or minimum requirements, allowing for longer duration and automatic renewal, removal of duplication with other Acts and, reducing the need to apply to multiple councils.

We quantify impacts from the changes set out in table 7.5, namely exemptions and removing requirements for approval for the section 68 activities listed. This is based on review of specific councils. Given the variation in requirements and fees across councils this may not give a good picture of the overall costs avoided — we have sought to be conservative in our estimates. The exemption from various approvals could reduce red tape costs by $4.8 million per year, with fees and costs of meeting requirements being the most important areas. However, the estimated avoided cost may be an upper bound estimate if exemptions are not granted in all cases listed. Examples of potential cost savings from implementing standard exemptions or minimum requirements are:

- reducing the public liability insurance that businesses would hold if this would no longer be required for an A-frame. We estimate the cost reduction from reducing liability from $10 million to $5 million. Some businesses would hold no public liability insurance if they were not required to. Others would continue to hold coverage to $10 million even without the requirement, or because of other requirements such as related to awnings or their own reasons. There may be additional cost savings from reducing the level of insurance coverage in other areas if $10 million is considered to be excessive;
- reducing fees through exempting approval for skip bins. This is based on a conservative $25 fee per approval. A number of councils have arrangements where accredited providers pay a once off annual fee (as much as $1500); and
- reducing fees associated with onsite sewage systems because of streamlining the requirement to receive approval to install and to operate into a single approval.

In many other areas the cost reductions are negligible as approval is required under other acts.

We consider that all cost savings can be allocated as reductions in the regulatory burden for businesses and individuals. There would be no impact on councils as long as current fees for administration and inspections are cost reflective.

These changes are likely to have net benefits, although this is not proven. For example, there may be costs associated with allowing A-frame signs without approval in terms of reduced footpath space. In some council areas, these signs are not allowed at all currently.

7.5 Red tape costs avoided by IPART's recommendations

S68 area	Particular exemption	Avoided approvals	Avoided costs				
			Time	Admin	Other	Fees	Total
		No./year	$000/ year	$000/ year	$000/ year	$000/ year	$000/ year
E2	No approval required for A-frames and sandwich boards	1 232	21	2	2 094	131	2 248
F4	No approval required if domestic oil or solid fuel heaters are installed by an accredited operator	622	43	1	0	47	91
D4	All busking activities exempt	2 150	6	4	0	11	21
C3/ C4	Skip bins exempt from approval if accredited operator	34 273	297	57	0	857	1 211
C6	No requirement to obtain approval to operate a sewage management system if inspections undertaken or use an accredited operator to check	12 790	222	21	0	640	883
B5	Stormwater works exempted for single lot residential dwellings or if repairs to existing	1 986	34	3	0	248	286
D5	Remove requirement for approval to operate a loudspeaker or sound amplifying device	1 369	18	2	0	0	20
D6	Remove requirement for approval to deliver a public address	172	2	0	0	0	3
F5	Remove requirement for approval for amusement devices	548	10	1	0	41	51
A1/F3	Remove requirement for approval for manufactured homes where these require a DA	0	0	0	0	0	0
E2	Remove requirement for footpath dining to require approval under section 68	0	0	0	0	0	0
F7	Remove requirement for mobile vendors to require approval under section 68	0	0	0	0	0	0
Total		**55 142**	**654**	**91**	**2 094**	**1 974**	**4 813**

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

Source: The CIE.

Abolishing local approvals policies or removing sunset provisions

Councils may make local approvals policies. If made, such as policy is required to:

- specify the circumstances (if any) in which (if the policy were to be adopted) a person would be exempt from the necessity to obtain a particular approval of the council;
- specify the criteria (if any) which (if the policy were to be adopted) the council must take into consideration in determining whether to give or refuse an approval of a particular kind.
- specify other matters relating to approvals.

If a local approvals policy is made then a draft must be placed on public exhibition for 28 days and the council must accept submissions for 42 days. The council must also obtain the NSW Planning Director-General's consent for any exemptions from the necessity for approval. A local approvals policy is automatically revoked at the expiration of 12 months after the declaration of the poll for that election. This effectively means that the process of public consultation has to occur every 4 years.

Local approvals policies differ in their coverage and length. For example, the Blacktown local approvals policy is 29 pages, Bathurst is 75 pages, Narrabri is 24 pages and Blue Mountains is 31 pages. The cost of developing a policy reflects the time devoted to this by councillors, council staff, members of the public, NSW Planning (for approval), as well as financial costs. We would expect that a public consultation process as required by the *Local Government Act* would lead to overall costs (including time) of up to $50 000 per local approvals policy.

Only a portion of NSW local governments have local approval policies. A search of the NSW Government Gazette indicated 31 referrals to "local approvals policy".[50] A number of councils have multiple local approvals policies and it is not clear whether these have been developed through a single process or multiple processes. On the basis of each of these being developed separately, the cost every four years for the development and consultation on local approvals policies would be in the order of $1.5 million, equivalent to $0.4 million per year.

IPART's recommendations would remove local approvals policies (presuming that generic exemptions were provided across all councils), or remove the requirement to redo local approvals policies. Under the first option, this would avoid $0.4 million in costs per year but would also reduce benefits from providing exemptions and guidance on the approvals policy. Under the second option, councils may wish to remake local approvals policies from time to time in any case and hence there would remain some cost. If councils remade their local approvals policies every 8 years instead of 4 years then the avoided costs would be $0.2 million per year.

Mutual recognition of approvals by other councils

IPART has recommended allowing mutual recognition of approvals by other councils. For most section 68 approvals, approval is related to a site and mutual recognition will therefore not have an impact. It is also unclear which section 68 activities will be granted exemption as a result of IPART's recommendation to provide, where feasible, standard exemptions or minimum requirements for section 68 activities. In some cases, councils have enabled approval of operators (such as for skip bins) through their local approvals policies, in which case mutual recognition could reduce costs. The cost reductions estimated in table 7.5 include accreditation of operators and then subsequent exemption. For this reason we have not separately included this cost saving.

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50 NSW Government Gazette 2010, *Summary of affairs,* No. 85, Friday 25th June,

Conclusions

A summary of the likely impacts from IPART's recommendations in streamlining local government approvals is set out in table 7.6. The change in council costs reflects avoided costs from not making local approvals policies or removing the automatic expiry of these. The reduction in red tape reflects the avoided costs for people and businesses now not requiring council approval. We have not allocated council cost reductions for fewer approvals on the basis that the fees charged by councils match their costs.

7.6 Impacts of streamlining local government

approvals Item	Value
	$m/year
Reduction in red tape for businesses and individuals	4.8
Savings to local councils	0.2 to 0.4
Savings to NSW Government	0.0
Net benefits	**5.1**

Source: The CIE.

8 Improving the ability to share services

8.1 IPART recommendations for sharing services

- The *Local Government Act 1993* 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 service 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).
- 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.

Size and nature of the problem

Sharing services can allow councils to access economies of scale in service provision. There is extensive debate about the extent to which economies of scale may or may not be realised in local government services.[51] Our analysis of council expenditure suggests that there are likely to be economies of scale, even after controlling for population density (table 8.2). Across all councils, a 10 per cent higher population is associated with a 2.1 per cent lower per capita expenditure. Using only metropolitan areas, this figure is 18 per cent for regional cities and 16 per cent for towns. These figures are statistically significant at the 1 per cent level for all councils and regional cities and towns and at the 5 per cent level for metropolitan areas of Sydney.

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51 This is summarised in, for example, Urban Taskforce Australia (assisted by Percy Allan and Associates) 2012, *Sydney's liveability crisis — reforming local government,* Part 2.

These findings suggest that there are likely to be economies of scale in council service provision. There are limitations to the analysis. In particular, there may be other drivers of per capita expenditure (apart from population density, which is accounted for) that are correlated with population size.[52] Councils may also be providing different levels of service depending on how large a population they serve.

8.2 Economies of scale in council service provision

Explanatory variables	All councils	Metropolitan only [a]	Regional cities and towns only
Dependent variable	Expenditure per capita	Expenditure per capita	Expenditure per capita
	Elasticity	Elasticity	Elasticity
Constant	9.82	8.31	9.34
Population density	0.08**	-0.08	0.05*
Population	-0.21**	-0.18*	-0.16**
R2	0.78	0.20	0.40
No of observations	152	31	38

[a] Sydney City is excluded.

Note: All variables are in natural logs. * means that the variable is statistically significant at the 5 per cent level and ** means it is stat5istically significant at the 1% level. (All constants are statistically significant at the 1 per cent level.)

Source: The CIE.

Economies of scale may not be able to be realised as easily in some regions or services. For example, sharing services across two rural towns that are 200 kilometres apart will be less likely to lead to economies of scale than sharing services across two metropolitan areas where activities require face-to-face contact and hence costs of travel become relevant.

IPART's recommendations relate only to council's role in regulatory compliance and enforcement. There is no reliable data on costs of providing these services across different councils.[53] There is information on staff employed in undertaking development approvals. This suggests substantial economies of scale, even larger than for council services in general. Using the value of development approvals per full time equivalent staff involved in DAs, a 10 per cent increase in the value of development approvals undertaken by the council is associated with a 5.6 per cent increase in the productivity of each staff member, measured as the value of DAs determined per staff member (table 8.3). If we look at number of DAs instead, which is a poorer measure as DAs can differ in their complexity, we see that a 10 per cent increase in the number of DAs assessed by a council is associated with a 4.5 per cent increase in productivity of staff, measured as the number of DAs determined per staff member. These findings allow for differences across council areas in the density of the council and the delay that people

52 Technically, this is unobserved variable bias. Note that other drivers of expenditure that are not related to population size will not alter the conclusions presented in table 8.2.

53 Councils are required to report on expenditure related to enforcement of local government regulations, building control and town planning through Special Schedule 1. We have reviewed this data and consider that it is not of sufficient quality to undertake empirical analysis.

and businesses seeking approval face (which is one measure of the standard of service provided).[54]

8.3 Economies of scale in development approval

Explanatory variables	Model 1	Model 2
Dependent variable:	Value of development approvals per FTE	Number of development approvals per FTE
	Elasticity	Elasticity
Constant	0.07	1.77**
Density (people/km2)	-0.04	-0.06**
Development approval delay (days)	0.03	-0.03
Value of development approvals	0.56**	
Number of development approvals		0.45**
R2	0.73	0.43

Note: All variables are in natural logs. ** means that the variable is statistically significant at the 1 per cent level.

Source: The CIE.

The reasons for economies of scale in the provision of regulatory services are easy to identify. In many regulatory areas, a council has the need for less than one person to undertake a particular role. To take an extreme example, some council areas will have less than 100 pools in their council area. A person will require training in pool inspections (four day course are offered for this) and could then undertake all inspections in a month's work. Or, for food inspections, there are 454 people trained in food inspections across NSW, but the required work effort is only 150 FTEs.[55]

In areas where specific tasks do not require a full council officer's time, officers will typically cover multiple roles. For example, a council officer could undertake food inspections, environmental assessments and swimming pool inspections and require training in each of these tasks. Councils will also require additional trained people to cover for leave or for staff turnover. These issues mean that it is more efficient to provide these services in larger council areas.

Under a model where councils shifted to service provision using regional organisations of councils (ROCs), such as is being promoted in the Hunter ROC, the number of organisations providing regulatory services would reduce from 152 to around 17.[56] This would mean the average population being serviced by each organisation would increase by 22 times. The cost savings based on the economies of scale estimated across council groups is shown in table 8.4. This suggests councils could save in the order of $150 million per year in costs related to activities covered by the IPART review.[57]

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54 Neither of these are statistically significant.

55 NSW Food Authority, data reported for 1 July 2011 to 30 June 2012.

56 There are currently 17 ROCs in NSW. Some of these are overlapping and there are a small number of councils not a member of a ROC.

57 Note that the extent to which these categories fully cover costs related to local government compliance and enforcement is no clear and councils use different methods of allocating costs across services.

8.4 Cost reduction from realisation of economies of scale

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

Note: This is based on achieving 16 per cent economies of scale, which is the lowest figure from the regressions undertaken using all councils, metropolitan only councils and rural and regional cities and towns. The calculation is as follows:

$C_1 = C_0 . \exp\left[-0.16 . \left(\ln\left(\frac{NSW\ Popn}{17}\right) - \ln\left(\frac{NSW\ Popn}{152}\right)\right)\right]$ where C_0 is current costs and C_1 is expected costs with economies of scale.

Source: The CIE.

The cost reduction of around $150 million per year presented above may be understated to the extent that councils can achieve greater economies of scale in regulatory services than in other services, as suggested by data on development approvals. However, it may be overstated to the extent that issues such as travel costs in regional areas reduce economies of scale where face-to-face contact (such as inspections) are required or if economies of scale flatten out relatively quickly with council size. In any case, the estimated cost savings are for where full economies of scale have been realised and has not accounted for costs associated with the different models of achieving economies of scale.

These estimates are based on the existing model of regional organisations of councils (ROCs). However, there may be other forms of council collaboration to share regulatory services other than using ROCs. For example, the Independent Local Government Review Panel has considered the amalgamation of councils.[58] To the extent that aggregation occurs in other ways then there may not be as great a need to consider arrangements for sharing services across councils.

Impact of IPART's recommendations

Economies of scale in providing regulatory services could potentially be obtained through council amalgamations, shifting to state government provision of services, outsourcing or sharing of services. IPART's recommendations relate to the last of these options, as the other options are not within the scope of IPART's review and were considered by the Independent Local Government Review Panel.

It is unlikely that the full benefits of economies of scale in regulatory services of $150 million per year will be realised from improvements in the ability to share services. The Australian Institute of Management has noted that expectations from sharing services across state and federal agencies have not been met, with implementation costs being

58 Independent Local Government Review Panel 2013, *Future directions for NSW local government: twenty essential steps,* April.

higher than expected and timelines longer than expected.[59] They note optimism bias and fear of loss of control as two major issues leading to a gap between expectations and actual cost savings. For local councils, the second of these is likely to be particularly important.

Reviews of shared service arrangements that have taken place, which often cover a broader range of services than the regulatory activities which are the focus of this review, also suggest savings are likely to be smaller. For example:[60]

- Sharing services across 13 councils in Riverina region resulted in cost savings of around $1 million per year. If similar cost savings were achieved across all NSW based on per capita savings, then savings would be in the order of $100 million per year. This covers a broader range of services than regulatory and compliance activities. The councils covered are also smaller than average, so this may overstate savings achievable.
- An alliance of 3 very small regional councils in NSW achieved savings of $720,000 in its first ten months. If applied across NSW on a population basis, this would suggest savings of $200 million/year, although it is unlikely that sharing of services by larger councils would achieve the same cost savings as possible from these 3 small councils. This covers a broader set of activities than regulatory activities.
- Cost savings expected from an alliance of regional councils in the New England region were $3.3 million per year in the longer term, equivalent to 6 per cent of expenditure.[61] If applied to regulatory expenditure across NSW, this would imply savings in the order of $30 million per year. These figures are expectations rather than actual realised savings.

Furthermore, councils are currently able to move to shared service arrangements if they choose, but few have used regional organisations of councils or other mechanisms extensively to do so. The extent to which this behaviour can be changed at low cost is difficult to determine.

Reflecting these issues, we expect that potential savings are likely to be closer to the lower bound of the estimates, of around $30 million per year from sharing of regulatory services.

Potentially, sharing of services could also result in improvements in service quality or better consistency across councils. For example, it may enable councils to retain better staff with the resulting outcome being improved regulatory services for residents and resident businesses. Whether councils seek to share services for cost savings or to improve services will depend on the motivations of the councils involved.

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59 Australian Institute of Management 2012, *Shared services in the public sector: a triumph of hope over experience?,* White Paper, August.

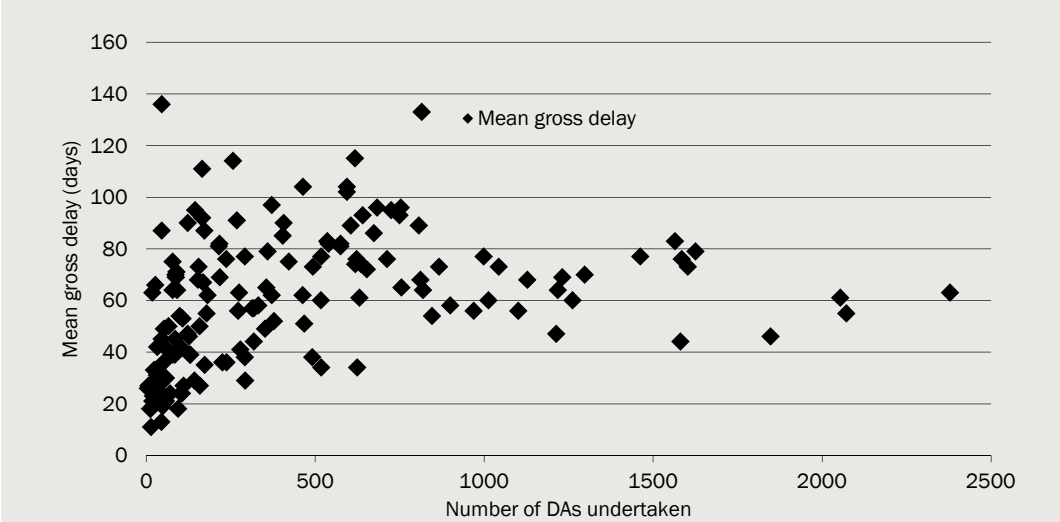
60 The first two examples are reported in Dollery, B. and A. Akimov 2008, "Are shared services a panacea for Australian local government? A critical note on Australian and International empirical evidence", *International Review of Public Administration,* Vol. 12, No. 2.

61 Dollery, B. E., Burns, S. and A. Johnson 2005, "Structural reform in Australian local government: The Armidale Dumaresq-Guyra-Urally-Walcha strategic alliance model", *Sustaining regions,* Vol 5., No. 1, pp 5-13.

There are few examples to illustrate which choices councils that share services or that are larger make. In one area where there is a measure of cost and service quality, the delay in determining development applications, there is no systematic relationship between scale and service quality. Instead, councils that process more DAs or a higher value of DAs appear to look for cost savings rather than scaling up their resourcing proportionately and processing applications in a more timely fashion. This is shown in chart 8.5 and in the regression results in table 8.6. We have also looked in detail at subcomponents to see whether councils that process more high value applications, industrial applications, commercial/retail applications or subdivision applications process applications more quickly. There is no evidence that this is the case across any of these areas. On this basis we allocate all of the gains from sharing of services to cost reductions to councils.

Issues related to the consistency of regulation are also addressed in other IPART recommendations, such as the partnership model between the NSW Department of Planning and Environment (DPE) and local councils. To avoid double counting benefits associated with consistency we consider gains from consistency under those recommendations.

8.5 Scale and development application delays



Data source: The CIE based on NSW Planning Local Development Performance Monitoring report for 2010-11.

Conclusions

The potential net benefits from sharing services are likely to be in the order of $30 million per year across NSW (table 8.6). The final incidence of these net benefits will depend on council behaviour. Following the NSW Government's Guidelines for Better Regulation we allocate these to the group to which they directly accrue, which is councils. The final benefits may then be passed on to those using services through reduced charges, rate payers through reduced rates or to businesses and residents through improved provision of regulatory or other services.

The NSW Government will incur some cost to enable services to be shared upfront, which IPART's recommendation then considers should be paid back through time. In this case there would be no net impact on the NSW Government although there would be outlays now for revenue later.[62]

8.6 Summary of impacts of sharing services

Item	Value
	$m/year
Reduction in red tape for businesses and individuals	0
Savings to local councils	30
Savings to NSW Government [a]	0
Net benefit	**30**

[a] There will be upfront costs if the NSW Government establishes a fund that is subsequently repaid by councils through cost savings.
Source: The CIE

62 Note that the $30m/year net benefit indirectly accounts for implementation costs.

9 *Improving dispute resolution*

9.1 IPART recommendations for improving dispute resolution

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.

Applicants may dispute a decision where they think an inconsistent outcome has occurred due to:

- inconsistency in the decision framework used across local councils; or
- inconsistency in the application of the decision framework amongst staff within a local council.

The effectiveness of an internal review process (by the local council making the original decision) is limited in the first case given the inconsistency is due to the framework applied within the local council. Internal review processes will be relatively more effective in the second case which aim to improve consistency of application of the decision framework within a local council.

Size and nature of the problem

The costs of dealing with a complaint through a formal appeal process can cost in the thousands of dollars after paying for a magistrate, legal representation for both parties, and time of the agency staff and complainant.[63] The cost of handling a complaint through Legal Services Commissioners in NSW and QLD was estimated to range between $1 331 and $2 711.[64]

The NSW Small Business Commissioner has estimated the cost of disputes handled through its dispute resolution services is less than $1000 per complaint,[65]

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63 From discussion with State Debt Recovery Office.

64 ACIL Tasman, 2010, *Cost benefit analysis of proposed reforms to National Legal Profession Regulation.* Prepared for the Attorney-General's Department.

65 NSW Small Business Commissioner's submission to IPART's Regulation Review – Local Government, 3 July 2014.

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 range depending on the scale of the complaint (for example, 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 (i.e. decrease unit cost if more reviews are conducted). This is often driven by the extent to which businesses and individuals have confidence in the original decision making process. [66]

Given the much lower costs of internal review, having this option could provide net benefits if it can adequately resolve disputes. Evidence on the extent to which this is the case across different areas of council disputes is not available.

Impact of IPART's recommendation

The reduction in cost to businesses and individuals from an internal review system can range between a 10 to 30 fold reduction in cost. However the reduction in cost is dependent on:

- whether the complaint is due to an inconsistency across local councils or an inconsistency within an individual local council;
- the scale of the complaint; and
- whether an internal review process will provide independent and consistent outcomes across local councils and within local council.

There is insufficient information to understand these issues and hence the impacts on businesses, councils and the community are not able to be quantified.

66 The CIE, 2012, *Benefit-cost analysis: National Heavy Vehicle Regulator (NHVR) model law.* Prepared for the National Transport Commission.

10 Improving regulatory outcomes

10.1 IPART recommendations for improving regulatory outcomes

- As part of the State's Quality Regulatory Services initiative, the NSW Government should require all State agencies that devolve regulatory responsibilities to local government to:
  - consider councils' responsibilities in developing their risk-based approach to compliance and enforcement,
  - consider councils' responsibilities in defining the regulatory outcomes and setting monitoring mechanisms to measure the outcomes, and
  - identify what information needs to be obtained from councils in relation to their regulatory activities to measure regulatory outcomes and how this data will be used or published to assess and assist council performance.

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

Size and nature of the problem

The NSW Government has initiated a Quality Regulatory Services (QRS) initiative that aims to reduce costs for businesses and individuals. As part of this, agencies are required to implement risk-based approaches and outcomes measures by the end of 2015. This applies to all NSW Government agencies with regulatory responsibilities, including those that devolve responsibilities to local government.

IPART's recommendation aims to strengthen the focus on local government capability as part of the Quality Regulatory Services initiative. For the 31 NSW Government agencies[67] that devolve responsibilities to local government, this addresses a similar problem as that addressed by the partnerships model — it seeks to ensure that there is an appropriate allocation of responsibilities between local government and the NSW Government and adequate capability in local government, where regulatory responsibilities are devolved. It also seeks to ensure continuous improvement of regulatory outcomes through monitoring.

67 Stenning and Associates 2012, Register of NSW Local Government Regulatory Functions, prepared for IPART.

The NSW Government's red tape reduction of $750 million, equivalent to 20 per cent of total red tape, implies the total red tape from all levels of government is approximately $3.75 billion per year.[68] The amount of red tape associated with local government is likely to be upwards of 20 per cent of this total[69] and therefore equivalent to around $750 million per year. Of this, around half may be attributable to planning ($260 million to $305 million) (see table 3.5), building and environment, which is partly addressed by other recommendations made by IPART (eg, the partnership arrangements for planning). Hence the areas of remaining red tape are likely to be in the order of $375 million per year that could be influenced by this recommendation.

Impact of IPART's recommendation

The outcomes of IPART's recommendation will depend on the tangible measures that are put in place as a result of reviews by NSW Government agencies and that result from improved measurement of outcomes. If the reviews can achieve something similar to that expected for partnership arrangements for planning, around 3.2 to 10 per cent of red tape might be able to be reduced through ensuring that agencies consider local governments as part of the Quality Regulatory Services initiative. Given the greater scope of the partnership arrangement for food and planning, the lower bound is more realistic, amounting to around $10 million per year red tape reduction, with minimal extra costs to the current QRS process.[70] These gains could reflect improvements in the allocation of responsibilities between the NSW Government and local councils and ensuring that regulatory administration is undertaken by the organisation best placed to do it rather than influenced by cost shifting.[71] Note that a part of the gains from considering the use of councils to administer regulation overlaps with sharing services. If councils were to represent a more efficient administrative option, then the costs of devolving responsibilities to them would be lower. Organisations that operate their own administrative structures across NSW typically choose a smaller number of administrative centres than there are councils. For example, WorkCover has 23 offices around NSW and NSW Health divides its operations into 15 Health Districts.

There may be further reductions in red tape that would eventuate from the use of information collected on regulatory outcomes across councils over time. This would depend on the information collected, and use of information[72]. The collection of

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68 NSW Better Regulation Office, 2012, *Guidelines for estimating savings under the red tape reduction target.*

69 See Chapter 4.

70 There may be some additional costs related to consultation with councils.

71 In some instances councils may be chosen to administer regulation to avoid costs for NSW Government agencies. For example, see Local Government and Shires Association of NSW 2012, *The impact of cost shifting on NSW local government 2010/11.*

72 In some cases, extensive information collection is not used by governments to improve their decision making, such as bus contract data collected by Transport for NSW. In other cases, such as for development approvals, information is available but councils do not view

information is not costless. As a guide, it has been argued by some that for project evaluation, the optimal level of expenditure on information gathering is >10 per cent of the project value.[73] In Victoria, the Victorian Competition and Efficiency Commission notes substantial pay-offs from reviews (box 10.2). The gains from information collection will depend on many factors. Gains will be higher when:[74]

- there is uncertainty about the appropriate policy design and governance;
- a larger part of this uncertainty can be resolved through review or information collection;
- information gathering is less costly; and
- the policy design or governance will be more likely influenced by evidence.

IPART's recommendations are specifically aimed at ensuring that the QRS process considers issues around local government capability and improvement. This aligns with views from councils and businesses alike that councils often have insufficient capacity and capability to perform the roles allocated to them by NSW Government agencies.

10.2 Victorian gains from review

The Victorian Competition and Efficiency Commission has noted the gains from its reviews are many multiples of the cost. For 3 major published inquiries undertaken by VCEC, it estimates its costs as $5.36 million. The acceptance of the recommendations is expected by VCEC to lead to annual savings of $95-$127 million.[75]

Conclusions

The potential gains from improvement in regulatory performance as a result of ensuring the Quality Regulatory Services process considers local government issues could be in the order of $10 million per year if they achieve an impact towards the lower end of that achieved from the food model partnership and expected for planning. This would involve minimal cost in addition to the costs of the QRS process.

We do not include the impacts of this recommendation in totals for IPART's recommendations. Reductions in red tape should be included when tangible changes are made following the finalisation of the QRS process.

performance in the same way. For example, in some council areas delaying development and extensive legal action may not be considered to be a bad thing.

73 See Henry Ergas 2012, "The NBN and cost-benefit analysis", presentation to the Economic Society of NSW.

74 These principles are detailed in Little I. and J. Mirrlees 1990, "Project appraisal and planning 20 years on", *Proceedings of the World Bank Annual Conference on Development*, Appendix. The focus of this paper is on project appraisal.

75 Victorian Competition and Efficiency Commission 2011, *Strengthening foundations for the next decade,* April, p. 136.

10.3 Impacts of improving regulatory outcomes

Item	Value
	$m/year
Reduction in red tape for businesses and individuals	10
Savings to local councils	Na
Savings to NSW Government	Negligible addition to costs of QRS
Net benefits	**10**

Source: The CIE.

11 Building and construction

11.1 IPART recommendations for building and construction

- 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'.
- 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.
- 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.
- Councils seeking to impose conditions of consent above that 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.
- Certifiers should be required to inform council of builders' breaches if they are not addressed to the certifier's satisfaction by the builder within a fixed time period. Where councils have been notified:
  - 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 National Construction Code (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.
- 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.

- The NSW Government (e.g. DPE) should enable building owners to submit Annual Fire Safety Statements online to councils and the Commissioner of Fire and Rescue Service.

Establishment of a NSW Building Authority

IPART has recommended that the NSW Government should:

- subject to a cost benefit analysis, create of 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, co-ordinated framework for interacting with councils through instituting a 'Partnership Model'.

Size and nature of the problem

Responsibility for the regulation of the building industry is currently split between:

- NSW Fair Trading (under the Department of Finance and Services) — responsible for licensing builders, including investigating complaints against builders;
- the Building Professionals Board (under the Department of Planning and Infrastructure) — responsible for accrediting certifiers, including investigating complaints against certifiers; and
- the Department of Planning and Environment – responsible for building control and safety.

This fragmentation of regulatory responsibilities contributes to several problems, including:

- Ineffective enforcement — there is some evidence to suggest that building defects are a significant problem, suggesting there is room to improve the effectiveness of the regulatory regime;
- Red tape for consumers — splitting regulatory responsibilities across multiple agencies can create confusion among consumers. Consumers are often not sure to which agency they should make a complaint if they are dissatisfied with building work. Indeed even if consumers were well informed of the regulatory responsibilities of the agencies, it is not always immediately clear whether the fault lies with the builder or the certifier (or both); and
- Inefficient enforcement — splitting regulatory responsibilities across multiple agencies could also mean that there is some overlap between investigations, resulting in a less efficient regulatory regime.

The size and nature of each of these problems are discussed further below.

Ineffective enforcement

A recent study by the University of New South Wales on the role and effectiveness of strata management in NSW found evidence to suggest that building defects are a significant problem in strata schemes in NSW and this may be at least partly due to failures of the building certification system.[76] In NSW, the defects typically occur at the construction, rather than design phase.

In a survey of owners of lots in strata schemes around 72 per cent of respondents reported that one or more building defects had been present at some stage.[77] Similarly, a survey of Executive Committee members found that around 69 per cent had experienced building defects.[78] There is no information available on the extent of building defects in other residential buildings.

The most common defects were internal water leaks, cracking to internal or external structures and water penetration from outside (chart 11.2).

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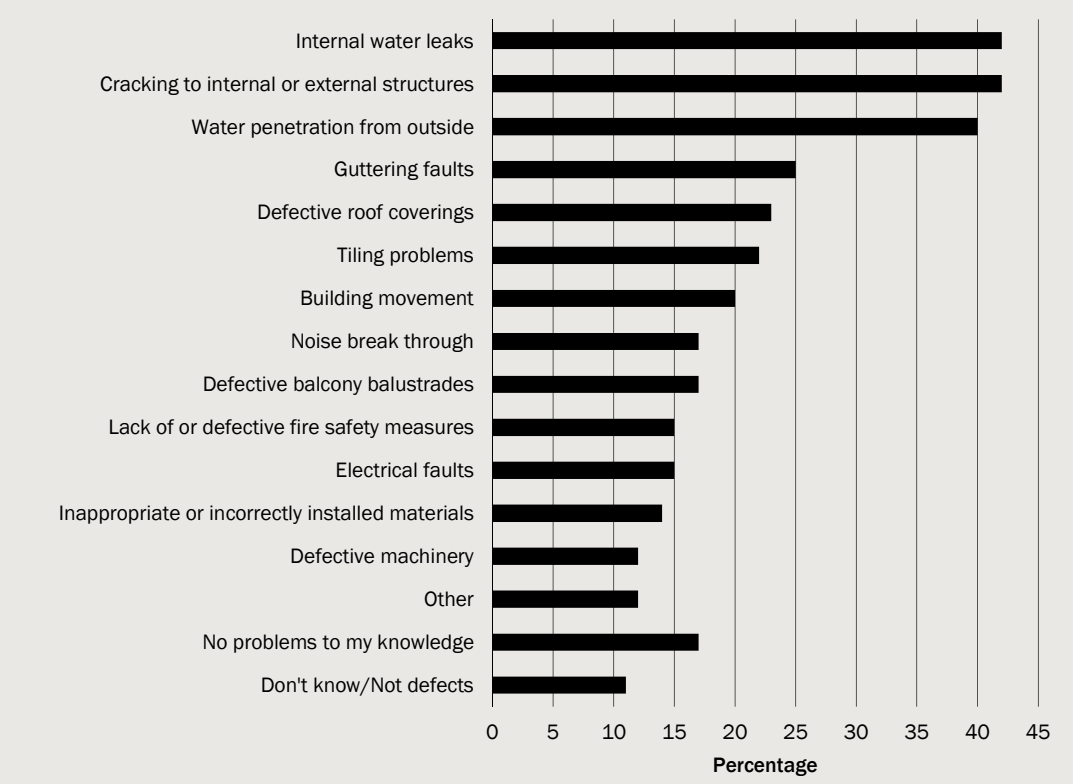
[76] Easthorpe, H. Randolph, B. and Judd, S., 2012, *Governing the Compact City*, City Futures Research Centre, Faculty of the Built Environment, university of New South Wales, May, p. 68.

[77] Easthorpe, H. Randolph, B. and Judd, S., 2012, *Governing the Compact City*, City Futures Research Centre, Faculty of the Built Environment, university of New South Wales, May, p. 65.

[78] Easthorpe, H. Randolph, B. and Judd, S., 2012, *Governing the Compact City*, City Futures Research Centre, Faculty of the Built Environment, university of New South Wales, May, p. 67.

11.2 Defects in strata schemes



Data source: Easthorpe, H. Randolph, B. and Judd, S., 2012, *Governing the Compact City*, City Futures Research Centre, Faculty of the Built Environment, university of New South Wales, May, p. 66.

The cost associated with getting defects rectified can be significant. Estimated rectification costs associated with some common building defects are summarised in table 11.3.

11.3 Estimated costs of rectification in hypothetical situations

Repair type	Age of building	Size of building	Location	Estimated total cost
Replacing a defective roof membrane	Newly built	8 storeys, 50 apartments	Inner Western Sydney	$150 000
Replacing glass balustrades (due to inappropriate design)	Newly built	10 storeys, 50 apartments	Northern Beaches, Sydney	$150 000 to $250 000
Re-tiling all bathrooms due to buckling of original tiles	3 years old	3 storeys, 10 apartments	Eastern Suburbs, Sydney	$75 000
Fixing a number of cracks to external walls	6 years old	5 storeys, 20 apartments	Northern Suburbs, Sydney	$100 000

Source: Easthorpe, H. Randolph, B. and Judd, S., 2009, *Managing Strata Repairs: Managing Major Repairs in Residential Strata Developments in New South Wales*, City Futures Research Centre, Faculty of the Built Environment, university of New South Wales, July, p. 56.

In many cases, the builder rectifies the defects at their own cost. According to the UNSW survey, 49 per cent of respondents whose schemes had defects reported that they had not had any problems getting defects fixed in their schemes.[79]

In other cases, the costs to owners of rectifying defects can be significant. The UNSW reports that for a 20 unit strata scheme with 2 or 3 major defects, getting defects rectified could cost between $200 000 and $400 000 and take 3 to 5 years (table 11.4). This suggests costs of between $10 000 and $20 000 for each apartment. These costs can often mean that owners pay the rectification costs themselves.

11.4 Hypothetical cost breakdown for a 20 unit scheme with 2 or 3 major defects

Stage	Timeframe	Cost
Assessment of the nature and extent of defects	4-6 months	$30 000-$50 000
Negotiations regarding settlement	Up to 6 months	$20 000-$50 000
Application for rectification	9-12 months	$10 000-$50 000
Court case for damages	2-3 years	$150 000-$250 000
Total	**3-5 years**	**$210 000-$400 000**

Source: Easthorpe, H. Randolph, B. and Judd, S., 2012, *Governing the Compact City*, City Futures Research Centre, Faculty of the Built Environment, university of New South Wales, May, p. 71.

Scaling up some of the costs identified above across all dwelling units completed in NSW provides an indicator of the costs of building defects on the community. In 2011-12, there were more than 26 000 dwelling units completed in NSW, including around 15 000 houses and 12 000 other dwelling units. As discussed above, the UNSW survey suggested that around 70 per cent of strata schemes have building defects. While there is no information on the defect rate for houses, it is reasonable to expect they would be somewhat lower than for strata schemes. If the defect rate for houses is around half that for strata schemes, this would imply that around 13 500 of the dwelling units completed in 2011/12 could have building defects.

According to the sample of hypothetical rectification costs reported in table 11.3, the rectification costs per unit range between $3000 and $7500, with an average of around $4500. In addition, the costs associated with assessment, negotiation and application for rectification could be between $3000 and $7500 per dwelling (see table 11.4). This suggests the overall costs could be at least double that estimated above. Furthermore, a court case for damages could cost around $7500 to $12 500 per dwelling extra. According to a UNSW survey of strata schemes, in around 15 per cent of cases, the owner or developer would take the builder or developer to court to cover the costs of rectifying defects.

If the average cost of rectification is around $9000 per dwelling, this would imply that the cost of rectifying building defects could be up to $120 million per year in NSW. These

79 Easthorpe, H. Randolph, B. and Judd, S., 2012, *Governing the Compact City*, City Futures Research Centre, Faculty of the Built Environment, university of New South Wales, May, p. 68.

costs would be covered by either the owners, the builders or property developers or by the insurance held by either the owner or the builder/developer. In some cases, the defects may not be rectified at all.

In many cases it may take significant time to get defects fixed, or they may not get fixed at all. Only 22 per cent of respondents to the UNSW survey indicated that all defects had been fixed. The costs associated with these delays could include:

- an adverse impact on the health and safety of residents;
- lower quality and liveability of homes and hence quality of life;
- the financial cost of re-housing residents; and
- lower property values and rental incomes.

Overall, the limited information available suggests the cost of building defects in NSW could be in the range of $100-200 million. This is based on a defect rate of 35 per cent for house and 70 per cent for other dwellings and a cost per dwelling of between $6000 and $15 000 per dwelling. This includes the cost of fixing the defect, as well as the financial costs associated with investigations, negotiations and preparing the application for rectification.

This estimate can be considered conservative. Since there is no information available on the prevalence of defects in houses, it is possible that our estimate of 35 per cent (based on half the prevalence in strata schemes) overstates the extent of the problem. On the other hand, the cost of defects per dwelling may be higher for houses, compared to strata schemes. Furthermore, the costs associated with court proceedings, as well as the costs associated with delays in having defects rectified (both financial and non-financial) have not been included.

Red tape for consumers

Over the past five years, the average number of complaints received by the Building Professionals Board was 120 per year. Over this period, only 46 per cent of all complaints determined have resulted in some form of disciplinary action against the certifier. The Building Professionals Board estimated that approximately half of all complaints appear to be the fault of the builder rather than the certifier.

It is therefore likely that in many of these cases, the complainant may have been forced to submit complaints to both the Building Professionals Board and NSW Fair Trading. Assuming it would take two hours to prepare the second complaint at a cost of around $34.70 per hour (based on ABS estimates of the average hourly cash earnings for all occupations), the reduction in red tape would be around $8328 per year.

Inefficient enforcement

There may be some diseconomies of scope associated with splitting the responsibility for regulation of the building industry across two state government agencies. For example, if an investigation arising from a complaint against a certifier finds evidence that the builder is at fault, there is currently no referral system, so that this evidence could be used by NSW Fair Trading to pursue disciplinary action against the builder.

The Board's investigation and audit functions cost around $2.0 million in 2011/12 (including a proportionate share of the overheads). During the year, the Board determined 130 complaints.

Impact of IPART's recommendation

The creation of a Building Authority would result in a more streamlined regulatory regime. It would provide a 'one stop shop' for complaints where consumers, councils or members of the community are dissatisfied with the outcome of a building development.

The red tape reduction could be expected to be fairly minor. As mentioned above, the Building Professionals Board receives around 120 complaints per year. The administrative burden of these complaints could be around $8328 per year. Even if the creation of a Building Authority reduced the need for all of these complaints, the reduction in red tape would be relatively minor.

There may also be some economies of scope associated with merging the building functions of the NSW Fair Trading with the Building Professionals Board and the building control functions of the Department of Planning and Environment (DPE) into a single Building Authority, particularly relating to the investigation and audit functions. The total cost of the Building Professionals Board's investigation and audit functions is around $2 million per year (including a proportionate share of overheads). If there are significant economies of scope, the cost savings are likely to be significantly less than $1 million per year. More likely, these resources would be used to improve enforcement. To significantly improve the effectiveness of the regulatory regime, more government resources are likely to be required.

Furthermore, there are likely to be upfront costs associated with creating the new Building Authority. A 2010 report for the UK National Audit Office estimated that the average cost of establishing a new department or merging two mid-sized departments is in the order of £15 million. Based on the current exchange rate, this would be around $22 million. This included the costs associated with:

- Staff;
- Information technology;
- Property;
- Corporate function;
- Indirect costs; and
- Branding and communications.

However, given the relatively small scale involved, the cost of merging the building function of NSW Fair Trading, DPE and the Building Professionals Board could be expected to be somewhat lower than that, potentially closer to $1 million.

The main advantage in creating a Building Authority could potentially be in improving the effectiveness of the regulatory regime. As discussed above, building defects appear to be a significant problem in NSW. Consequently, the benefits associated with even

relatively small improvements in the effectiveness of the regulatory regime would dwarf any red tape reductions and cost savings for the Government.

Nevertheless, there is little evidence that a single regulator necessarily leads to more effective regulation of the building industry. In both Queensland and Victoria the functions performed by the Building Professionals Board and NSW Fair Trading have been undertaken by a single regulator. In both states, recent reviews have found that the regulation of the building industry has been ineffective.

In Victoria, the Auditor-General assessed the effectiveness of the building permit system in assuring that approved works meet requisite building and safety standards. It also examined how effectively the Commission regulates the activities of municipal and private building surveyors, and how effectively councils enforce compliance with the Act. The Auditor-General concluded that:

> "The [Building] Commission cannot demonstrate that the building permit system is working effectively or that building surveyors are effectively discharging their role to uphold and enforce minimum building and safety standards."[80]

In Queensland, the Parliamentary Transport, Housing and Local Government Committee inquired into the operation and performance of the Queensland Building Services Authority in its regulation of the industry, including the maintenance of proper standards in the industry in 2012. The Committee recommended that:

> "…in the interests of improved confidence and transparency, the "one stop shop" model for the provision of Queensland government building services be discontinued and that the Queensland Building Services Authority be disbanded as soon as alternative mechanisms for delivering its functions can be established."[81]

Overall, better regulation of the building industry could potentially deliver significant benefits to the community. Creating a Building Authority in NSW is unlikely to improve the regulation of the building industry in itself. Nevertheless, despite the failings of regulators in other states, a single regulator may provide a better platform for a more effective regulatory regime. The benefits from better enforcement are likely to be significantly larger than any red tape reductions or government savings.

Improving the transparency of Certifier Conduct

The recommendations aimed at improving the transparency of certifier conduct is essentially aimed at ensuring that consumers are fully informed of each certifiers' disciplinary record.

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80 Victorian Auditor-General, 2011, *Compliance with Building Permits*, December, p. vii.

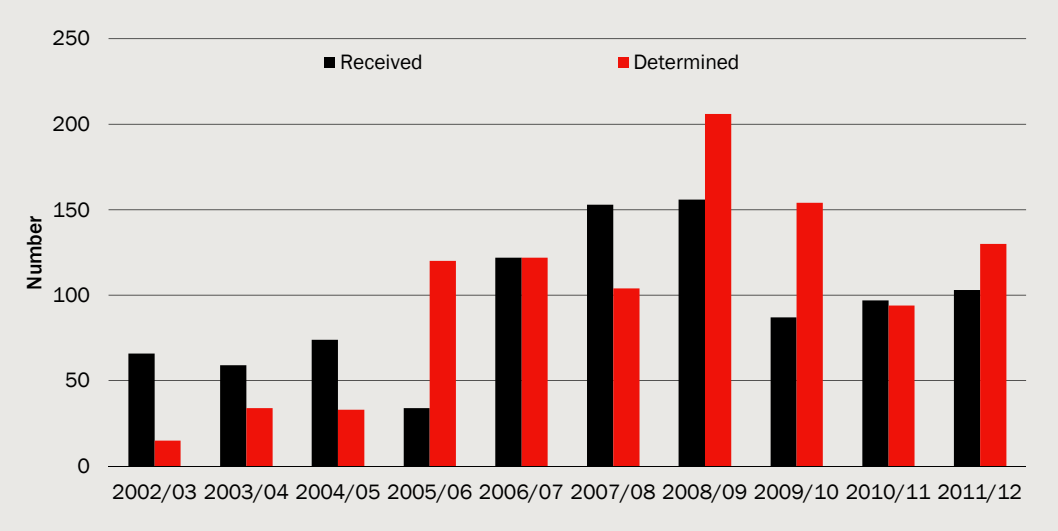
81 Transport, Housing and Local Government Committee, 2012, *Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012*, Report No. 14, November, p. ix.

Size and nature of the problem

The Building Professionals Board reports that some builders form a business relationship with a private certifier and effectively bundle the certifier's services as part of a package offered to consumers. These relationships may mean that the consumer does not play an active role in choosing the certifier. They can also compromise the certifier's independence in performing their important regulatory functions.

Over the past five years, the Building Professionals Board has received nearly 600 complaints, an average of around 120 per year. During this period, the Board has determined 688 complaints.[82] Of the complaints determined, around 300 resulted in some type of disciplinary action, such as a reprimand and/or fine. The remaining 388 complaints were either withdrawn, dismissed or no further action taken.

11.5 Complaints against building certifiers



Data source: Building Professionals Board, Annual Report.

Analysis of the current disciplinary register suggests that the issue of 'repeat offenders' is a significant problem. The disciplinary register includes the Board's disciplinary decisions against accreditation holders, as well as similar decisions by the Administrative Decisions Tribunal (ADT) that arise from cases referred to the ADT by the Board. The published disciplinary register does not include:

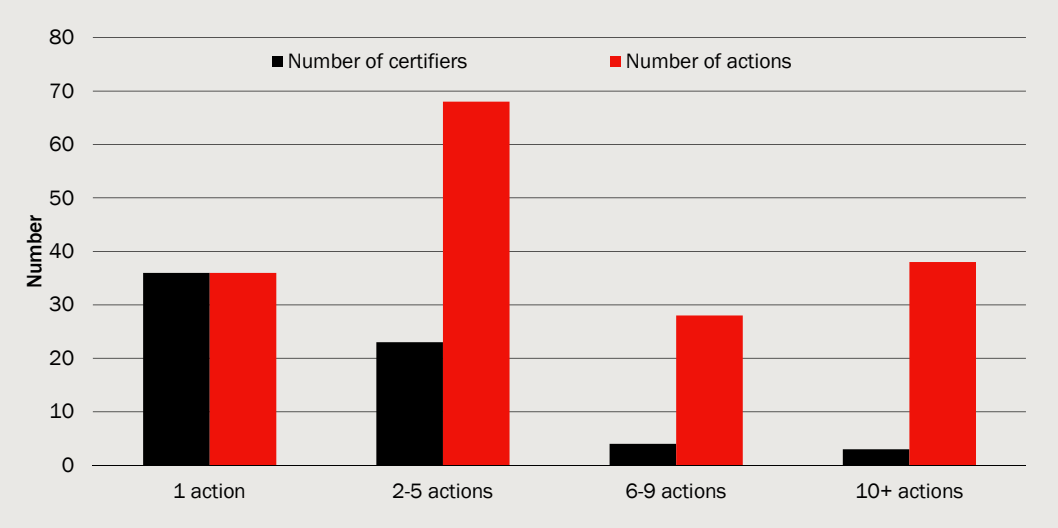
- decisions to take no further action which have been made more than 12 months ago;
- cautions or reprimands imposed more than three years ago;
- orders imposing conditions which were imposed more than five years ago;
- orders to undertake educational courses; to report on practice; to pay a fine or compensation where the order has been complied with more than five years ago; or

82 The number of complaints determined exceeds the number of complaints due to a significant backlog accumulated during previous years.

- orders for suspension or cancellation of accreditation made more than five years ago.[83]

As at 12 February 2013, the disciplinary register includes a total of 170 disciplinary actions against 66 individual certifiers (mostly individuals and one company). There are 30 certifiers on the register with multiple disciplinary actions, including one with 15 disciplinary actions (chart 11.6).

11.6 Building Professionals Board Disciplinary Actions — Frequency distribution



Data source: Building Professionals Board Disciplinary Register, The CIE.

Impact of IPART's recommendations

While the Building Professionals Board's disciplinary register is already available on its website, the extent to which consumers are aware it is there and use it is not clear.

IPART's recommendations would ensure that more consumers are aware that the disciplinary register is there. This is likely to mean that more consumers check the register. This is important, particularly in light of the bundling arrangements that occur. How they respond to the information is less clear.

It is difficult to see that consumers would willingly choose to employ a certifier with more than say two disciplinary actions. That would imply that once a certifier has three disciplinary actions, consumers would no longer use them (at least the actions were removed from the register). There are 13 certifiers with four or more actions on the register. These certifiers have a total of 93 disciplinary actions recorded on the register.

If consumers stopped using certifiers with a poor disciplinary record, this could reduce the number of complaints by around 19 per year. Assuming a cost of $15 000 per complaint, the savings in investigation costs could be around $285 000 per year.

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83 Building Professionals Board website, http://www.bpb.nsw.gov.au/page/disciplinary-decisions/, accessed 20 March 2013.

The only red tape savings for consumers would be that fewer would need to make a complaint to the Building Professionals Board. These savings would be negligible. The real benefit to consumers would be in improving the outcome of building projects. The cost of certifier breaches can very significantly. In most cases there would be very little cost, while in others the cost may be large. It is therefore difficult to quantify these benefits.

The cost of implementing IPART's recommendations would be minimal.

Addressing regulatory creep

IPART has recommended that councils seeking to impose conditions of consent above that of the National Construction Code (NCC) must conduct a cost benefits analysis (CBA) justifying the benefits of these additional requirements. Similar to the approach taken in Victoria, sign-off will be required by an independent body such as IPART on any variations to the BCA.

Size and nature of the problem

A nationally consistent building code has been in place since the early 1990s. According to the Productivity Commission, the benefits of a nationally consistent building code include:

- Reduced costs for builders and designers working across state borders — these firms do not have to expend resources understanding and complying with multiple building codes. A nationally consistent NCC may also encourage building practitioners to operate in a number of jurisdictions, promoting economies of scale and more efficient building practices.
- Better compliance with building regulations — a single nationally consistent NCC reduces misunderstanding of and confusion between codes;
- Creation of a larger market for building products — suppliers of building products are able to manufacture the same product in each State and Territory, rather than having to manufacture different products to meet each different code. This promotes cost savings through increased economies of scale in production and through increased competition between manufacturers.
- Transferability of building designs — the same design can be used in different jurisdictions, rather than having to alter designs to meet different requirements in each jurisdiction.
- Transferability of skills — skills should be able to be transferred more easily, with attendant benefits in terms of allocation of resources and reduced retraining costs in the industry.
- Savings in code development costs — since only one code has to be developed, there should be savings in code development costs, notwithstanding additional initial development costs, given the national code has to deal with a wider variety of

buildings and environments and the resources needed to achieve consensus across jurisdictions.[84]

Ongoing variations between states, as well as local government areas within states, has prevented the national building code from achieving its full potential.

A Productivity Commission report in 2004 found there was still a significant lack of consistency between State and Territories in some areas. One example is BASIX which applies only in NSW. Nevertheless, these state-based variations have declined over time.

The Productivity Commission's 2004 report also identified Local Government planning controls and other regulations that affect building regulation and the administration of the NCC as a key source of inconsistency.[85] The Commission was also concerned that Local Governments usually do not conduct an adequate level of impact analysis of their regulations. This means that new regulations may be introduced that contain extra requirements on business, with increased costs, for uncertain benefit.[86]

More recently, the Productivity Commission noted that little progress had been made on addressing the problem of local government requirements creating inconsistencies.

A recent (as yet unpublished) study by The CIE found that the nationally consistent building code 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 NCC 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. According to ABS data, the value of building work done in NSW is around 24 per cent of the national total. If the national costs are distributed proportionately across states, this suggests the cost to NSW, could be around $72 million.

State-based variations mainly affect the non-residential segment of the building industry and larger multi-dwelling residential developments. The larger property development and construction companies that work across state borders mainly service these segments of the market. By contrast, local government-based variations affect all segments of the building industry. Large property development and construction companies work across multiple local government areas within NSW, as well as across state borders. Local builders that largely operate in the residential market are less likely to operate across state borders, although they are likely to operate across multiple local government areas.

While state-based variations have declined over time, anecdotal evidence suggests that variations introduced by local governments have increased. A number of stakeholders suggested that local government variations are a greater problem that state-based variations.

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84 Productivity Commission, 2004, *Reform of Building Regulation*, Research Report, November.

85 Productivity Commission, 2004, *Reform of Building Regulation*, Research Report, November.

86 Productivity Commission, 2004, *Reform of Building Regulation*, Research Report, November, p. XXXVII.

As a conservative estimate, local government based variations are likely to account for at least half of the cost of variations from the national code incurred by NSW. This suggests that local government variations from the NCC could be costing NSW at least $36 million per year.

Impact of IPART's recommendation

Since it is difficult to envisage many circumstances in which local government deviations from the NCC would be in the best interests of the community, IPART's recommendation should mostly address this problem, so long as the 'gateway' model is effective. Based on The CIE's tops down estimates outlined above, the benefits to the community from eliminating local government-based variations from the NCC could be at least $36 million.

Improving council regulatory performance

IPART has recommended that certifiers should be required to inform council of builder's breaches if they are not addressed to the certifier's satisfaction by the builder within a fixed period. Where councils have been notified, they should be required to respond to the certifier's complaint in writing within a set period of time. In the case where the breach is not related to the National Construction Code (NCC) and the council has not responded within the specified period, then the certifier can proceed to issue an occupation certificate.

Size and nature of the problem

Where a building does not comply with its development consent, councils have various enforcement powers, including: issuing orders requiring compliance with the development consent and/or cessation of building work; issuing a compliance cost notice; imposing on the spot fines; and bringing proceedings in the Land and Environment Court for an order to remedy or restrain a breach.[87]

By contrast, private certifiers can only issue a notice of intention to issue an order. Private certifiers are obliged to inform the council and request they issue an order.

Currently, councils are not required to inform the private certifier of any enforcement action taken (if any). If the certifier is not aware of the enforcement action taken, an occupation certificate cannot be issued. This can delay payments to builders and subcontractors, the sale of properties or the occupation of the dwelling by the owners.

There is no publicly available data available on the extent of this problem. However, with almost 23 000 occupation certificates issued by private certifiers in 2010-11 (around 46 per cent of the total) and the value of DA's approved exceeding $18 billion, the cost to the community of delays could be relatively large, even if the problem occurs in a low proportion of cases.

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87 Building Professionals Board, 2011, *Submission to the NSW Planning Review*, November, pp. 29-30.

Impact of IPART's recommendation

IPART has recommended that where councils have been notified of a breach of building conditions of consent, the council should be required to inform the certifier of what action has been taken in writing within a specified period of time. If the council decides to take no action, the certifier will be able to issue the occupation certificate if the breach is not related to the National Construction Code (NCC).

IPART's recommendation will reduce delays in the building process. The benefits of reduced delays could potentially be large. The cost imposed on councils would be minimal.

Improved clarity of regulatory roles for the community

IPART has recommended trialling a system that incorporates into the current PCA signage requirements, information setting out contact details for specific complaints.

The cost of a trial is likely to be minimal. Trials provide an opportunity to comprehensively assess the benefits and costs of a new system. This recommendation is not quantified.

Annual fire safety statement

The last recommendation — the allowance for Annual Fire Safety Statements to be submitted online — is likely to result in a moderate reduction in red tape. Annual Fire Safety Statements are required for all buildings except detached or semi-detached residential buildings.[88] The number of these buildings is not known but, based on the number of lots that are zoned outside of low density residential and land (for example, commercial, industrial and medium and high density residential), there are likely to be around 200 000 buildings that should submit Annual Fire Safety Statements each year across NSW.[89] Moving this to an online system would lead to reduced paper and processing costs for applicants and reduced processing and storage costs for councils and the Fire Commissioner of the NSW Fire Brigades (documentation is required to be sent to both).

- Avoidance of stamp, paper, envelope and printing costs for two sets of documents will save $1.70 per statement.[90] There is also likely to be some saving in time through being able to use an online application. We have allowed for 3 minutes. The total cost savings per application is then $3.42. The avoided costs to applicants are therefore around $0.7 million per year.

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88 Specifically, Annual Fire Safety Statements are required for Class 2 to 9 buildings.

89 This estimate is based on the number of parcels of land zoned for commercial, industrial and medium-high density development across Sydney, uplifted to NSW. Zoning information is available from NSW Land and Property Information.

90 This reflects envelope cost of 10 cents, printing costs of 3.5 cents per page (including paper and printer consumables and allowing for 4 pages) and stamp cost of 60 cents.

- Reduced document handling costs for councils and the Fire Commissioner are likely to be in the order of $2 per document each, or $4 in total.[91] The avoided costs to NSW councils and the Fire Commissioner are therefore around $0.8 million per year.

There would be an implementation cost for using an online arrangement. The NSW Government Licensing Service, which is an online facility covering a range of NSW Government licences is expected to cost $86 million. It covered 1.7 million licences in 2009 according to the Auditor General or $6 million according to the NSW Department of Finance and Statistics.[92, 93] This amounts to a cost of $14 to $50 per licence in implementation costs depending on which estimate of the number of licences is used, or an average of $32. The costs for implementation of an online system for Fire Safety Statements is likely to be lower as part of the costs of GLS reflect initial implementation costs. If cost were half of this average then implementation costs would amount to $3.2 million or an annualised amount over 10 years $0.5 million per year.

The net benefits from online processing would therefore be in the order of $1.0 million per year (table **Error! Reference source not found.**). This would comprise a $0.7 million 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 NSW Fire Commissioner in ongoing costs and a $0.5 million (annualised) increase from implementation costs.

There are no impacts on other benefits or costs of the regulations and we do not allow for changes in fees and charges as a result of the movement to online processing.

11.7 Impacts of online Annual Fire Safety Statements

Item	Value
	$m/year
Reduction in red tape for businesses and individuals	0.7
Savings to local councils	0.4
NSW Government	
Savings to NSW Government (NSW Fire Commissioner)	0.4
Implementation costs (annualised)	-0.5
Net benefits	**1.0**

Source: The CIE.

Conclusions

IPART's recommendations in the area of building and construction could deliver significant red tape reductions and benefits to the community (table 11.8).

91 See the case studies in Laserfiche 2007, A guide to the benefits, technology and implementation essentials of digital document management solutions.

92 NSW Auditor General 2009, *Government licensing project — performance audit.*

93 www.licence.nsw.gov.au/New/Statistics

The main red tape benefits would arise from requiring councils to justify the imposition of conditions of consent on construction work, over and above what is required under the National Construction Code. Additional to this, creating a NSW Building Authority could provide a better platform for more effective regulation of the building industry. Since building defects appear to be a significant problem, this could potentially deliver significant benefits to the community. However, it is not possible to quantify the extent to which IPART's recommendation will address the problem.

11.8 Summary of impacts of building and construction recommendations

Item	Building & Construction	Fire Safety Statements
	$m/year	$m/year
Reduction in red tape for businesses and individuals	36.0	0.7
Savings to local council	-	0.4
Savings to NSW Government	Costs likely to increase	-0.1
Net benefit	**36.0**	**1.0**

Source: The CIE.

12 Environment

12.1 IPART recommendations for environment

- 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).
- 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.

Environment — partnership model

IPART's recommendation to establish a partnership model between EPA and local government seeks to improve the partnership between the two levels of government in environmental regulation.

Under Section 6(2) of the *Protection of the Environment Operations Act* (POEO Act) 1997, local councils are the appropriate regulatory authority (ARA) for non-scheduled activities in its local area, with a few exceptions such as environment protection licences and activities carried on by the State or a public authority. In general, local councils are responsible for regulating pollution from all premises which do not hold a pollution licence (i.e. premises that are not listed in Schedule 1 of the POEO Act, including generally small-scale industrial activities).

The NSW Environment Protection Authority (EPA) is the ARA for scheduled activities under the POEO Act, for which licences are administered for scheduled activities. The NSW EPA manages a public list of licensed scheduled activities and delicensed premises regulated by the EPA on its POEO public register.[94]

Non-scheduled POEO matters that come under local councils' jurisdiction are wide ranging and often require a reactive response. Examples include:

- noise and dust pollution from a development site;

94 NSW EPA, POEO Public Register, http://www.environment.nsw.gov.au/prpoeo/index.htm

- noise in general from households (e.g. barking dogs, noisy alarms or domestic equipment);
- illegal dumping of solid waste; and
- pollution of stormwater.

Size and nature of the problem

Local councils regulate non-scheduled activities through notice and enforcement powers in their local government area. A public register of notices, licences, applications, and audits by local government area is also available on the NSW EPA website.[95] One council estimated they receive approximately 1 000 complaints each month with respect to POEO matters. If all other councils had a similar per person rate, this is equivalent to approximately 390 000 POEO related complaints per year to local councils across NSW.[96] The same council noted the staff resources required for POEO compliance and enforcement was 10 fold the requirement for food safety matters. Across 152 local councils, apply a 10 fold estimate to current FTEs in food would equal approximately 1 500 local council staff involved in POEO matters.

There are already key elements of a partnership model in place for environmental regulation (table 12.2) and the EPA has in place mechanisms to assist local council officers to fulfil regulatory responsibilities under the *POEO Act*. These include:

- four day course which has been designed to equip Authorised Officers within local government with the necessary competencies to fulfil their responsibilities as outlined in the *Protection of the Environment Operations Act 1997*;[97] and
- various guides and tool kits for air quality, licensing, notices, noise and wood smoke.

12.2 Current local council environmental regulation and the partnership model

Element of the partnership model	Environmental regulation
Dedicated consultation forum	No
Clear delineation of regulatory roles and responsibilities	Yes, in large part. The POEO Act states who the appropriate regulatory authority (ARA) is for different types of activities in s6. The EPA is the ARA for scheduled and licensed premises (and activities operated by public authorities), and local council is the ARA for non-schedule activities in its area. The Act defines what scheduled and licensed premises are but is not clear about what non-scheduled activities constitute. Identification of non-scheduled premises for local councils jurisdictions is more by a process of elimination. If it is not clearly outlined as a scheduled and licensed premises then it is a non-scheduled activity. Other legislation, for example regarding contaminated land, also delineates council and EPA responsibilities.

95 NSW EPA, POEO Public Register, http://www.environment.nsw.gov.au/prpoeoapp/

96 Number of POEO complaints in single council was extrapolated based on population data to estimate total number of POEO complaints across 152 local councils.

97 NSW EPA, *Environment protection legislation – short course for local government officers, http://www.environment.nsw.gov.au/legislation/handbook.htm*

Element of the partnership model	Environmental regulation
Risk-based approach to regulation	In part. Higher risk activities are scheduled activities and regulated by EPA. Lower risk activities are specified as non-scheduled and regulated by local councils. The EPA also provides some assistance to councils in training and materials in undertaking a risk-based approach to the activities regulated by councils. However, this assistance is not formalise or as consistent as that provided by the Food Authority's dedicated Local Government Unit.
Legislated commitment to a partnership model	No.
Use and publication of reported data	The NSW EPA manages a public register of scheduled and licensed premises as well as registers of licences, applications, notices, prosecutions and civil proceedings. Requirement under the POEO Act for councils as part of their ARA role to maintain a public register of regulatory actions taken, including details of prosecutions and penalty notices issued.
Legislated ability to set fees and charges	Yes. The POEO Act enables local council to cost recovery the fees of implementing environment regulation: ▪ Recover the administrative costs of preparing and issuing noise control notices sand compliance costs associated with these notices under s267A and 267b ▪ Recover the cost of registering a charge on land in order to secure payment of compliance cost notices and any resulting change, including the discharging of the charge (s107) ▪ Compliance cost notices can already be given in relation to clean-up notices, prevention notices and prohibition notices (s104). ▪ Costs and expenses of taking any sample or conducting any inspection, test, measurement or analysis during the investigation of an offence, as well as the costs and expenses of transporting, storing or disposing of evidence during the investigation of an offence (s248).
Periodic review of partnership agreement	No.
Dedicated local government unit	No. However, the EPA and councils coordinate to deliver effective compliance campaigns, audit programs and regulatory responses. These activities also provide an opportunity to share skills and experiences, leading to a more consistent regulatory approach. The EPA has regional offices that work with councils and also provides training to councils.

Source: The CIE based on review of NSW EPA's website and NSW EPA's submission to IPART Regulation Review of Local Government Compliance and Enforcement.

Seven councils, in submissions to IPART, commented there was overlap or uncertainty as to who is the ARA under the POEO Act.[98] Councils commented generally that more communication between both levels of government needed to be more structured and coordinated. Specific issues raised related to guidance and capacity building required in relation to the regulation of air quality, contaminated land, waste disposal, pollution from State-owned utility and underground petrol storage systems.

Conversely, Sutherland council commented that the delineation of roles between state and local government is relatively clear. However, the delineation is not always clear to the general public which can cause confusion and delays in response to complaints when individuals cannot identify the ARA for a particular issue.

98 Councils included Sydney City, Shoalhaven, Shellharbour, Newcastle, Warringah, Hurstville and Lismore.

From businesses' perspective, the Australian Sustainable Business Group commented councils often lack the necessary expertise to efficiently regulate contaminated land. In addition, Caltex noted overlap in regulatory roles between state and local governments, unnecessarily prescriptive interpretation of environmental requirements by local councils, and inconsistent enforcement and compliance across local councils.

The level of stakeholder comment indicates there is a significant problem. However, there is no available data to quantify the magnitude of this.

Impact of IPART's recommendation

Benefits of a partnership model could include:

- 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 poor outcomes.

The cost of establishing the partnership model for environmental regulation would be approximately $1.9 million per year. This cost is based on the cost to administer the food model scaled up to account for the larger FTE effort required with local council for environmental regulation and also taking account of the fact that a large proportion of the cost is fixed.

Given the uncertainty about the scope and scale of the problems noted in submissions, the CIE expects that IPART's recommendation to conduct a cost-benefit analysis to determine whether the partnership model for environmental regulation would have a net benefit. The key steps to be completed for the cost-benefit analysis include:

- *Identify the problem and establish the base case* — may involve conducting a set of questionnaires to identify the nature and degree of the problem including the type of compliance and enforcement activities conducted under the POEO Act and other environmental legislation. A survey of local councils should establish local councils' understanding of their responsibilities under the POEO Act and other legislation, and check how these align with the EPA's understanding and what is specified under the legislation. A survey of businesses that operate across multiple jurisdictions could be used to identify where overlap, inconsistency, and unnecessary red tape exists for businesses complying with environmental regulation.
- *Outline options for assessment* — possible options to be evaluated in the cost-benefit analysis include (but not limited to):
  - the partnership model as recommended by IPART;
  - a single regulator model for specific issues under the POEO Act (as suggested by Caltex);

  - a shared serviced model with centres responsible for multiple council areas (also suggested by Caltex); and
  - strengthening the existing system of EPA regional offices.
- *Assess costs and benefits* — quantify the costs (where possible) to business and residents under for each option relative to the base case. Costs may include red tape, time delays, inconsistent or negative outcomes to business, negative outcomes to the environment, or cost to government. Benefits may include avoided costs and avoided red tape to businesses, avoided costs to local and state government, and/or improved environmental outcomes.
- *Identify preferred option* — the option with the highest positive net benefit will typically be the preferred option.

Environment — waste management plans

IPART's recommendation would remove the need for complying development certificates to have a waste management plan. Complying development certificates can be issued for a wide range of developments where the list of pre-determined standards within the SEPP is satisfied. Examples include demolition, residential dwellings, swimming pools, garages or carports, fencing and pergolas.

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.

The cost for a private firm to prepare a waste management plan for a complying development ranges between $4 000 and $6 000.[99] In general the cost to prepare a plan does not vary substantially based on the value/size of the complying development.

However, at least two councils (Lane Cove and Gosford) do not require a waste management plan for a complying development.[100] And from discussion with Hornsby Council a waste management plan will not necessarily be required for relatively simple complying developments such as a fence of pergola.

In the absence of a clear understanding about which councils require a waste management plan for complying developments and for which types of developments, it is not possible to accurately quantify the impact of IPART's recommendation.

However, assuming 10 per cent of complying development certificates issued per annum require a private firm or licenced contractor to complete a waste management plan at a

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99 From discussion with private company Waste Audit http://www.wasteaudit.com.au/Pages/Details.htm

100 Gosford City Council, 2000, *Development Control Plan Number 106: Controls for Site Waste Management.* http://www.gosford.nsw.gov.au/council/policies/dcp_register/dcp_106.pdf ; and Lane Cove Council, *Lane Cove Development Control Plan: Part Q Waste Management and Minimisation* Page 6 http://ecouncil.lanecove.nsw.gov.au/newtrim/documents/70883691/TRIM_TE_REC_692608.PDF .

unit cost of $5 000, the estimated reduction in red tape from IPART's recommendation is $6.4 million per year.

We have estimated the average red tape to businesses currently required to prepare a waste management plan for a complying development as $6.4 million per year.[101] This is based on the mid-point cost of $5000 per waste management plan and 10 per cent of the average 12 900 complying development certificates per year requiring a waste management plan (table 12.3).

12.3 Estimated costs avoided from removing requirement of complying development to complete a waste management plan

Financial year	Complying development certificates	Estimated cost avoided
	Number	$million/year
2008-09	9 194	4.6
2009-10	14 315	7.2
2010-11	15 038	7.5
Average	**12 849**	**6.4**

Note: CDCs is complying development certificates

Source: Number of CDC approved sourced from NSW Planning, Performance monitoring reports.

In addition to these costs savings there are likely to be cost savings to local council from the reduction in time spent reviewing waste management plans for complying development certificates. Assuming it takes on average half an hour to review a waste management plan, an approximate estimate of the cost savings to local council is $25 000 per year. Clearly if a waste management plan is relatively complex or missing required data thereby requiring longer time to review, the cost savings to local council will be greater.

IPART's recommendation will increase costs to state government to amend the NSW Housing and Industrial and Commercial Codes to include standard waste management requirements.

12.4 Summary of findings — standard waste management requirements

Standard waste management requirements	Value
	$m/year
Reduction in red tape for businesses and individuals	6.4
Savings to local councils	0.03
Savings to NSW Government	Costs will increase
Net benefits	**6.5**

Source: The CIE.

101 Assumes all waste management plans are contracted to private firms.

13 Public Health

13.1 IPART recommendations for public health

- 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.
- The NSW Food Authority, in consultation with councils, should provide guidance reducing the frequency of routine inspections by councils of retail food businesses with a strong record of compliance to reduce over inspection and costs.
- The NSW Food Authority should finalise its internal review and work with councils to implement its reforms within 18 months of its review being completed to:
  - remove any regulatory overlap (eg, of related retail and non retail food business on the same premises)
  - develop a 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.
- 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 5 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 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).

Public health — food safety

NSW Food Authority Guidelines

Size and nature of the problem

There are approximately 1 100 mobile food vendors operating across 152 local councils in NSW. The majority are based in the Sydney metropolitan area, Wollongong and Newcastle.

Vendors must apply for a licence to operate their vehicle and undergo an annual food safety inspection by the 'home council', provided the vehicle also trades in that local government area.[102] If the vehicle does not trade in the local council area in which it is garaged, then it can be inspected by the local council in which it first trades.[103]

In terms of food safety inspections, councils can apply a 'home jurisdiction rule' whereby a council in which the vehicle is operating does not need to conduct an inspection if the home council has already conducted an inspection within the past 12 months. Despite the home jurisdiction rule, councils are still conducting duplicate inspections of food vendors over a 12 month period. Reasons for duplicate inspections includes vendors did not have the previous inspection report with them to demonstrate compliance or council deemed it necessary to conduct another inspection for food safety purposes.

On average, mobile vendors are inspected twice within a 12 month period equalling a total of 2 200 inspections on average.[104]

IPART's recommendation to apply the 'home jurisdiction' rule will reduce up to 1 100 inspections per year. The average inspection fee charged to mobile vendors is $140 per inspection.[105] IPART's recommendation would hence reduce red tape for businesses by up to $154 000 in per year.

Frequency of food inspections

The frequency of inspections of retail food businesses is determined by the risk level assigned to it. The NSW Food Authority uses the national food safety risk profiling framework to classify the risk priority of NSW food businesses.

High and medium risk food businesses are inspected annually. Low risk food businesses are not inspected routinely and are only inspected in response to complaints and/or incidents received.

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102 The 'home council' is the council in which the vehicle is ordinarily garaged.

103 NSW Food Authority, *Guidelines for mobile food vending vehicles.* NSW/FA/F1055/1302.

104 From discussion with Peter Sutherland at NSW Food Authority.

105 From discussion with Peter Sutherland at NSW Food Authority.

The NSW Food Authority is currently reviewing the frequency of inspections by councils with the intention to reduce the frequency for retail food businesses with a strong record of compliance.

> The Authority is introducing a revised audit frequency whereby good performing food businesses will have the opportunity to have a substantially reduced frequency if they maintain an "A" rating at audit time.[106]

In 2011-12 there were a total 39 411 high and medium risk food businesses. Councils undertook a 59 974 inspections in 2011-12 of the 39 411 high and medium risk retail food businesses that were required to be inspected. [107] Of the total number of high and medium risk retail food businesses 37 249 businesses did not require further intervention by councils,[108] leaving a total of 22 275 inspections being conducted on 2 162 businesses.

IPART has recommended that the NSW Food Authority provides guidance on reducing the frequency of routine inspections. IPART's recommendation does not specify what the frequency of inspections should be, for example, once every 18 or 24 months instead of the current frequency of once every 12 months.

The change in cost to business from this recommendation is uncertain because the reduced frequency of routine inspections is yet to be decided. Clearly, a reduction in the inspection frequency will reduce cost to business whilst an increase in frequency will increase cost to business. As an example, if the inspection frequency is reduced to either once in 18 months or once in 24 months, cost to business would reduce by approximately $1.9 million and -$2.8 million per year, respectively (table 13.2).

The change in benefits, such as avoided foodborne illness from retail businesses, due to a reduced inspection frequency has not been quantified.

13.2 Change in cost to business from reduced inspection frequency

Inspection frequency	Cost of inspections	Change in cost
	$million/year	$million/year
Once every 12 months	5.6	0
Once every 18 months	3.7	-1.9
Once every 24 months	2.8	-2.8

Note: Based on 37 250 businesses achieving a strong compliance record and an inspection cost of $150 per inspection.
Source: The CIE.

106 NSW Food Authority, *Submission to Productivity Commission in relation to the study Performance Benchmarking of Australian Business Regulation: Food Safety.*

107 There were 29 106 high risk food businesses and 10 305 medium risk food businesses.

108 NSW Food Authority, 2012, *Summary report of NSW enforcement agencies' activities: food retail and food service sector for 1 July 2011 to 30 June 2012.* Report prepared by the NSW Food Authority. Page 3.

NSW Food Authority review

Remove regulatory overlap

The NSW Food Authority regulates and inspects approximately 15 000 licenced non-retail food businesses. In some cases these non-retail food businesses are located on the same premises as the retail business counterpart which is regulated and inspected by the local council.

From discussions with the Food Authority there are approximately 2 000 premises where both retail and non-retail combined businesses operate and which are currently inspected twice in 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 on 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.

Single register of notification for all food businesses

Approximately 50 000 food businesses across NSW need to notify their food business with both their local council and the NSW Food Authority.

There are two options for businesses to notify the Food Authority, either through a free online service[109] or via a paper form which is mailed to the Food Authority and costs $55 to process.

Assuming all food businesses use the online notification system, the estimated cost to notify NSW Food Authority is approximately $16.10 per businesses.[110] Assuming the same cost to business to notify local council, the total notification cost to an individual food business to notify both its local council and the NSW Food Authority is $32.20.

IPART's recommendation to develop a 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.

Negligible risk food businesses exempt from requirement to notify

High, medium and low-risk food businesses are required to notify their business details to the NSW Food Authority before trading commences. Some jurisdictions (Victorian, Western Australia and Tasmania) have expanded the food risk classification system to include 'negligible risk' businesses and do not require these businesses to register or notify

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109 NSW Food Authority, http://www.foodnotify.nsw.gov.au/nafsis/index.cfm?action=business

110 Assuming it takes half an hour to complete the online notification system and the time cost to business is $32.20 as specified in NSW Better Regulation Office, 2012, *Guidelines for estimating savings under the red tape reduction target.* Page 19.

their business as a food business.[111] Negligible risk food businesses serve food that has no realised hazard such as soft drink vending machines.

In NSW there is no separate classification for negligible risk food businesses and the low risk classification includes business that only handle packaged food that has a stable shelf life such as vending machines and petrol stations. From discussion with NSW Food Authority, it is likely that NSW's classification of low risk food business is equivalent to Victoria's classification of negligible risk.

There are approximately 4 200 low risk food businesses that are currently required to notify the Food Authority of their activities.[112]

As estimated above, the cost to notify NSW Food Authority is approximately $16.10 per businesses. IPART's recommendation reduces the cost to low (negligible) risk food businesses by approximately $67 600.[113]

Standard inspections template

The NSW Food Authority states that the use of standardised inspection templates will improve consistency of inspections.[114] There may be local preference issues which limit local councils capacity to use a standardised template but this is unclear.

To estimate the change in cost to business from consist use of a standardised inspection template across NSW data is needed on the cost inconsistency of inspections imposes on businesses. Because this data is not available it is not possible to estimate the change in cost to businesses from IPART's recommendation.

Conclusions

IPART's recommendations regarding food safety will reduce red tape by $3.22 million per year. The largest reduction in red tape ($1.9 million) comes from reducing the frequency of inspections of food businesses with a strong compliance history.

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111 Productivity Commission, 2012, *Performance benchmarking of Australian business regulation: role of local government as regulator.* Chapter 9 Food Safety.

112 From discussion with NSW Food Authority.

113 Assuming all low risk food businesses use the online notification system and takes approximately half an hour to complete at a cost per hour of $32.20.

114 NSW Food Authority, 2012, *Summary report of NSW enforcement agencies' activities: food retail and food service sector for 1 July 2011 to 30 June 2012.* Report prepared by the NSW Food Authority. Page 8.

13.3 Summary of findings Recommendations regarding food safety

Item	Mobile food vendors	Reduced inspections for good compliance	Remove regulatory overlap	System of notification	Negligible risk food businesses	Standard inspections template	Total
	$m/ year	$m/ year	$m/ year	$m/ year	$m/ year	$m/ year	$m/ year
Reduction in red tape for businesses & individuals	0.15	1.9	0.3	0.8	0.07	na	3.22
Savings to local councils	0	0	0	0	0	na	0
Savings to NSW Government	0	0	0	0	0	na	0
Net benefits	**yes**	**yes**	**yes**	**yes**	**yes**	**unclear**	**3.22**

Source: The CIE.

Public health — swimming pools

Size and nature of the problem

Key requirements under the amendments to the *Swimming Pools Act 1992* (NSW) include:

- the owner of a premise with a swimming pool must register their swimming pool on the NSW Register;
- local councils must develop and adopt an inspection program;
- premises with a swimming pool that is tourist and visitor accommodation or consists of more than two dwellings must be inspected once every 3 years; and
- inspections are conducted on private single dwelling premises with a swimming pool that are for sale or lease.

A Better Regulation Statement was not completed for the amendments to the *Swimming Pools Act 1992* (NSW) to determine whether there is a net benefit to society from the legislation. Our analysis suggests that the implementation of this amendment will lead to an increase in red tape in the order of $17.9 million per year and that there are likely to be net social costs from the amendment.

Number of private swimming pool inspections

The Office of Local Government estimates there are over 340 000 backyard swimming pools in NSW.[115] This estimate is approximate and there is limited data on the location of swimming pools across private residential properties (owner-occupied and leased), multi-dwelling complexes, and tourist and visitor accommodation. On the basis of break-downs of pools across these categories, we estimate that there would be 115 600

115 Member for Penrith, 2012, *Minister visits Penrith to discuss swimming pool safety changes*. http://www.stuartayres.com.au/local-news/minister-visits-penrith-to-discuss-swimming-pool-safety-changes.html

inspections required per year from the amendment to the Act (table 13.4) based on the following key assumptions:

- a single dwelling pool is inspected when it is sold (once every 7 years for owner-occupied properties)
- a single dwelling pool is inspected when it is leased (once every 3 years for leased properties)
- a multi-unit complex pool is inspected every 3 years
- 70 per cent of pools are re-inspected following initial inspection.

13.4 Number of swimming pool inspections

Assumptions used to estimate number of swimming pools relevant to Amendment Act	Value
Total number of private swimming pools in NSW relevant to Amendment Act[a]	340 000
Proportion of pools at private single dwelling (owned)	70 per cent
Number of private single dwellings (owned) with pool	238 000
Average sale period for private single dwelling (years)	7
Number of private single dwellings sold per annum	34 000
Proportion of pools at private single dwelling (leased)	10 per cent
Number of private single dwellings (leased) with pool	34 000
Average lease period (years)	3
Number of private single dwellings with pool leased per annum	11 333
Proportion of pools at multi-dwelling complex or tourist/visitor accommodation	20 per cent
Number of tourist/visitor accommodation and multi-dwelling complexes with swimming pool	68 000
Frequency of inspection for tourist/visitor accommodation and multi-dwelling complexes (years)	3
Proportion of private swimming pools re-inspected[b]	70 per cent
Total number of inspections per year	**115 600**

[a] We have not included a growth rate for the number of pools over the ten year period. [b] From discussion with Wollongong Council.
Source: The CIE.

Costs of the Amendments

The Amendment Act requires all owners of private dwellings with a swimming pool to conduct a self-assessment of their own swimming pool fences and register their swimming pool on the NSW Register. On the basis of the unit cost estimates in table 13.5, the initial (once off cost in the first year) for pool owners across the three categories is:

- private single dwelling (owned) —$1.9 million
- private single dwelling (leased) —$0.3 million
- multi-dwelling complexes and tourist/visitor accommodation — $1.2 million.

13.5 Basis of estimates of costs of the *Swimming Pool Amendment Act*

Item	Value
Cost of self-assessment and registering of swimming pool	
Estimated time to self-assess private pool and register on-line (hours)	0.5
Cost of leisure time (per hour) for individuals[b]	$16.10
Cost of business time (per hour) for businesses[b]	$34.70
Cost of inspection	
Council initial inspection fee	$150
Council reinspection fee	$100
Proportion of properties requiring reinspection	70 per cent[a]
Required time (hrs) for pool owners to be on site during inspection (assumed during work hours)	1

[a] From discussion with Wollongong local council approximately 60-80 per cent of premises require re-inspection.

Source: The CIE.

The ongoing inspection costs are estimated based on the number of inspections from table 13.4 and the maximum cost of inspections in the Act (of $150 for an initial inspection and $100 for a follow-up inspection).[116] In addition, owners of swimming pools will be required to be on-site during the inspection. We have estimated that this will require one hour of the owner's time.[117] Based on this, the estimated cost per year of the mandatory inspections set out by the Amendment Act are:

- private single dwelling (owned) —$8.7 million
- private single dwelling (leased) —$2.9 million
- multi-dwelling complexes and tourist/visitor accommodation — $5.8 million

Owners of swimming pools may also incur additional costs to meet the safety standards set in OLG's pool 'self assessment' checklist. These costs will be incurred on a case-by-case basis depending on the existing fencing, location and structure of the pool. Examples of safety standards that may impose additional costs on owners include:

- the latch on the door is at least 1500 millimetres above floor level, doors open away from the pool area and are self-latching
- there are no wall openings greater than 100 millimetres
- there is an appropriate warning sign, including details of resuscitation (CPR) techniques, in the immediate vicinity of the pool area which can be easily read from a distance of 3 metres
- child-resistant barrier separating the pool from the house
- the pool fence is at least 1200 millimetres high all the way around
- the gap between the bottom of the fence and the ground is no more than 100 millimetres; and

116 Inspection and re-inspection fee are the maximum allowable fees council can charge for an inspection under the Amendment Act. http://www.dlg.nsw.gov.au/dlg/dlghome/PublicTopicsIndex.asp?mi=0&ml=10&id=12

117 Based on discussion with Randwick local council.

- there are no potential hand holds or food holds within 900 millimetres of the top of the pool fence in any direction.

Additional costs incurred by owners to meet specified safety standards have not been quantified as they will vary between properties. Nonetheless, these costs could be substantial, and therefore our estimate of the cost of the amendments to the Act will be a lower bound.

Councils may also incur costs to establish the state-wide online register, development of an inspection program by each council, possibly also compliance costs to council, education awareness and training and support for staff, as well as for undertaking inspections. We do not include these costs on the basis that the fees charged by council will cover these costs. On this basis there will be no cost implications for councils. If councils choose to charge less than their costs then there will be a lower cost for pool owners and a cost for councils.

- **The estimated annualised cost of red tape is $17.8 million over the initial ten years of the amendments to the *Swimming Pools Act 1992* being in place.**

13.6 Estimated cost of amendments to the *Swimming Pools Act 1992*

Cost and benefit items	Units required	Unit cost	Total cost
	No.	$	$m
Self-assess and register pool online (once off cost)			
Private dwellings (owned)			1.9
Private dwellings (leased)			0.3
Tourist/visitor accommodation and multi-dwelling complex			1.2
	No.	$	$m/year
Inspections (annual on-going cost)			
Sold properties			8.7
Leased properties			2.9
Multi-dwelling complexes			5.8
Annualised cost over 10 years including implementation			**17.8**

Source: The CIE.

Benefits of the Amendment

The aim of the Amendment Act is to reduce swimming pool drowning and near-drowning incidents of very young children. No attempt has been made in developing the regulation to assess the benefits that might be obtained. Below we present information that would inform such an analysis.

On average six children drown in private swimming pools in NSW each year.[118] A review of 40 drowning deaths of children in NSW found the 3 critical factors were lack of adult supervision, lack of properly maintained pool fence and/or child resistant barriers

118 NSW Child Death Review Team (CDRT), 2012, *Child deaths: drowning deaths in private swimming pools in NSW*. Issues Paper 01 April 2012.

to pool area, and inappropriate use of existing pool fence. A finding of the review was that:

> Pool fences can never take the place of active supervision of children around pools, but where these is a lapse in supervision, a child resistant safety barrier will save lives.[119]

In some cases properly maintained fences were present but drowning incidents occurred because the fence was temporarily propped open or there was a situation where responsibility for supervision was unclear amongst multiple family members or friends.

It is not clear how many lives the Amendment Act will save. Given there are multiple factors that can lead to an incident, the Amendment Act, which requires increased compliance with pool barrier requirements, will not prevent all drowning incidents across NSW. The Local Government Minister, Mr Page, quoted research which found that increased compliance with pool barrier requirements could reduce infant death from drowning by up to 41 per cent.[120] Using this figure as an upper bound, the Amendment Act will avoid less than 2.5 drowning incidents per year.

The estimated benefit of avoiding a drowning incident is approximately $4.2 million (in 2012 dollars).[121] The value of avoiding 2.5 drowning incidents per year is hence approximately $10 million per year. The benefit from avoided non-fatal incidents has not been included in this analysis because there is insufficient data on the number and type of outcomes.

On this basis it is likely that the Act would have net social costs of greater than $7.8 million per year. If fewer lives are saved than the upper estimate of 2.5 then the net costs would be higher (table 13.7).

13.7 Benefit of amendment to the Act under different assumptions about incidents avoided

Average number of drowning incidents avoided	Annualised benefit	Annualised net benefit
	$ million ($2012)	$ million ($2012)
0.5 incident per year	2	-15.8
1 incident per year	4	-13.8
1.5 incidents per year	6	-11.8
2 incidents per year	8	-9.8
2.5 incidents per year	10	-7.8

[a] Applying a 7 per cent discount rate.

Note: A negative net benefit implies a net cost to society.

Source: The CIE.

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119 NSW Child Death Review Team (CDRT), 2012, *Child deaths: drowning deaths in private swimming pools in NSW*. Issues Paper 01 April 2012.

120 Member for Penrith, 2012, *Minister visits Penrith to discuss swimming pool safety changes*. http://www.stuartayres.com.au/local-news/minister-visits-penrith-to-discuss-swimming-pool-safety-changes.html

121 Abelson, P., 2008, *Establishing a monetary value for lives saved: issues and controversies.* Working papers in cost-benefit analysis. Office of Best Practice Regulation: Department of Finance and Deregulation.

Impact of IPART's recommendation

IPART's recommendation will partly reduce both the red tape and the net costs arising from the amendment to the *Swimming Pools Act 1992*, while having little impact on the potential benefits of the amendment to the Act. We estimate that the recommendation could reduce the red tape associated with the amendment to the Act by around 40 per cent largely through removing the regulations after 5 years. A greater reduction in both red tape and cost could be obtained through seeking to halt the regulation until the Office of Local Government has established that there are net benefits from the amendment — that is, through reviewing the regulations before they are initially implemented.

A review of each recommendation is set out in detail below.

Risk based inspections program

From talking with local councils it is not clear what the requirement to develop an inspections program entails. Therefore local councils were not able to estimate the cost and resources required to undertake this task.

It is not clear how a risk-based approach can be incorporated into the inspections program given the amendment to the Act specifies the inspections required by type of dwelling.

In terms of an inspection template detailing what is required to be checked at an inspection some local councils have been proactively undertaking inspections prior to the amendment to the Act. In addition, the NSW Water Safety Taskforce has developed, in consultation with local councils, a Home Pool Safety Checklist to assist pool owners determine whether their pool fence or other barriers comply with legislation.[122]

Without detail on what development of an inspections program entails, it is not possible to estimate the impact from IPART's recommendation.

Shared services

The amendments to the *Swimming Pools Act 1992* (NSW) do not require inspections to be conducted at a specific time during the year. It is likely councils will have a degree of flexibility for when mandatory inspections (once every three years) are carried out at tourist/visitor accommodation and multi-dwelling complex sites. Conversely councils will be required to conduct inspections relatively promptly (time allowance is not specified in the *Amendment Act*) when a private property with a swimming pool is to be sold or leased, and in response to complaints or requests from the community.

It is estimated there will be approximately 115 600 inspections of private swimming pools conducted each year (table 13.4). Backlogs in swimming pool inspections may result for inspections of private dwelling properties given the need for prompt response from

122 NSW Water Safety Taskforce, *Home swimming pool safety, http://www.safewaters.nsw.gov.au/poolchecklist.htm*

council when a property is to be sold or leased. A backlog will be more likely if there are peak periods for the sale and lease of private properties (e.g. spring or autumn).

A shared services model will have a benefit to local councils if:

- the number of properties sold and leased are not constant throughout the year but occur in peak periods; and
- the peak periods differ across local councils to enable resources to be shared to smooth the peaks in inspections.

Box **Error! Reference source not found.** demonstrates the benefit of a share services model under two different situations.

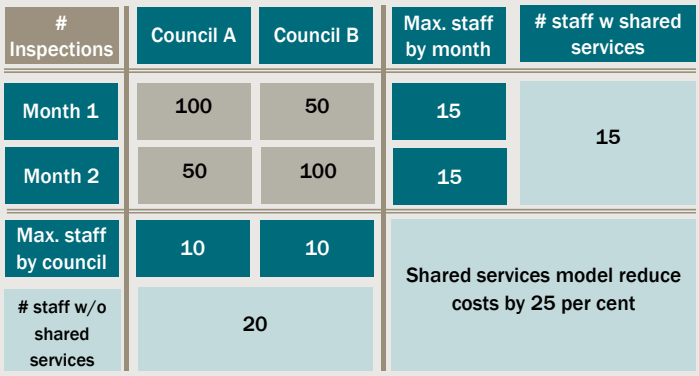
13.8 Identifying where the shared services model provides benefit

Two examples are provided to illustrate when shared services provides benefit to local council compliance and enforcement activities. In both examples it is assumed that 1 staff member conducts 10 inspections.

Example 1: Inspection peaks differ across councils

A shared service model will provide benefit to local councils because peak inspections occurs at different periods for different councils. Staff can be shifted from a council without a backlog of inspections to assist the council during the peak period of inspections.

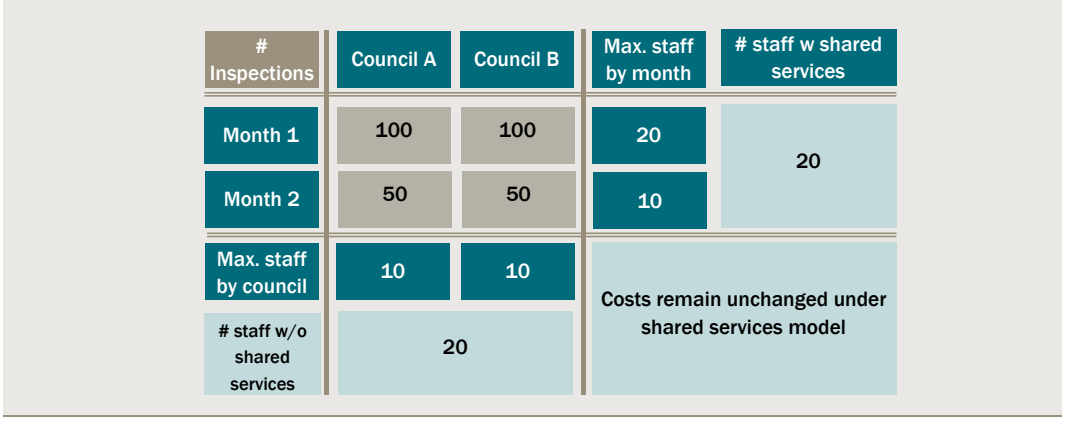
Over the two month period the number of staff required without shared services is 20 compared to 15 under a shared services model. In this example shared services saves 25 per cent in staff costs.



Example 2: Inspection peaks are similar across councils

In this example a shared service model will not provide benefit to local councils because all councils will have staffing constraints in the peak periods and will not be able to resource support staff from neighbouring councils.

Over the two month period the number of staff required without shared services is 20 compared to 20 under a shared services model. In this example shared services does not reduce staff costs.



Property sales data for Sydney which showed that there are peak periods for property sales, however the peak periods are relatively similar across local government areas. By combining all Sydney LGAs this suggested the real requirement would be 10 per cent lower than if each council met its individual need. Therefore a shared service model for swimming pool inspections could reduce the cost of backlog by approximately 10 per cent.

- **The cost saving of applying a shared services model to the inspection of private dwelling properties to be sold or leased (approximately 77 000 inspections) is $1.15 million per year.**

Review of the Amendment after 5 years

If, as our preliminary analysis suggests, the amendments to the *Swimming Pools Act 1992* (NSW) are found to have net cost and are discontinued following a five year review then costs and net costs from year 6 onwards are avoided. There are some implementation costs associated with setting up the regulations that would be sunk. Compared to continuing with the regulation on an ongoing basis, we estimate that a review that results in the discontinuation of the regulation would have annualised cost savings over the next ten years of $7.2 million.

Review of councils' regulatory performance and inspection fees and OLG's guidance material

Stakeholders commented that the consultation and implementation of the amendment to the *Swimming Pools Act 1992* were inadequate. Councils were uncertain what their regulatory responsibilities were and how they should undertake their new responsibilities consistently and efficiently. Following the amendment to the Act, OLG prepared various guidance materials for councils, including:

- a sample pool registration form;
- 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; and

- 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.[123]

The *Swimming Pools Regulation 2008* prescribes the maximum fees that councils can charge pool owners to undertake swimming pool inspections; $150 for the first inspection and $100 for the second inspection. Some councils have commented that the prescribed fees are too low to recover the true costs of inspections, particularly if multiple re-inspections are required.

The impact of IPART's recommendations has not been quantified as councils are still implementing the early stages of the amendment to the Act. Currently there is insufficient information on councils' current regulatory performance, the appropriateness of the guidance material provided by OLG and whether specified inspection fees are cost reflective. It is likely that the recommendation will reduce red tape if reviews inform improvements for regulatory performance and ensure inspection fees are cost reflective.

Conclusions

Review of the amendments to the *Swimming Pools Act 1992* (NSW)within 5 years, which results in the discontinuation of the regulation will reduce red tape by $7.2 million[124] per year and have net benefits of over $3 million per year (annualised over the next 10 years). The difference between the reduction in red tape and net benefits of $4.2 million per year is attributable to the avoided benefits from the discontinuation of the regulation. The impact of the other recommendations relating to regulation for private swimming pools will have minimal impact (table 13.9). A larger reduction in red tape could have been achieved if the implementation of the amendment to the *Swimming Pools Act 1992* was delayed beyond April 2013 until analysis confirmed that it was likely to have net benefits.

13.9 Summary of findings: Regulation of private swimming pools

Item	'Model' inspections program	Shared services	Review of Amendment Act	Review of performance, fees and guidance material	Total
	$m/year	$m/year	$m/year	$m/year	$m/year
Reduction in red tape to businesses and individuals	0	0	7.2	unclear	7.2
Savings to local councils	unclear	1.15	0	small increase in costs	1.15

123 NSW Office of Small Business Commissioner submission to IPART Regulation Review of Local Government Compliance and Enforcement, July 2014.

124 This estimated red tape reduction of $7.2 million per year results from the discontinuation of the regulation subsequent to a review after the regulation has been in place for 5 years. This estimate is therefore different to the estimate of $17.8 million reduction in red tape per year on page 86 because the latter relates to the red tape imposed by the regulation over a ten year period since its inception.

Item	'Model' inspections program	Shared services	Review of Amendment Act	Review of performance, fees and guidance material	Total
Savings to NSW Government	unclear	0	0	small increase in cost	small increase in costs
Other impacts			-4.2		-4.2
Net benefit[a]	**unclear**	**1.15**	**3.0**	**unclear**	**4.2**

[a] Net benefit is the total of reduction in red tape, savings to local councils, savings to NSW Government and other impacts.
Note: Recommendations 32 a,b,c,d are relevant assuming the Amendment remains in place whilst recommendation 32e is a review of the Amendment which may result in is discontinuation whereby recommendations 32 a, b, c, and d or no longer relevant. Hence the impacts of recommendations 32 a, b, c, d are not additive with recommendation 32e.Totals may not add due to rounding.

Source: The CIE.

Public health — boarding houses

Costs and benefits of the Boarding Houses Act 2012

Key requirements under the *Boarding Houses Act 2012* (the Act) include:

- mandatory registration of all 'registrable boarding houses' with the Register of Boarding Houses. The Register will be administered by NSW Fair Trading;
- the application of shared accommodation standards under the Local Government (General) Regulation 2005 to smaller (general) boarding houses;
- initial compliance investigations of registered boarding houses by local councils;
- the introduction of occupancy rights for all boarding house residents. The occupancy scheme will also be administered by NSW Fair Trading; and
- an enhanced scheme for the authorisation and operation of 'assisted' boarding houses which will be administered by Ageing, Disability and Home Care.

Currently, the Act will be implemented in two stages. Initially the provisions of the Act relating to the register were due to commence on 1 January 2013. The remainder of the Act will not commence until regulations have been finalised, which is expected to be during the Budget Session of Parliament 2013. The regulations will be subject to a Regulatory Impact Statement and public consultation.[125] (A Regulatory Impact Statement was not completed for the *Boarding Houses Act 2012* to determine whether there is a net benefit to society from the legislation.)

Depending on the number of registrable boarding houses (which is currently very uncertain) we estimate that the Act imposes a minimum red tape cost on businesses in the order of $130 000[126] in the first year, with a maximum in the order of $3 million[127]

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125 NSW Family and Community Services: Ageing, Disability and Home Care. *Boarding House Program*. http://www.adhc.nsw.gov.au/sp/delivering_disability_services/boarding_house_program

126 Based on the minimum estimate of 455 boarding houses across NSW.

127 Based on the maximum estimate of 10 000 boarding houses across NSW.

for the cost of registration and initial compliance inspections conducted by local council. The cost could potentially be much more depending on changes to Boarding Houses that are required following inspections.

There may be benefits associated with the Act. These have not been established in developing the regulation. It is not clear whether these benefits are greater or less than the costs. IPART's recommendations are likely to partly reduce red tape/net cost to businesses. The reduction in red tape cannot be precisely quantified but are likely to be small. The impacts on council and state government budgets will also be small.

Number of boarding houses inspected

Boarding houses provide accommodation for a fee, however tenants do not have control over the premises and usually they do not have a right to occupy the whole of the premises.[128]

All 'registrable boarding houses' will be required to register with NSW Fair Trading for a one-off fee of $100. 'Registrable boarding houses' consist of two categories:

- *general boarding houses* — a boarding house accommodating five or more residents for fee or reward, which does not fall within a list of exclusions in the Act, such as hotels and motels, backpacker's hostels and aged care homes.
- *assisted boarding houses* — a boarding house which accommodates two or more 'persons with additional needs'[129] and will also be required to be authorised by the ADHC.

Prior to the Act, boarding houses could be licensed or unlicensed, however those which accommodate two or more people with a disability were required to be licenced under the *Youth and Community Services Act 1973* and the *Youth and Community Services Regulation 2010.* Currently there are 23 boarding houses licenced under the *Youth and Community Services Act* which accommodate two or more people with a disability.[130] All other boarding houses are unlicensed, but must comply with public health, food, local government and environmental planning and assessment related legislation.[131]

Inspection role for local councils

Under the section 16 of the Act, local councils are required to conduct an initial compliance investigation of all registered boarding houses within 12 months of

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128 The Property Owners' Association of New South Wales, POANSW, Boarding House Division. http://www.poansw.com.au/boardinghouse.php#nav2

129 Under section 36 of the Act, a person is a person with additional needs if the person has age related frailty, a mental illness within the meaning of the *Mental Health Act 2007*, or a disability; which is permanent or likely to be permanent; and which results in the need for care or support services (whether or not of an ongoing nature) involving assistance with, or supervision of, daily tasks and personal care such as (but not limited to) showering or bathing, the preparation of meals and the management of medication.

130 Hansard, second reading, Boarding Houses Bill 2012.

131 NSW Fair Trading, *Boarding houses*, http://www.fairtrading.nsw.gov.au/Tenants_and_home_owners/Boarding_houses.html

registration.[132] Councils are responsible for investigating both general and assisted boarding houses for compliance with relevant standards relating to building and fire safety. Councils must also inspect for compliance with standards relating to places of shared accommodation for 'general boarding houses' only. The ADHC has responsibility for inspecting compliance with these standards at 'assisted boarding houses'. Lastly, if a council suspects that a boarding house is operating illegally as an 'assisted boarding house', it should contact Ageing, Disability and Home Care immediately because of the increased risk to residents' health, safety and welfare.[133]

There is currently limited data on the total number of boarding houses, both general and assisted, across NSW that are regulated under the *Boarding Houses Act 2012*. Four estimates of the number of boarding houses across NSW are listed below and range between 455 and 10 000 across NSW. It is possible that the substantial discrepancy between estimates is due to lower bound estimates counting assisted boarding houses only, whilst upper bound estimates counting all boarding houses (general and assisted).

- 750 boarding houses operating in NSW with the vast majority located in the Sydney metropolitan region[134]
- Homelessness NSW estimated there were over 10 000 boarding houses across NSW in its submission to IPART. Homelessness NSW also noted that the distribution of boarding houses across NSW is uneven, with the majority in Sydney metropolitan local councils, for example, in Marrickville Council it is believed there are approximately 600 boarding houses[135]
- the NSW Ombudsman estimated there are 455 boarding houses in NSW, of these, 31 are licensed boarding houses[136]
- Sydney Water estimates there are between 100 and 120 boarding houses with greater than 10 residents per house and approximately 500 additional boarding houses with less than 10 residents[137]
- the NSW Office of State Revenue has data on the number of boarding houses which have received a land tax exemption application, which is approximately 700 across NSW.[138] It is unknown how many of these boarding houses are deemed 'registrable' under the new *NSW Boarding Houses Act 2012.* Further it is also possible some boarding houses have either not received a land tax exemption (either, didn't meet all criteria) or have not applied for an exemption.

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132 With exceptions if the boarding house has been previously registered.

133 Premier and Cabinet, Division of Local Government, 2013, *Circular to Councils Boarding Houses Act 2012*. http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Circulars/13-02.pdf

134 Parliament of New South Wales, 2012, *Boarding Houses Bill 2012. Bill Second Reading.*

135 Submission by Homelessness NSW.

136 NSW Ombudsman, 2011, *More than board and lodging: the need for boarding house reform. A special report to Parliament under section 31 of the Ombudsman Act 1974.*

137 Personal communication with Sydney Water.

138 Personal communication with NSW Ageing, Disability and Home Care (ADHC)

Costs of the Act

Registrable boarding houses will be required to register with NSW Fair Trading by 30 June 2013. In order to register, boarding houses need to complete a registration form and pay a registration fee of $100 to the NSW Fair Trading Centre.[139] Boarding house proprietors will be required to provide basic identification information as well as information about the number of residents, beds and bedrooms and other profiling information. Proprietors will be required to update the register annually.

Section 16 of the Act requires an initial compliance investigation by local councils of registrable boarding houses within the 12 months of registration, unless the premises were inspected in the previous 12 months. We estimate the cost to local council is approximately $270 to conduct a two hour initial inspection and $190 to conduct a one hour re-inspection based on a sample of local council's inspection fees for boarding houses/shared accommodation for 2012-13.[140] Boarding houses are required to comply with planning, building and fire safety requirements and accommodation standards.

An initial compliance inspection will assess whether a registered boarding house complies with requirements imposed by or under the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979* with respect to the use of the boarding house, including (but not limited to):

- requirements in relation to building and fire safety, and
- relevant standards or requirements for places of shared accommodation for the purposes of Order No 5 (d) in the Table to section 124 of the *Local Government Act 1993.*

The cost of the Act to boarding house proprietors in the first 12 months ranges between $133 000 and $2.9 million depending on the number of boarding houses which at his stage is very uncertain (table 13.10). This does not include the cost to proprietors to upgrade facilities to meet planning, building and fire safety requirements[141] and accommodation standards including the occupancy principles outlined in the Act. From discussion with Randwick Council this could be a significant cost to some boarding house proprietors that previously were not licensed and have not been inspected recently.

Subsequent inspections, beyond the initial 12 months, are at the discretion of the local council. It is not possible to quantify the ongoing costs to inspect boarding houses because subsequent inspections to the initial compliance inspection are at the discretion of the local council. The Act does not specify the frequency of ongoing inspections.

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139 NSW Fair Trading, *Boarding houses, http://www.fairtrading.nsw.gov.au/Tenants_and_home_owners/Boarding_houses.html*

140 Based on an average of inspection fees published in select local council's 2012-13 Fees and Charges publication. Select local councils include Woollahra, Randwick, Ku-ring-gai, Byron and Sutherland Shire Council.

141 Owners of existing boarding houses may apply for grants to undertake essential fire safety works to improve fire safety for boarding house residents http://www.housing.nsw.gov.au/Centre+For+Affordable+Housing/Boarding+House+Financial+Assistance+Program/Fire+Safety+Program/

13.10 Costs of *Boarding Houses Act 2012*

Quantified costs in initial 12 months	Unit cost ($)	Total red tape cost ($)	
		Lower bound	Upper Bound
Register with NSW Fair Trading	100	45 500	1 000 000
Inspection fee	150	104 423	2 295 000
Reinspection fee	100	17 290	380 000
Time cost during inspection for business[a]	34.70	29 998	659 300
Quantified cost of red tape of the Act		**197 211**	**4 334 300**

[a] $32.20 per hour time cost from Better Regulation Office, 2012, *Guidelines for estimating savings under the red tape reduction target*.

Note: Lower bound estimate is based on 455 boarding houses and upper bound estimate is based on 10 000 boarding houses.

Source: The CIE.

Benefits of the Act

The key purpose of the *Boarding House Act* 2012 is to protect the rights of residents living in all boarding houses in New South Wales. Momentum was also driven by the 300 Hostel inquiry following the deaths in 2009-2010 of six residents in a Marrickville boarding house which was licensed under the *Youth and Community Services Act 1973* by Ageing, Disability and Home Care ADHC. The Coroner's report said the six people who died were over sedated, undernourished and 'poorly treated medically and neglected'.[142]

Impetus for the *Boarding House Act 2012* also was a reform process driven by an Inter Departmental Committee on Share Private Residential Services established in 2008.[143]

The POA NSW state that boarding house legislation in Victoria has caused many privately run boarding houses to close reducing the supply of low to moderate cost accommodation options. The POA NSW notes that legislation in NSW may negatively impact on privately run boarding houses in NSW, given the marginal and non-growth nature of the sector.[144]

Impact of IPART's recommendations

Ageing, Disability and Home Care (ADHC) has developed the following guidance material for councils to support the implementation of the Act:

- a guide for councils on the *Boarding Houses Act 2012* (NSW)
- a fact sheet providing information for councils in developing a boarding house inspection program
- an inspections report template.[145]

142 Marrickville Council, 2013, *Community and Corporate Services Committee Meeting*.

143 Letter to IPART from NSW Family and Community Services: Ageing, Disability and Home Care regarding IPART's draft report for the Review of Local Government Compliance and Enforcement.

144 The Property Owners' Association of New South Wales (POA NSW), Boarding House Division. http://www.poansw.com.au/boardinghouse.php#nav7

145 IPART, 2014, *Local government compliance and enforcement: Regulation Review-Final Report.*

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

IPART's recommendation that NSW Fair Trading should undertake regular reviews of the boarding houses guidance material for councils and boarding house operators may reduce red tape and the net costs arising from the Act, if the review improves the effectiveness and consistency of regulation by local councils. It is not possible to quantify the impacts as it is unknown whether councils will adopt the boarding houses guidance material and whether the guidance material has assisted councils in developing a boarding house inspection program and conducting inspections.

13.11 Summary of findings — Regulation of boarding houses

Regulation of boarding houses	Value
	$m/year
Reduction in red tape to businesses and individuals	unclear
Savings to local council	unclear
Savings to NSW Government	unclear
Net benefit	**unclear**

Source: The CIE.

14 Parking

14.1 IPART recommendations for parking

- 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 retain the role of handling parking fine requests for review or appeals, to ensure consistency and fairness across the state.
- 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

Private parking area agreement guidelines

The OLG's private parking area agreement guidelines were prepared 15 years ago. An updated version must improve consistency and transparency for managing private parking arrangements between local councils and private land owners and companies, State agencies and owners corporations.

There is no data on the number of disputes relating to parking on private land. We have been unable to detail the scale of the problem and quantify the impact of IPART's recommendation.

It is expected that IPART's recommendation is likely to have a small reduction in the red tape for businesses through greater clarity of agreements, as long as councils use the guideline put forward by OLG.

Parking fines

Under the current two-tiered system of handling parking fine representations, businesses and individuals can face costs related to:

- inconsistencies in handling and outcomes; and

- time costs arising from lack of clarity and confusion about how to dispute a fine.

There are currently 3 local councils who have established parking panels to review parking infringement notices, including Mosman Council, Parramatta City Council and Hurstville City Council. These councils also purchase a premium package with SDRO under which SDRO is responsible for managing parking fine issues such as disputes). In these select councils there is duplication of effort in the review process of parking fines because they have established a parking panel and also pay for a premium package with SDRO.

Staff cost is the primary cost of establishing parking panels. As an example, the Parramatta parking panel consists of two residents and one senior council staff member who meet weekly and hear, on average, about 10 matters per meeting[146], which would enable the parking panel to hear a maximum of 520 matters per year. Individuals still have the opportunity to request a review of a parking fines by the State Debt Recovery Office.

The staff cost of Parramatta City Council's parking panel is approximately $250 000 per year.[147]

Under current arrangements Parramatta City Council hears approximately 520 matters per year, this equates to the parking panel reviewing approximately 10 per cent of total parking notices disputed in the council area (approximately 5 127 in 2011-12) (table 14.2). Each matter heard by Parramatta's parking panel costs approximately $480.

Assuming Hurstville City Council and Mosman Municipal Council will also review approximately 10 per cent of total parking noticed disputed in their area, each council will hear approximately 174 and 169 parking notice matters per year, respectively. The staff cost for each of these councils, based on the average cost to hear one matter by a parking panel, is approximately $83 520 and $81 120 respectively.

14.2 Parking notices issues and disputed in councils with parking panels — 2011–12

	Parking notices issues	Parking notices disputed[a]
Hurstville City Council	17 371	1 737
Mosman Municipal Council	16 916	1 692
Parramatta City Council	51 269	5 127
Total	**85 556**	**8 556**

[a] Based on estimate that Approximately 10 per cent of fines issued for driving related matters (parking, speeding, red light cameras) are disputed, from discussion with State Debt Recovery Office.

Source: NSW Office of State Revenue, Number of parking notices issued by all issuing authorities by financial year. Data as at COB 7 Feb 2013.

146 Parramatta City Council, 2010, *Adjudication Panel sits for the first time*. http://www.parracity.nsw.gov.au/your_council/news/media/media_releases2/2010/november_2010/adjudication_panel_sits_for_the_first_time

147 Assumes the one senior council staff is paid a salary of $80 000 and the two residents are paid a salary of approximately $56 000. Salaries are based on hourly rates for Professional and Clerical and Administrative Workers, respectively, sourced from Better Regulation Office, 2012, *Guidelines for estimate savings under the red tape reduction target.* On-costs of 30 per cent have also been included.

- **IPART's recommendation for council's to streamline the review process of parking notices to *either* SDRO or local council will reduce cost to local councils by approximately $415 000 per year.**

Conclusions

A summary of the impacts of parking recommendations is contained in table 14.3.

14.3 Summary of parking recommendations

Item	Update its free parking area agreement	Consolidate appeals process	Total
	$m/year	$m/year	$m/year
Reduction in red tape for businesses and individuals	small reduction	0	0
Savings to local councils	small increase in costs	0.4	0.4
Savings to NSW Government	small increase in costs	0	unclear
Net benefits	**yes**	**0.4**	**0.4**

Source: The CIE.

15 Road transport

15.1 IPART recommendations for road transport

- 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.

Size and nature of the problem

The problems with heavy vehicle access to roads owned by local councils have been studied in detail and there is a widely held finding of considerable gains from improving the use of heavy vehicles.[148]

- The Productivity Commission estimated the gains from heavy vehicle reforms of $35 billion, equivalent to an annualised gain of $3.3 billion. This reflected 3 reforms of which regulatory fragmentation is one. If these gains were shared equally, regulatory fragmentation could be worth $1.1 billion per year.[149]
- The NTC estimated the gains from performance based standards as being equivalent to $3.6 billion or $343 million per year.[150]
- Castalia 2009 for the NTC estimated the gains from improving compliance and enforcement at $1.7 billion or $160 million per year. Of this $123 million would be reduced red tape for industry and $38 million reduced costs for road regulators.[151]
- The NTC estimated that higher mass limits could achieve gains of $4.1 billion or $387 million per year in 1998 (adjusted to 2010 prices)[152]. In 2006, a review for the NTC

148 See The CIE 2012, *Benefit cost analysis of the National Heavy Vehicle Regulator model law,* prepared for the National Transport Commission for more details on these estimates.

149 Productivity Commission 2006, *Road and Rail Freight Infrastructure Pricing, Productivity Commission Inquiry Report No. 41*, 22 December.

150 National Transport Council 2010, *Performance Based Standards, Draft Regulatory Impact Statement*, March.

151 Castalia Strategic Advisers 2009, *Securing a National Approach to Heavy Vehicle Regulation, Report to the National Road Transport Operators Association (NatRoad).*

noted that the fragmentation of the regulatory system has meant that only about half of this has had been realised.[153]

These cost estimates are national. In NSW, based on its share of the national population, it might be expected that the costs of limitations on heavy vehicle access arising from regulatory fragmentation and inconsistency are up to $366 million.[154]

Impact of IPART's recommendations

It is expected that the NHVR will be responsible both for technical assistance to councils in certifying local roads for access by heavy vehicles and in engineering assessments of infrastructure. [155] However, it is possible (and even likely in the current budget environment) that the NHVR will not be sufficiently well resourced to undertake these tasks. This would then mean that NSW misses out on substantial benefits that have been identified as arising from the establishment of the NHVR and the resulting improvement in access to local roads for heavy vehicles.

The benefits that NSW would miss out on can be considered through the lens of what the National Heavy Vehicle Regulator was expected to achieve. The CIE found that under a pessimistic scenario, changes to the decision making frameworks for road access could achieve a benefit of $8.2 billion, versus achievement of benefits of $17.9 billion under a medium scenario[156], or a difference of $10 billion.[157] These are benefits over a 20 year period for the whole of Australia. Annualised and apportioned to NSW, this difference is equivalent to $300 million for NSW per year. This can be viewed as capturing the change in the outcome if the NHVR is not sufficiently resourced to enable a better decision making framework for access decisions.

The cost of NSW separately seeking to provide technical assistance and assist councils with engineering assessments of infrastructure would be higher than if this was undertaken nationally. There would also be reduced consistency. This may be able to be mitigated if the NSW Government provided separate funding for the NHVR to expedite assistance to NSW councils. Again, using the estimates in The CIE, the cost of a better

152 National Transport Commission 1998, *Regulatory Impact Statement: Increased Mass Limits for Road-Friendly Heavy Vehicles*, April.

153 Keatsdale 2006, Review of heavy vehicle mass and loading, oversize and overmass and restricted access regulations, NTC, Ma.

154 The upper bound is based on the Productivity Commission estimate.

155 For example, the NHVR regulator notes that it may provide case managers for complex road access decisions and will have a national mapping system with NHVR managing all approvals and rejections by councils and reasons for these (NHVR 2012, Managing heavy vehicle access under the NHVR, Fact Sheet, November).

156 The difference between the pessimistic and medium scenarios is the rate at which the gains are made over the 20 year period. In the pessimistic scenario the gains grow slowly over the entire 20 years, whilst in the medium scenario maximum annual gains are achieved within the first half of the 20 year period and subsequent annual gains are made at a declining rate.

157 The CIE 2012, *Benefit cost analysis of the National Heavy Vehicle Regulator model law,* prepared for the National Transport Commission, p. 44.

decision making framework would be one fourteenth of the benefits under the medium scenario. Applying this ratio to NSW would indicate that the cost of improving the decision making framework alone might be in the order of $21.5 million per year — these costs include some costs related to infrastructure and it is not clear the extent to which these costs (and associated benefits) would be generated by a technical assistance program. That is, will improved decision making frameworks for access lead to councils changing their infrastructure expenditure.

The likelihood that the pessimistic scenario occurs as against a medium scenario that would be more likely under an appropriately resourced NHVR is not known. The contribution of technical assistance to achieving benefits may also be less than 100%. If together, these factors implied an allocation of one fifth of the benefits and costs from improving access from the pessimistic to medium scenario, then IPART's recommendation would generate expected benefits of $59 million per year, costs of $4 million per year and net benefits of $55 million per year. These are clearly dependent on the level of technical assistance that would be provided to local councils and the extent to which this can shift local councils towards more rational decision-making and/or decision making that accounted for the full set of benefits and costs, rather than just those for the local government area. If infrastructure costs to improve access were borne by local councils, then they would incur roughly two thirds of the costs, with the remainder borne by the NSW Government.

Conclusions

A summary of the likely impacts of the road transport recommendations is set out in table 15.2.

15.2 Impacts of road transport recommendations

Item	Value
	$m/year
Reduction in red tape for businesses and individuals	59.2
Savings to local council	-2.9
Savings to NSW Government	-1.4
Net benefits	**54.9**

Source: The CIE.

16 Companion Animals

16.1 IPART recommendations for companion animals

- The Office of Local Government (OLG) 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).
- OLG should allow for online companion animals registration (including provision to change owner address and contact details online for animals that are not under declaration).
- OLG 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.
- OLG 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.
- OLG should amend the Companion Animals Regulation 2008 (NSW) to enable fees to be periodically indexed by CPI

Size and nature of the problem

There are over 2 million companion animals registered in NSW and 219,000 new registrations each year. There are a large number of companion animals not registered in addition to this (38% of dogs and 56% of cats are not registered).[158]

Companion animal expenditures by councils are significant and these are not fully covered by revenues. Data reported by councils to OLG suggests costs in the order of $31 million per year and revenues of $11 million per year.[159] These figures are confirmed by other information sources. The shortfall in revenue from administration of the *Companion Animals Act 1998* is reported to be between 0.15% and 0.25% of total council

158 DLG, Companion Animals Taskforce Discussion Paper, May 2012, p. 17

159 Data provided by DLG. Note that 138 councils reported expenditures and 134 reported revenues. Those not reporting included a number of major councils.

expenditure by the Local Government and Shires Association of NSW (now Local Government NSW).[160] This is equivalent to $14 to $23 million per year across all NSW local governments.

A part of the costs for councils associated with the administration of the *Companion Animals Act* are a result of difficulties in enforcement because animals are not registered and owners cannot be identified from registration information. A further part is associated with lack of responsible pet ownership.

The processes for registration are also overly administrative, with registration and changes required to be entered by councils rather than directly into the register.

Impact of IPART's recommendations

IPART's recommendations aim to increase and improve the registration of companion animals and thereby make enforcement of the *Companion Animals Act* more efficient. Further, the recommendations aim to simplify the registration process. Finally the recommendations aim to reduce issues related to irresponsible pet ownership, including through desexing.

Impacts from responsible pet ownership campaigns

The returns from responsible pet ownership campaigns will depend on the extent of targeting and the amount of funding made available. The NSW Government has historically supported such programs including the Safe Pets Out There (SPOT) program, for which funding was $600,000 per year[161], and the NSW Responsible Pet Education Program, for which funding of $2.1 million was provided over 3 years[162].

The returns for these programs are not clear. However, an evaluation of a joint initiative between the RSPCA and Bathurst Council (which has subsequently been expanded to the RSPCA's Community Animal Welfare Scheme) suggested that benefits amounted to $2 for each dollar spent.[163] It is unclear whether these returns would apply to additional expenditure beyond the current level provided by the NSW Government. It would be expected that this would be more relevant to a continuation of the current programs, although specific analysis of these would be a more robust basis for making decisions about future NSW Government expenditure in this area.

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160 Local Government and Shires Association of NSW 2012, *The impact of cost shifting on NSW local government 2010/11,* Appendix B.

161 Marston, Bennett, Rohlf and Mornement 2008, Review of strategies for effectively managing unwanted cats and dogs in Queensland – A report to the Department of Primary Industries and Fisheries, Queensland, p. 117.

162 DLG 2012, Companion Animals Taskforce Discussion Paper, May, p. 28.

163 Deloitte Australia 2011, CAWS Programme 2010-11 Cost-benefit Case Study for Bathurst Regional Council - Final report, reported in DLG 2012, Companion Animals Taskforce Discussion Paper, p. 19.

For the purposes of this quantification, we cost IPART's recommendation as suggesting a similar amount of funding as the current programs of $700,000 per year. It is not possible to estimate the impacts that this might have without a better understanding of the program design and whether expenditure would be additional to that currently provided.

Improved enforcement of the Companion Animals Act

The State Debt Recovery Office has indicated that in 2012, the share of Companion Animals penalty infringement notices that were not paid was 40.2 per cent. This has risen from 25.3 per cent in 2007, although it is not clear if the increase partially reflects locating those to who PINs have been issued after long delays. In any case, this is a very low level of enforcement.

Collecting debts can be costly where it is difficult to locate owners. For businesses, debt collectors can charge between 25 per cent and 50 per cent of the money they collect, depending on the difficulties of the debt being chased. SDRO has indicated that debt collection is easier once a person's date of birth is known, as has Sutherland Shire in its submission to this review.

Our estimates of the magnitude of changes from improved enforcement and reduced debt collection costs are set out in table 16.2. This is based on:

- 21 000 penalty infringement notices issued in 2012;
- improving enforcement of penalty notices from the current level of 60 per cent to the 2007 level of 75 per cent;
- the median cost of fines for breaches of the *Companion Animals Act* of $275;[164] and
- 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 per cent 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 be further feedbacks to improved behaviour by animal owners if penalties are enforceable.

16.2 Impacts of improved enforcement

Item	Value
	$m/year
Change in collection of fees	0.9
Change in costs of debt collection	-0.3

Source: The CIE.

164 The average is higher at $765 but we expect that it is likely that a greater share of fines are at lower values. This would mean that councils collect $3.5 million currently in penalty infringement notices, which appears consistent with total revenue estimates of $11 million per year for animal control.

Reducing the administration costs of registration

Administration costs related to Companion Animals are high as there is no online system for registration and the process is unnecessarily burdensome in the way it is set up. Currently, all changes to registration go through local councils. The changes proposed in IPART's recommendations would allow this to be undertaken directly by pet owners, avoiding administration associated with councils.

We estimate that allowing for online registration would:

- reduce time costs for those making registrations through not having to go through council by 5 minutes per registration;
- reduce administration costs (such as postage) by $1.65 per registration; and
- reduce processing costs for councils by $2 per registration.

There will be implementation costs associated with IT for online processing. As previously noted, the implementation costs for the Government Licensing Service were in the order of $30 per ongoing license held. The Companion Animals Register already exists and allows for entry by council officers. The changes to the system would be expected to be a smaller than the costs of GLS because of this. We allow for costs of $10 per average number of new licences added per year.

After accounting for implementation costs the net benefits would be in the order of $0.8 million per year. The reduction in red tape would be $0.7 million, the NSW Government would incur costs of $0.3 million (annualised over 10 years) to implement the system and councils would reduce their costs of $0.4m/year.

16.3 Impacts of online processing

Item	Per application	Total
		$m/year
Avoided time for applicant	5 minutes/$1.45	0.3
Avoided administration costs for applicant	$1.65	0.4
Avoided costs for councils	$2.00	0.4
Implementation costs	Na	0.3
Net benefits		**0.8**

Source: The CIE.

Other IPART recommendations

IPART's recommendations would have other smaller impacts that have not been quantified, such as increasing fees for pet owners through CPI increases, with revenue going to councils.

Conclusions

The companion animals recommendations would marginally increase red tape through increasing the amount collected from individuals through fines, but with some offsetting reduction in compliance costs to register animals (table 16.4). The largest impact would be a reduction in council costs of around $1.6 million per year. The NSW Government would incur costs of $0.3 million per year (implementation costs annualised over 10 years) if it funded the online registration system.

16.4 Impacts of companion animals recommendations

Item	Value
	$m/year
Reduction in red tape for businesses and individuals	-0.2
Savings to local councils	1.6
Savings to NSW Government	-0.3
Net benefits	**1.1**

Source: The CIE.

17 Other areas

17.1 IPART recommendations

- 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.
- 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
  - issue longer-term DAs for periods of 3-5 years for recurrent local community events (subject to lodging minor variations as section 96 EP&A Act amendments).

Approval terms for footway restaurants

Businesses offering outdoor dining need to apply for an approval to use the footway for restaurant purposes under section 125 of the *Roads Act 1993*. The term of the approval is specified by the council and can not exceed 7 years as specified under the Act. There is substantial variation in the length of an approval term provided by councils. For example, City of Newcastle approves outdoor dining for a period of up to 12 months which concludes at the end of each financial year. [165] The length of the approval term is two years for Manly council[166] and three years for Gosford City Council[167].

In 2006-07, there were 5603 cafés and restaurants and catering services in NSW.[168] Since 2006-07, the retail trade value has increased by 21 per cent.[169] Assuming the number of

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165 The City of Newcastle, 2011, *Outdoor Dining*. www.newcastle.nsw.gov.au/__data/assets/pdf_file/0004/148585/Policy_-_Outdoor_Dining_Policy_April_2011.pdf

166 Manly Council, *Application for outdoor eating area approval*. http://www.manly.nsw.gov.au/council/licenses-and-permissions/

167 Gosford City Council, 2010, *Guidelines for Business Use of Public Footpath Policy*. http://www.gosford.nsw.gov.au/customer/document_gallery/council_guidelines/guidelines-for-business-use-of-public-footpaths.pdf

168 ABS, 2008, *Cafes, Restaurants and Catering services, Australia, 2006-07*. Cat. no. 86550DO001_200607. Released April 2008.

cafés and restaurants has increased in line with the increase in retail trade value, the number of cafés and restaurants across NSW in 2013 is approximately 6800.

In order to apply for a footway restaurant licence, the business must obtain development consent under the Environmental Planning and Assessment Act 1979 and other statutory approvals. If no development consent exists, a development application must be lodged.[170]

Impact of IPART's recommendation

IPART recommends the maximum approval term for outdoor dining councils can provide under the *Roads Act 1993* should be increased from 7 years to 10 years. Under the Act, councils have discretion regarding the approval term as long as it is less than the maximum of 7 years. The impact of IPART's recommendation is influenced by the current approval term that councils provide for outdoor dining and the approval term councils will provide if the maximum term is extended to ten years.

Three important pieces of information required to quantify, the impacts of this recommendation are unknown:

- the proportion of cafés and restaurants that offer outdoor dining
- the current approval term provided by councils
- the approval term councils would provide if the maximum approval term increased to 10 years in the Act.

An upper bound estimate of the impact of IPART's recommendation assumes all cafés and restaurants provide outdoor dining, all councils provide the maximum approval term of 7 years and all councils will increase their approval terms to 10 years in accordance with the amendment to the Act. The upper bound estimate is a total reduction in cost to businesses and councils of $20 000 per year based on:

- the number of renewals required per annum decreasing by 290[171]
- business taking an hour to complete the application at an hourly cost of $34.70
- council also taking an hour to approve the application at an hourly cost of $34.70.

It is assumed that the processes for businesses to complete an approval application and for councils to approve it are fairly routine and not time intensive given that complex matters are considered in the initial development application process that occurs prior to the issuing of an approval.

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169 ABS, 2013, *Retail Trade, Australia: Table 3: Retail Turnover, By State*. Cat. no. 8501.0. Released 2013.

170 Woollahra Municipal Council, 2012, *Policy and Procedures for Footway Restaurants and Display of Goods.* *http://www.woollahra.nsw.gov.au/__data/assets/pdf_file/0008/18386/Policy_and_Procedures_for_Footway_Restaurants_and_Display_of_Goods-June2012.pdf*

171 There are approximately 6800 cafés and restaurants for which approximately 970 and 680 approvals are required each year when the maximum approval term is 7 years and 10 years, respectively.

Extending the approval period may also provide greater certainty to businesses regarding investment. The benefit of greater certainty has not been quantified.

The estimated maximum reduction in costs of $20 000 to councils and businesses. It is a maximum because many councils currently do not offer the maximum approval term of 7 years. It appears that councils have reasons for not offering the current maximum approval term of 7 years and therefore are unlikely to offer an amended maximum approval term of 10 years.

The reduction in cost is likely to result in a net benefit given the low risk of issuing licences for an extended period. The risk is likely to be low because in most cases prior to issuing an approval the businesses must obtain development consent for the footway restaurant.

A reduction in red tape greater than $20 000 could be achieved if IPART recommended that all councils extend their approval terms to the maximum term specified in the Act.

Community events

In general, a development application is required if a community event is to be held on land that is not normally used for the same purpose as the event. The development application enables temporary use of the land. Examples of community events requiring development consent include markets held on land that is otherwise used as a car park of a recreation area and music events within parks.

IPART is recommending that councils should adopt measures to simplify and streamline the approvals process for local community events, such as

- specifying some temporary uses of land as exempt development in local environment plans, or
- issue longer term DAs for periods of 3-5 years for recurrent local community events

Some councils currently issue longer term DAs for recurrent local community events. For example, Ku-ring-gai council has given development consent for a festival to run annually for 6 years and for Christmas carols to be held once a year for 5 years.[172] A submission from the event organiser of the Murrumbateman Field Days noted that council required a DA and a transport management plan every year despite the event running for the past 34 years. Since this submission in September 2012 the council has agreed to approve the development application for a five year period which reduces cost and time to business and community. A transport management plan is still required each year which requires time to complete and an approximate cost of $240 for a traffic engineer to update an existing plan.[173]

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172 Information sourced from Ku-ring-gai Council's Development Application Tracking tool http://www.kmc.nsw.gov.au/Plans_and_regulations/Building_and_development/DA_Tracking

173 Personal communication with Kim Williams, event organiser of the Murrumbateman Field Days event.

Impact of IPART's recommendation

Simplifying and streamlining the approvals process for local community events (where feasible and appropriate) is likely to reduce cost to business and community. For example, extending the approval period for the development consent reduces cost to businesses and community from 4.5 days to 0.5 days (i.e. reduction of 4 days) for each year of the approval period excluding the initial year. [174] Therefore extending the period from 1 year to 5 years reduces cost equivalent to approximately 16 days of work over a 5 year period for a single community event. In addition the development application fee is avoided in each year of the approval period excluding the initial year.

The reduction in cost to businesses and community from extending the approval term from 1 year to 5 years for a single community event is approximately $1000 per year.[175]

The number of recurrent community events which require a DA each year is not known. As mentioned some councils already issue longer approval periods.

Given the likelihood that this recommendation will result in small to zero costs then suggesting councils provide longer approval periods or specifying some temporary uses of land as exempt development in local environmental plans (where feasible and appropriate) is likely to result in a net benefit, if councils actually take note of the advice. However the net benefit is dependent on the number of recurrent community events that are unnecessarily required to submit a DA each year.

17.2 Summary of impact of IPART's recommendations in other areas

Item	Footway restaurants	Community events
	$m/year	$m/year
Reduction in red tape for businesses and individuals	0.01[a]	Reduction
Savings to local councils	0.01[a]	Yes
Savings to NSW Government	0	0
Net benefits	**0.02[a]**	**Yes**

[a] This is an upper bound estimate.

Source: CIE.

174 Personal communication with Kim Williams, event organiser of the Murrumbateman Field Days event. Estimate is based on a community event that is equivalent in size to the Murrumbateman Field Day.

175 Reduction in cost associated with avoided 4 days to process DA is approximately $970 in the years a DA is not required. Assuming an approval period of 5 years the reduction in cost per year of the 5 year period is approximately $780. In addition, each year a DA is not required the application fee of approximately $200 to $250 is avoided. Therefore the cost avoided per year of the 5 year period is between $160 and $200.

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