

Confidential Final Interim Report

Economic analysis of a new *Building Act* for Western Australia

An analysis of the cost implications of the
proposed new *Building Act* on building in Western
Australia

Prepared for the Department of Housing and Works

October 2006



ACIL Tasman

Economics Policy Strategy

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1 Introduction

This is a report by ACIL Tasman on a study commissioned by the Department of Housing and Works (DHW) to undertake an analysis of the cost impacts of a proposed new Building Act on building in Western Australia.

The report is divided into three key sections:

- A review of publicly available information on related developments and experiences in other Australian jurisdictions
- An analysis of the impact of ‘binding the Crown’ on the cost of the government’s building program
- An analysis of the costs implications of existing and proposed new building regulations for local government authorities.

While this report does not represent a full Regulatory Impact Statement (RIS) it is presented in a form suitable for later development into a complete RIS.

This report is structured as follows. Section 2 gives the background to the proposed new Building Act, outlining the reform imperative and the new regulatory framework. Section 3 provides a review of the cost implications of changes to building regulations in other jurisdictions in Australia. Section 4 focuses particularly on experience in Victoria. Section 5 sets out stakeholders views on the impact of ‘binding the Crown’ on building costs in the public sector. Section 6 examines the financial impact of the proposed new legislation on local governments. A summary and conclusion are contained in Section 7.

2 Background

2.1 Reform of building regulations

Reform of building regulation aimed at developing a nationally consistent regulatory framework for the building and construction sector has been underway in Australia for over a decade. This has been aimed particularly at reducing differences between jurisdictions in mandatory technical specifications, and an increasing emphasis on performance-based standards rather than prescriptive requirements. The reform program has been coordinated by the Australian Building Codes Board (ABCB) since its inception in 1994.

The national centrepiece of building regulation in Australia is the Building Code of Australia (BCA). The BCA contains standards for achieving minimum health, safety and amenity objectives in building regulation. While aimed at promoting national consistency in building regulation the BCA allows for variations by regions with different characteristics (e.g. cyclone risks).

In its 2004 research paper on reform of building regulation, the Productivity Commission¹ found that the reform of building regulation has delivered greater certainty and efficiency to the building industry, as well as benefits to the broader community. However, the Commission also recommended further reforms, including:

- A strengthened commitment to the consistent application of the BCA
- Enhanced administration, compliance and enforcement systems
- Strengthened use of regulatory impact analysis
- The application of rigorous analysis to the incorporation of environmental requirements
- Better articulation of performance-based requirements.

2.2 New regulatory framework for Western Australia

The building industry in Western Australia is subject to a diverse range of legislation and regulations at all levels of government.² Building regulation in this State is currently provided under the *Local Government (Miscellaneous Provisions) Act 1960*, and consequent *Building Regulations 1989*.

¹ Productivity Commission (2004). *Reform of Building Regulation*, Research Report, Productivity Commission, November.

² See Department of Housing and Works (2006a). *A New Building Act for Western Australia*, Discussion Draft, (p. 26) for a list of current administration of building industry legislation.

The Government has recently proposed a new building regulatory framework in the form of a new *Building Act* to cover building and construction in Western Australia.³ The proposed new Act will:

- Entail significant and wide-ranging changes to the building regulatory environment
- Improve regulations governing the building industry
- Bring Western Australia in line with national reforms and National Competition Policy requirements, namely:
 - Adoption of the BCA as a primary building standard
 - Introduction of competition into the building certification process
 - Provision of a registration system for appropriately qualified building surveyors and certifiers.

In developing new building legislation the Government complies with the Council of Australian Governments' (COAG) *Principles and Guidelines for National Standard Setting and Regulatory Action* (November 1997).

2.3 Proposed new *Building Act*

The proposed new Building Act links the process of building to policy principles of competition, competency, responsibility and community safety. It accords with the Productivity Commission's 2004 report on building regulation discussed earlier and accommodates recent changes in law, which have shifted liability from joint and several to proportionate liability.⁴

The proposed legislation reflects the current trend of the BCA toward a more performance-based code and the emerging reality that no one profession or practitioner will have the necessary expertise to undertake the complete design, construction and certification of complex buildings.

2.4 Objective of the proposed new *Building Act*

The objective of the new building legislation is to provide an efficient and effective system for:

- Defining buildings and other structures to be controlled under the Act
- Prescribing design, construction and maintenance standards
- Handling building applications
- Certifying compliance and issuing building and occupancy approvals

³See Department of Housing and Works (2006a). *A New Building Act for Western Australia*, Discussion Draft for a detailed discussion of the proposed legislation.

⁴Department of Housing and Works (2006a), p. 3.



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- Registering practitioners
- Clarifying liability
- Compliance and enforcement of building standards.⁵

⁵ Department of Housing and Works (2006b). Summary of *A New Building Act for Western Australia*, Discussion Draft, p. 2.

3 Review of cost implications of changes to building regulations in other jurisdictions

3.1 Overview

As part of the project ACIL Tasman undertook a review of publicly available information on the cost implications of changes to building regulations in other states. These changes took place as follows:

- Victoria – 1993
- New South Wales – 1998
- South Australia – 1993
- Tasmania – 2004.

3.2 Implications for state governments of binding the Crown

The consensus from state and local government and building industry officials is that binding the Crown has had little impact from a cost perspective. The officials, surveyed as part of this review, all concluded that the cost impact of extending building legislation to state government capital works programs had been negligible.

The general view was that government buildings already had high building standards and maintained compliance prior to the legislation being extended to bind the Crown. In the case of Victoria, local, state and federal government buildings were already subject to the same fees and charges as those applied to residential and commercial buildings.⁶

One rationale put forward by officials for extending the legislation to bind the Crown in Victoria was to raise extra revenue through the building levy. The building levy, currently \$0.064 in \$100 of construction value, is used to fund the Victorian Building Commission (BC) and other statutory organisations under the BC's auspices (i.e. Building Practitioners Board). The additional revenue from the levy has helped reduce the level of cross-subsidisation of compliance activities in the building industry.

⁶ Up until recently, the building industry in Victoria was regulated by the *Building Act 1993*, the *Building (Interim) Regulations 2005* and the Building Code of Australia 2005. In June 2006 the *Building (Interim) Regulations 2005* were replaced by the *Building Regulations 2006*.

Another, less controversial, reason put forward to explain the binding of the Crown was that it is simply a matter of equity - public capital works should be subject to the same approval process as private developments.

Table 1 summarises the cost implications of binding the Crown in NSW, Victoria and South Australia.

Table 1 Cost implications on state governments from regulatory changes

State	Regulatory change	Cost implication
NSW	Regulations extended to state government capital works	Government building permits were brought in line with other building permits. It has not had much of an impact on costs as state government agencies generally sought development approvals and building permits from local councils prior to the legislative change.
Victoria	Regulations extended to state government capital works	Cost implication was negligible. Most government capital works already voluntarily followed the same process as private buildings. The regulatory change was based upon equity issues (i.e. ensuring private and public works were treated in the same way) rather than a concern that government capital works were sub-standard.
South Australia	Regulations extended to state government capital works	No cost implication as a result of binding the Crown to South Australia's building regulations as government buildings were generally over detailed and had no problem complying with the regulations and building codes. Inspection processes for government buildings were sufficiently rigorous prior to the changes.

3.3 Implications for local government

The fee structure for permits varies across states, with some local governments being restricted in the way they can charge for permits, while others are given the freedom to set their own fees. For example, in Victoria local governments are limited in the amount they can charge to perform their mandatory planning approval processes.

However, there is discretion across local governments as to how the fee is structured – either a flat fee or a percentage of the total building value. In South Australia local governments have a prescribed fee structure based upon a square metre formula. While private certifiers can determine their own charges, they are generally set in line with local government's fees.

In NSW, a Development Consent must be obtained from local government and there is a schedule of fees for this service. The Construction Certificate is open to competition and can be issued by either local government or private certifiers. The fees for a Construction Certificate are unregulated, although the Australian Institute of Building Surveyors has issued a recommended schedule of fees as a guide to its members, which many certifiers follow.

Where the fees are unregulated, local governments have acted in diverse ways, with some local governments undercharging (by cross-subsidising their building divisions) to compete with private certifiers, while others are overcharging to price themselves out of the market. For example, in NSW government officials have reported that local governments have not been happy with the introduction of private certification and many have priced themselves out of the market. Where this has occurred the government has guidelines to apply to local governments without building divisions.

In Tasmania government officials have commented that many local governments are still charging the same as before private certification was introduced in 2004. The Minister has the power to regulate the fees, however, has so far chosen not to do so. There has been significant debate as to the competition issues associated with local governments cross subsidising their building surveying practices. One building official suggested that local governments should be prevented from this cross subsidisation. In Victoria, 10 years after the introduction of competition, local governments are still absorbing the costs of certification.

Some local governments have succeeded in developing a profitable venture since the introduction of private certification. Evidence suggests that local governments that have set up business units within their organisations have been able to compete with private certifiers. However, with the attraction of larger wages in the private sector, many local governments struggle to hold on to their building surveyors. There is also a shortage of building surveyors in general, especially young surveyors.

One positive aspect of the changes in Victoria is the increased enforcement and compliance work being performed by local governments. Prior to private sector certification, local governments did not have the resources to perform many of their enforcement duties to the letter of the law. Now that building surveyors from the private sector perform the majority of the surveying work, local governments have greater capacity to enforce building standards such as pool fences and ongoing commercial office safety standards.

It has been noted by some government officials (both state and local) that small and rural local governments have struggled as a result of the introduction of competition into the certification process. The most lucrative jobs are often 'cherry picked' by private certifiers, while local governments are mandated to undertake jobs that are not profitable. Local governments are also finding it hard to attract staff, and some have to pay significant fees to external consultants in order to fulfil their mandatory obligations.

To summarise, local governments have moved from being the sole issuer of planning and building approvals to their current roles of:

- Planning, building certification and enforcement (within their own municipality)
- Planning and enforcement (within their own municipality), or
- Planning, enforcement (within their own municipality) and building certification (across their own municipality and other local governments).

The response of local governments has varied with no particular course of action preferred or considered as the optimal approach.

Table 2 summarises the cost implications on local government of regulatory changes.

Table 2 **Cost implications on local governments from regulatory changes**

State	Regulatory change	Cost implication
NSW	Mandated that local authorities take a maximum of 7 days to approve building permits	It has significantly reduced the time taken for building permits and development standards to be approved. Prior to a seven day maximum, it took significantly longer periods of time to gain approval from local governments. It has reduced delay costs for builders and therefore consumers.
	Schedule of fees introduced for development consents and fees for construction certificates now unregulated	As local governments are the only authorities licensed to undertake development consents (under the Environmental Planning and Assessment Act 1979) the costs are determined by the schedule of fees. Private and public certifying authorities can undertake construction certification responsibilities so more competitive process may force related costs down. However, there is no clear evidence to suggest this has eventuated.
Victoria	Opened building inspections to private certifiers	The local governments are performing fewer inspections now private certifiers are involved in the inspection process. Local governments are bound to a prescriptive charging formula for inspections whereas the private sector charges commercial rates subject to what they consider the market will bear. It has lowered the resource cost and burden on local governments as their involvement in the building certification process is declining steadily.
	Approval fee structure is flexible	Local governments have the ability to charge for building/construction approvals and permits as a percentage of the construction value or a fixed dollar amount. Councils are afforded discretion and flexibility to match revenues from the approvals and permits processes with the associated costs. Matching revenues with costs appears more efficient, less distortionary, and allocatively efficient.
South Australia	Introduction of private certification and a legislative loophole which enabled local governments to opt out of the permit process.	As a result of the introduction of private certification, local governments are either performing fewer inspections or none at all on private residencies. Therefore, the costs for some local governments declined.
	Currently re-	Will mandate local governments to perform licensing

	introducing compulsory licensing and inspection process for local governments	inspections again at certain stages in the construction process. This is likely to impose a resource cost on local governments that had opted out of the inspection process.
Tasmania	Introduction of private certification	Fees for the issuance of permits are not regulated and many local governments are undercharging. There is current debate in regards to this cross-subsidisation and the impacts on competition. Since the introduction of private certification, many local governments have opted out of the certification process.
	Limits placed on the amount of time taken to approve permits.	The time taken to issue a building permit has been reduced from 20 days to 7 days, while the initial assessment documents for surveying must be accredited in 14 days rather than 20 days.

3.4 Changes to building costs

The wide-spread adoption of the BCA has reduced building costs in the Eastern States. Uniform or consistent building standards have allowed greater flexibility for building firms to operate across state borders. Techniques in building commercial and residential structures are inherently complex, especially with innovative designs. Building standards outlined in the BCA, though detailed and complex, provide a consistent set of rules and guidelines for builders to follow. Uniformity has enabled building firms to compete and tender for work in other states operating under the BCA building standards. This freedom eventually allows building companies to establish businesses in several states, further increasing competition, driving efficiency and reducing building timeframes.

Building industry officials voiced their concerns in regards to the apparent trend for state-based efficiency regulations, such as BASIX in NSW and the 5 Star System in Victoria. One stakeholder commented that these regulations go against the principle of nationwide consistency in regulation through the BCA. He highlighted this with an example of a builder working in the ACT and also in Queanbeyan (NSW) and the problems associated with having to be familiar with two sets of regulations.

Several building industry officials also commented that, while the state-based regulations may be adding administrative costs to the building industry, the market is currently ahead of regulations in regard to innovative solutions to being ‘environmentally friendly’. As a result building cost increases cannot be solely attributed to the regulatory changes.

Table 3 summarises the cost implications on direct building costs from regulatory changes.

Table 3 **Cost implications on direct building costs from regulatory changes**

State	Regulatory change	Cost implication
NSW	Introduced Basix and 5 star building standards in 2003	Added significant costs to of construction through mandatory water reticulation (recycled water through a third pipe) systems and low energy appliances being installed. Each new house in NSW must reach a certain number of points of sustainability to comply with BASIX – which has added significant costs to residential development in NSW. It has also been suggested that these regulations go against the principle of nationally consistent regulations.
	Adopted compliance with BCA in 1998	Has facilitated ease of compliance for builders with national standards being adopted. It has also reduced costs and competition from interstate firms for building contracts and for building materials has increased.
	Performance-based BCA building standards in 1998 Mandatory maximum time limits on development consents (planning approvals)	Less prescriptive building standards have facilitated more flexible and more cost effective building processes and therefore lower costs for consumers. 7 day limits on development standards and other limitations on local government approval processes have reduced the time consumers, certifiers, builders and sub-contractors have to wait for development consents to be granted, which has reduced the costs of pre-construction delays in NSW and improved certainty of planning for industry participants. This ability to plan with greater precision would also improve labour utilisation in the industry.
Victoria	Introduced 5 Star building ratings in 2002	The anecdotal evidence suggests that construction costs have increased by approximately 2 per cent of total construction value. Put another way, it has added between \$10,000 and \$30,000 to construction costs. ⁷ It has also been suggested that these regulations go against the principle of nationally consistent regulations.
	Performance-based BCA building standards in 1993	Less prescriptive building standards have facilitated more flexible and more cost effective building processes and therefore lower costs for consumers.
South Australia	Compliance with BCA in 1994	Negligible direct building costs have occurred since a moved to comply with building standards in the Australian Building Code.
	Have recently introduced 5 Star building program	No clear outcomes in relation to costs at this stage.
Tasmania	Adopted compliance with BCA in 1998	Has facilitated ease of compliance for builders with uniform national standards being adopted. It has also reduced costs and opened up Tasmania to competition from the mainland for building contracts and the supply of building materials.
	Performance-based building standards in 1998 Setting time limits on the issuance of permits	Less prescriptive building standards have facilitated more flexible and more cost effective building processes, which have resulted in lower costs for consumers. Time limits have been significantly reduced, with the maximum time for a building permit declining from 20 days to 7 days.

⁷ This actual cost estimate comes from a press release from the Housing Industry Association

3.5 Changes to certification processes and costs

There is evidence to suggest that private certification has increased costs associated with the process for consumers. Private surveyors or certifiers generally build profit margins into their pricing. Also, in many areas private certifiers charge more than local governments, since prior to building regulation amendments, local governments were forced to pay set fees of between \$250 and \$400 per \$100,000 house, which led to cross-subsidisation between local government departments to compensate for the inadequate revenue streams. This has reportedly risen to \$1,250 for a house of equivalent value for private sector surveyor services in Victoria. Some respondents still believe this is underpriced and a result of strong price competitive pressure in the large cities. Thus, private sector involvement and the removal of mandated certification fees (which private sector certification probably facilitated) has allowed certification fees charged to consumers to more accurately reflect the efficient cost (including labour, insurance, future risk etc) of performing building certifications.

Further quantitative evidence shows that to build an average house (say 200 square metres in area) in Victoria in 1993 would have cost around \$150,000 and the permit fees would have been \$750. That same house would cost around \$300,000 to build in 2005, and based on the AIBS fee guidelines the permit fee would be \$3,000 + \$480 (levy). For equitable comparison, the permit fees for a house costing \$150,000 in 2005 would be \$2,000 + \$240 (levy).

The majority of people consulted indicated that private building surveyors complete tasks far quicker than their local government counterparts. Due to the perception that private certifiers provide a better service and are more responsive than local government, many consumers are choosing to employ them in preference to local government. As a result, across most areas of the east coast of Australia, private certifiers have a larger share of the market than their local government counterparts.

It was also suggested by building industry officials that there is evidence of regulatory creep, with the obligations associated with building regulation becoming more complex and detailed. As a result, building surveyors have to spend more time on each step of the application process than was previously necessary. A positive outcome of more onerous regulations is likely to be higher building standards for the benefit of consumers and the community in general.

Representatives of private surveyors and the building industry commented that some local governments have been charging private surveyors for information provided to them to complete the application process. These costs are

generally passed on to the consumer. In addition, there is anecdotal evidence that private surveyors applications are often ‘conveniently lost’ or ‘put to the bottom of the pile’, while local government building surveyors are given preference and are not faced with the same costs.

A survey undertaken for the Victorian Building Commission in 2004⁸ found this experience to be common as “a significant number of private building surveyors ... commented that the obtaining of the required information from Councils was tedious and slow and that Councils appear to be unanswerable to any one”. The survey also found that private building surveyors ‘documents lodged with Councils were re-checked to pick fault and that Councils were exceeding their ‘document lodgement’ role and using the information to gain a commercial advantage’.

There is anecdotal evidence that on approximately 5-10 per cent of occasions private surveyors did not carry out their compliance responsibilities properly. Building compliance or consumer protection bodies’ resources are used by disaffected neighbours when planning and building approvals/permits are issued for buildings that fail to fully comply with planning regulations (such as shade on neighbours’ property or issues to do with the road). Generally speaking, these bodies will refer complainants to local governments. When local governments are forced to enter a dispute and ensure compliance with planning legislation, they do so without receiving payment and generally incur the cost of time (estimated at a week) spent rectifying the situation.

Participants in the market suggest that the combination of compliance responsibilities and privatisation provides an incentive for non-compliance within the building surveying industry. Therefore, guidelines have been issued in Victoria to provide guidance to local governments as to when it is appropriate to intervene in planning and/or compliance disputes. Insurers have endorsed the implementation of the guidelines when insuring local governments and their building surveyors.

It appears that there has been a significant backlash by local governments to the introduction of private certification, which was not anticipated, nor handled appropriately, by the respective state governments. There have been rumours of corruption in the private sector, with complaints regarding the appropriate level of independence of the building certifier and the builder. The private sector has complained about underhand treatment by local

⁸ Improving the Efficiency & Effectiveness of the Building & Occupancy Permit Process under the Building Act 1993, Research and Survey Outcomes Report, prepared for Mr Dennis Hogan, Manager Technical & Research Services Building Commission – Victoria, June 2004, Prepared by Stephen Kip (Warrington Fire Research [Aust.] Pty Ltd) & Matthew Curtain (Pitt and Sherry).

governments and unfair competition due to local governments undercharging through cross-subsidisation.

In Tasmania, Victoria and NSW it has been legislated that the owner, rather than the builder, must appoint the certifier and an accreditation agency can perform audits. Within the building industry, there is an opinion that a few bad cases have marred an otherwise effective and efficient system. This has resulted from under-qualified certifiers not performing properly, rather than any issues of inherent corruption.

However, the role of private building surveyors/certifiers has reduced the costs in terms of time taken to approve and certify building or construction compliance with building codes and subsequently issue building permits. In Victoria research undertaken by CSIRO for the Building Commission in 1998 concluded that the competitive building permit system had dramatically reduced building permit approval times.⁹

Undoubtedly this reduces delays and therefore costs to architects, draftsmen, builders and their sub-contractors. The added advantage of faster approvals and permits process is that consumers or commercial developers can have construction of their buildings start earlier and therefore finish earlier with private sector certification.

Accreditation of private and local government building surveyors is a contentious issue. Anecdotal evidence suggests that the vast majority of private surveyors are extremely competent. However, 5 to 10 per cent of surveyors, mostly private, are alleged to not undertake their responsibilities and enforce compliance properly. Therefore, to ensure local government and especially private surveyors are sufficiently skilled and educated, stronger accreditation standards are recommended by some survey respondents. More advanced training, legislation and regulation updates and process-related refresher courses could improve the overall standards of the certification process, especially for those who are currently failing to fulfil their compliance responsibilities adequately.

A move away from first resort to last resort insurance programs has shifted the costs from insurance agencies (after the HIH collapse insurance companies withdrew from first resort insurance) to building practitioners. This has meant all practitioners, both surveyors and builders have had to take out public indemnity insurance to cover for the risk of future liabilities. Professional indemnity (PI) insurance has reportedly increased from \$12,000 per annum to

⁹CSIRO (1998). *Privatisation and performance based building regulations: are they cost effective?*, Canberra.

\$65,000 per annum for individual practitioners. This has pushed up costs for consumers as the cost of surveyors, architects and builders has increased dramatically. Also, insurance agencies are reportedly increasing the number of mandatory inspections on buildings to reduce the risk of compensation claims against the building practitioners they insure.

Although only a minor cost increase in the context of the certification process for larger building firms, the increase is much more significant for smaller builders. If PI insurance costs are spread over several hundred developments per year then PI insurance costs \$200-\$300 per property, whereas it may cost \$2,500 to \$3,000 for small builders with little asset backing and smaller volumes of properties.

In summary, the Victoria Building Commission estimated that the trade-off between increased monetary costs of private sector certification (allowing for distortionary low mandated prices prior to 1993 and increased regulations) and lower costs of delays has reduced the costs to industry by roughly 4-5 per cent. Given a large proportion of the increase in price was due to the adjustment of prices from artificially low levels, the reduced costs of time delays appears larger than any profit margins private surveyors may have built into their pricing (which anecdotally does not appear to be happening).

Table 4 summarises the cost implications of regulatory changes on certification processes.

Table 4 Cost implications on certification processes from regulatory changes

State	Regulatory change	Cost implication
NSW	Introduced private certification in 1998	The inspection process for building certifiers has been made slightly more cost effective now that private and local government building certifiers can be commissioned for inspections. In addition, the time taken for inspections to be completed has declined. The NSW Institute of Surveyors has also established guidelines for prices of building surveying work.
	Principal certifier oversees work with minimal local government role after developer consent	Minimising the involvement of local governments in the certification of construction has reduced the overall time taken to check compliance with the BCA.
Victoria	Introduced private certification and surveying in 1993	The inspection process for building certifiers has been made more cost effective now that private and local government certifiers and building surveyors can be commissioned for inspections and surveying work. In addition, the time taken for inspections to be completed has declined – time is a major impost on construction, especially during the building permit/pre-construction stage.
	Introduced private certification in 1993	Private certification tenders are often more expensive than local government prescribed rates but they are far quicker to issue building permits etc

	Mandated inspection process	to allow construction to begin quicker than if local governments performed the tasks. The Victorian Building Act mandates that there are four (minimum) milestone inspection stages. However, insurance companies providing public indemnity insurance often demand six inspection points to lower the risk of building flaws. This is likely to increase the short-term cost of building inspections but reduce resources spent of legal expenses in the long-term. It is also likely to lower insurance premiums offered to builders and certifiers if more inspections are conducted – which would lower the prices to consumers in a competitive market as the cost savings would be passed through to consumers.
<i>South Australia</i>	Private certification process	Not a great difference in actual costs of inspection process as private building certifiers quote prices based on pricing guidelines used by local governments (which are on a per square metre basis).
	Streamlining of the planning, building and land division Acts into one Act.	The consolidation of three Acts to one has streamlined the planning, approval and building components of the construction/development process. This has reduced duplication and therefore reduced the costs of regulation and provided a one-stop shop to reduce costs for builders, certifiers and local governments.
	Proposed to audit certifiers every three years	Likely to increase administrative costs for certifiers and will impact those with poorer record keeping practices more than those with better practices. The likely cost increase is unclear but may include a slight increase. However, more rigorous inspection process may improve building standards.
<i>Tasmania</i>	Introduced private certification in 2004	The inspection process from building certifiers has been made slightly more cost effective now private and local government building certifiers can be commissioned for certification of compliance to the BCA. In addition, the time taken for inspections to be completed has declined. The lack of surveyors in Tasmania has stymied price competition and consumers are paying more than they would in a more competitive market.

3.6 Implications for sub-contractors and suppliers

The adoption of national BCA building standards in the Eastern States has facilitated entry of producers of building materials from other states who previously designed products to the specifications in their home state. Uniform building standards across the states have increased the market size available to producers and suppliers of building products. Larger production runs and greater price and service competition has reduced prices for building products and driven innovation and products standards.

Standards have risen to the point where the regulations in the BCA are often immaterial as the products are superior to BCA specifications.

The benefits to sub-contractors appear less clear. Avoiding or reducing delays in the approval process by private sector certification may increase the volume of work and hence productivity and revenue of sub-contractors. In strong or bullish construction markets, however, delays would be of less concern to sub-contractors as the volume of work available in the market would be such that they are rarely under-employed and suffer little from construction delays.

Table 5 summarises the cost implications of regulatory change on sub-contractors and suppliers.

Table 5 **Cost implications on sub-contractors and suppliers from regulatory changes**

State	Regulatory change	Cost implication
NSW	No regulatory change to sub-contractors	No cost burden on sub-contractors.
	Standardised requirements for building products with BCA	As with most east coast states, uniform national standards for building products increased the standard of building products and reduced the cost as it provides for larger production runs (as the market increased from NSW to include most east coast states) which lowered the average cost per unit produced.
Victoria	No regulatory change to sub-contractors	No cost burden on sub-contractors.
	Standardised requirements for building products with BCA	Suppliers are meeting the product standards set out in the BCA very well in Victoria. Product development is perceived as a natural evolution that is moving ahead of the standards and regulations.
South Australia	No particular regulatory change to sub-contractors	It appears difficult to assess the cost implications associated with sub-contractors as they appear to be negligible. Plumbing and electrical costs have probably risen when consumers want more energy efficient appliances/services.
	Standardised requirements for building products with BCA	There was probably a one-off cost increase to suppliers in getting the products in SA to comply with national standards. Now the market moves ahead of regulations and allows more competition between suppliers in each state and O/S so supply costs of building products are declining.
Tasmania	No regulatory change to sub-contractors	The cost implication on sub-contractors is minimal.
	Standardised requirements for building products with BCAB	There was probably a one-off cost increase to suppliers in getting the products in Tasmania to comply with national standards. Now the market moves ahead of regulations and allows more competition between suppliers in each state and O/S so supply costs of building products are declining.

3.7 Implications for consumers and the community

The implications for consumers have largely been encapsulated above in terms of cost savings from shorter timeframes for building certification procedures, moderately cheaper monetary costs from private certification in some instances, better building standards and more cost effective building products.

The benefits to the community are less clear. From a holistic perspective, the regulatory changes have led to a more efficient allocation of resources from greater involvement of private sector certifiers and surveyors and less participation from local government certifiers and surveyors. One issue that is less ambiguous is that compliance with the BCA has improved building standards of residential and commercial buildings. Binding the Crown to building regulations appears to have had a negligible effect, however, on the standard of government buildings and amenities in the eastern states.

Table 6 summarises the implications of regulatory changes for customers and the community.

Table 6 **Implications on customers and the community from regulatory changes**

State	Regulatory change	Cost implication
<i>NSW</i>	Mandatory maximum time limits on development consents (planning approvals)	Seven day limits on development standards and other limitations on other local government approval processes have reduced the delays certifiers, builders and sub-contractors have to wait for development consents to be granted. This reduces the costs of pre-construction delays in NSW and improves certainty of planning for industry participants. This ability to plan with greater precision would also improve labour utilisation in the industry, which is likely to reduce costs for consumers in a competitive industry – especially if demand does not exceed the supply of building services.
<i>Victoria</i>	Introduced private certification in 1993	A potential cost to consumers and the community in general is the independence between building certifiers and builders. Though owners are obligated to select the building surveyor to satisfy compliance with the BCA, builders often recommend a surveyor which jeopardises the independence of the inspection process. In the short and especially the medium to long term poor compliance is likely to have cost implications for the owners and for external flaws, the community.
<i>South Australia</i>	On-the-spot fines are going to be introduced for non-compliance with the BCA instead of courts	Will not impact costs for good builders as they comply already. It may increase costs of poor or rogue builders who do not meet current standards mandated in the building codes. Will only cost consumers more if poor builders pass on cost increases. Should improve building standards and therefore benefit the community.
<i>Tasmania</i>	Reduced the time limits for councils to approve planning	The reduction in the time taken for local governments to process and issue building permits has been reduced from 20 days to 7 days. Though the certification is

and building permits	largely done by private surveyors, local councils still have planning roles at the beginning and the end of the pre-construction compliance stage. Reducing the consideration times of local governments has enabled the total time taken to issue building permits to decline from around 20 days to 14 days (with private surveyors) – this benefits builders and sub-contractors but as discussed above is likely to reduce the costs consumers face.
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4 Compliance costs in Victoria – a case study

4.1 Introduction

Before comparing the costs of building regulation in other states it is important to ensure that the details underlying the regulatory framework are understood. This ensures that the drivers of any variations in regulatory compliance costs can be determined. For example, it allows for differences in the nature and extent of regulation, on the one hand, and differences in labour rates, on the other, to be separately identified. Another subsidiary objective is that it will allow more meaningful estimates of relative compliance costs in states which have not undertaken relevant compliance cost studies.

Whilst various data sources exist for estimating average or median house prices, it is more difficult to ascertain evidence as to actual levels of building regulation compliance costs. Typically this would require surveys to be undertaken to estimate compliance costs. To date, only Victoria has undertaken a rigorous study of compliance costs for building regulations. This occurred during a government review of building regulation compliance costs.

In this section we further examine the regulatory framework, median prices, and compliance costs in Victoria as a case study in compliance costs.

To derive estimates of compliance costs in other states would require further research on compliance costs specific to those jurisdictions. Alternatively, estimates could be based on likely compliance costs relative to the regulatory framework in Victoria, taking into account any necessary differentials in labour costs for administrative tasks.

4.2 Regulatory framework

The regulatory framework for building in Victoria includes the BCA, state legislation and local government bylaws and regulations.

The BCA is common across jurisdictions and imposes approximately 1,000 standards. In Victoria there are three major pieces of legislation including the *Building Act 1993* (Vic), *Building Regulations 2006* (Vic) and the *Domestic Building Contracts 1995* (Vic) and 12 other relevant pieces of legislation. There are a range of organisations that administer the Building Act, including the Building Commission, the Building Practitioners Board, the Building Advisory Council, the Building Regulations Advisory Committee, the Building Appeals Board, the Plumbing Industry Commission, and the Plumbing Industry Advisory Council.

The range and relative significance of relevant building regulations are covered in Section 4.4.

4.3 Median house prices

Whilst median house prices are generally seen as the best indicator of property values because they remove the impact of high value properties, it is often difficult to obtain the median price of housing construction, excluding property values, when assessing building costs. Additionally, median house prices are reported for each capital city in ABS data, and as such are specific to capital cities rather than states as a whole. Hence, in this study, average new housing construction costs are used as the relevant benchmark, somewhat deviating from industry norms.

In the 12 months to 30 June 2006, the ABS estimated that the size of the new housing construction market was \$11.9 billion. Over the corresponding period there were 53,131 new housing starts. Making the assumption that those houses were completed within that year, we can derive an imputed average house construction price of \$224,539.¹⁰

4.4 Compliance costs

4.4.1 Victorian Competition and Efficiency Commission analysis of compliance costs

In April 2006, the Victorian Government released the Victorian Competition and Efficiency Commission's (VCEC) report of its inquiry into housing regulation entitled *Housing Regulation in Victoria: Building Better Outcomes*¹¹. The issue of building regulation compliance costs was specifically considered in the inquiry.

Compliance costs were defined by VCEC to include:

¹⁰ Australian Bureau of Statistics, *Housing Finance Cat No. 5609*,

¹¹VCEC (2005). *Housing Regulation in Victoria: Building Better Outcomes*, Final Report, October.

- Administrative costs (e.g., the time and resources required to understand new regulation and to complete the paperwork associated with on-going regulatory compliance)
- Capital and production costs (e.g., changing design and construction methods to meet regulatory requirements)
- Indirect or efficiency costs (e.g., the effect of the regulation on the price of inputs).

They also included in compliance costs any costs borne by private households arising from delays that result from the imposition of regulation on the housing construction process falling on consumers and administrative and enforcement costs incurred state and local governments.¹²

To obtain an estimate of compliance costs VCEC undertook a survey of 19 builders and one architect in the new housing construction market. The survey included builders of significantly different size, ranging from less than 10 jobs per year up to greater than 1,000 jobs per year.¹³

The VCEC endeavoured to obtain estimates of the incremental compliance costs imposed by building regulations over and above costs that would normally be incurred if there were no housing regulation.¹⁴ It identified 'building permits' as a compliance cost, although it received only two estimates of the cost of building permits from respondents, which were widely different (\$10,000 - \$15,000 versus \$650 - \$1,000).¹⁵

Overall, compliance costs as a share of total project costs ranged between 2 per cent and 20 per cent. VCEC concluded that this variation partly reflects the varying extent to which respondents could provide estimates for all of the selected regulations and their different views on the incremental cost attributable to regulation.¹⁶

In addition to the compliance costs above, there is a building permit levy in Victoria. The estimated cost of this levy was 0.064 per cent of housing construction costs. This amounted to an aggregate cost of \$6.72 million in 2004. Other levies include the Building Advice Conciliation Victoria (BACV) levy (0.064 per cent) and HHH levy (0.032 per cent).¹⁷ In total, the levies

¹²VCEC (2005). Box C2, p. 454.

¹³VCEC (2005). Table C.1, pp. 458-459.

¹⁴VCEC (2005). p. 455.

¹⁵Compliance costs of administrative tasks were assumed to be \$40 per hour. This estimate was derived from ABS data on average weekly earnings, adjusting base wage values by assuming 50 per cent on-costs and a 38 hour working week (VCEC (2005). p. 455).

¹⁶VCEC (2005). p. 491.

¹⁷VCEC (2005). p. 461.

represent 0.16 per cent of the total cost of housing construction work. Based on 2004 construction activity, the levies cost an additional \$16 million in 2004.

The VCEC found that the four major drivers of the compliance costs in Victoria are related to:

- 5 Star energy efficiency (including water saving devices)
- building warranty insurance
- perimeter scaffolding
- termite protection.¹⁸

These costs did differ according to the size of the house, the size and risk profile of the builder and the value of the average house for each builder as well as some differences specific to the builder.¹⁹

4.4.2 Compliance costs for the average new home

Taking the compliance cost estimate of 4 per cent of construction value, and average new housing prices of \$230,870 the estimate of the actual compliance cost is \$9,275 for each average house built in Victoria.

The aggregate cost of compliance in Victoria in 2004 is estimated by VCEC to be in the order of \$416 million, including around \$16 million in levies.²⁰

4.4.3 A comparison with other studies

Housing Industry Association

The Housing Industry Association (HIA) in its submission to the Productivity Commission inquiry into first home ownership (October 2003) estimated that selected state regulation and local laws cost \$17,700 for an average new home (around 11 per cent of the cost of an average house of \$150,000).²¹

Master Builders Australia

The Master Builders Australia national survey of members in 2004 estimated that compliance with local government requirements added \$1,712 (or 1.1 per cent) to the cost of building a \$150,000 house in Victoria. This estimate

¹⁸VCEC (2005), p. 472.

¹⁹VCEC (2005), p. 472.

²⁰VCEC (2005), p. 461.

²¹VCEC (2005), p. 484.

focused on the additional costs imposed by local government planning and building requirements.²²

Building Commission

A study commissioned by the Building Commission in Victoria in 2005 found that mandatory Victorian housing construction regulations could impose costs of \$15,171, or 5.1 per cent of the total cost of a typical \$300,000 house.

More recently, a Regulatory Impact Statement for the *Building Regulations 2006* estimated that the cost for building owners of all building regulations in Victoria to be 2.25 per cent of the cost of a \$300,000 house.²³

5 Binding the Crown

The new Building Act in Western Australia proposes to bind the Crown. This will mean that the Crown and public authorities will be brought under the jurisdiction of the new Building Act to ensure the application of uniform building standards to public buildings.²⁴ It will also mean that the Crown and public authorities will be bound by administrative requirements of the new legislation. Government statutory corporations and agencies undertaking building works will be required to demonstrate that they have achieved compliance with the BCA by obtaining a Certificate of Design Compliance from an appropriately qualified Building Surveyor.

This section of the report examines the cost to Government statutory corporations and agencies of administrative compliance with the new Act. It does not consider any possible construction and operational costs associated with binding the Crown.

The role of the Department of Health and FESA has not been taken into account in this report, although it is noted that FESA currently does not require the submission of plans for exempt buildings.

Figure 1 illustrates that the Government agencies most likely to be affected by the introduction of the new Act are Education and Training, Health and Justice.²⁵

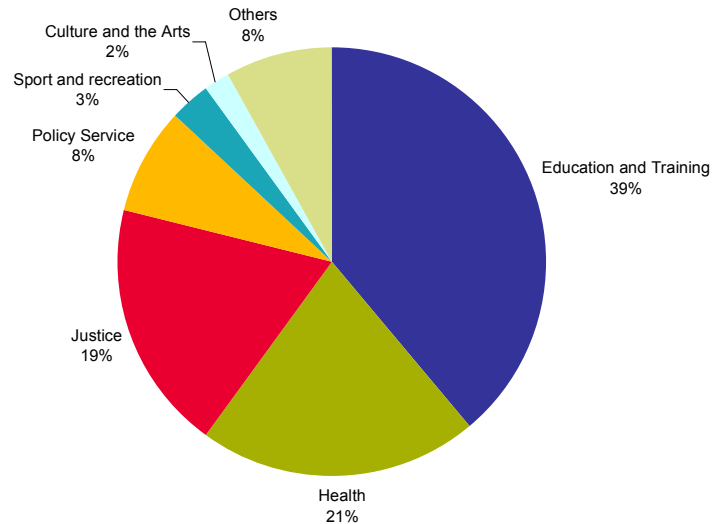
²²VCEC (2005). p. 484.

²³ Building Commission (2006). Regulatory Impact Statement *Building Regulations 2006*, January.

²⁴Department of Housing and Works (2006). *A New Building Act for Western Australia*, Discussion Draft, p.47.

²⁵ The Department of Justice has now been split into the Department of the Attorney General and the Department of Corrective Services.

Figure 1 **Department of Housing and Works Projects by Agency 2005/06**



Note:

Data source: Department of Housing and Works

Consultations for the purpose of this section were conducted with the officers in the construction and maintenance sections within the Department of Housing and Works, the Water Corporation, the Royal Australian Institute of Architects, and three architectural firms with considerable experience in the public sector construction projects.

The key points to come out of the consultations were:

- In the case of major government construction works, a reduced set of building plans are presently lodged with the relevant local government as a courtesy and that the cost of providing a full set of plans and documentation in the future would be minimal
- Private sector stakeholders were strongly of the view that it would be the cost of time delays in respect of planning approvals that would be the key determinant of costs rather than compliance with the new Building Act
- One architect noted that, given current building costs, delays due to the approval process would add 1 per cent to the construction cost each month
- Minor government construction works, including renovations, office refits and the relocation of transportable buildings were seen by government officials and architects as an issue as no local government approvals are sought at present. Two of the private stakeholders independently estimated that the total cost of small jobs would rise by 50 per cent if building and planning approvals were required.

A summary of stakeholder responses is presented in Table 7.

Table 7 **Binding the Crown – Summary of stakeholder responses**

Stakeholder	Stakeholder response
RAIA	<ul style="list-style-type: none"> • If certification was required for small alterations to government buildings it could add 50 per cent to the cost • FESA does not require plans to be lodged with it if a building license is not required • There have been some recent major delays (up to 6 months) caused by the need for planning approval for school buildings. Requiring building as well as planning approvals will add to the delay
Western Property – Stewart Barrett	<ul style="list-style-type: none"> • Considers that the new Act will have a greater impact on small projects compared to the impact on the major construction arm of DHW. • Is worried about having anything to do with the LGAs if it affects the time line of the job • Has a lot of work moving and relocating transportable buildings the construction of which used to be exempt from the Builders Registration Board
Holton Connor Architects	<ul style="list-style-type: none"> • Currently the firm in respect of exempt buildings provides detailed plans but without the mechanical and electrical drawings to local governments without asking for certification • The nightmare for architects would be if certification was required by LGAs for small alterations to Government buildings as it could add 50 per cent to the costs • Its more the time lost on the project rather than actual cash as delays can add, at today's prices, up to 1 per cent of the job per month
T & Z Pty Ltd	<ul style="list-style-type: none"> • There have been some recent major delays (up to 6 months) caused by the need for planning approval for schools (in Wanneroo). Requiring building approvals as well as planning approval would add to the delays • There are currently inconsistencies between LGAs in the interpretation of the BCA regulations • FESA doesn't require plans to be lodged with it if a building license is not required
Taylor Robinson Architects	<ul style="list-style-type: none"> • Is of the view that planning delays will continue to be the main cause of costs driven by time delays • Do not believe that bringing in the new Act would lead to a change in their fees except to add a private building surveyor to the list of consultants, say \$10,000 on a \$30 million project

Source: ACIL Tasman

Table 8 summarises stakeholder comments on various issues related to building control.

Table 8 **Binding the Crown – Summary of comments**

No	Item	Comment
1	Existing Practice	<ul style="list-style-type: none"> With respect to exempt buildings the architect provides detailed plans (without the mechanical and electrical drawings) to local government. Certification by local government is not required
2	Cost of Binding the Crown	<ul style="list-style-type: none"> If certification was required for small alterations to government buildings it could add 50% to the cost FESA doesn't require plans to be lodged with it if a building license is not required There have been some recent major delays (up to six months) caused by the need for planning approval for school buildings. Requiring building as well as planning approvals will add to the delay
3	Financial Impact of New Act	<ul style="list-style-type: none"> Currently applications for approval by architects on tendered works are lodged with the builders name shown as To Be Advised (TBA). This will not be possible under the new Act and will increase time delays Another cost would be the preparation of sets of documentation for each of the different parties who are required to certify each stage of the process Currently an architect engages within the fixed fee a BCA specialist but in the future would probably want to have all extra specialist certifiers added to the clients cost. Adding a private building surveyor to the list of consultants could increase fees by say \$10K on a \$30M project The new Act will lead to there will be 2 to 3 more steps in the chain. LGAs are becoming increasingly more pedantic but not necessarily more thorough. Some LGAs have requirements peculiar to their own district Its more the time lost on the project rather than actual cash as delays can add, at today's prices, up to 1% of the job per month As the project manager an architect would have to gather together all the certificates of compliance from others to lodge for the certificate of occupancy
4	Department of Health	<ul style="list-style-type: none"> The Department of Health used to have a large role in assessing public buildings for compliance with the Health Act, what is its future role?
5	Planning Procedures	<ul style="list-style-type: none"> How will the planning approval procedures be integrated into the overall approval process?" The interviewee believed that planning delays will continue to be the main cause of costs driven by time delays

Source: ACIL Tasman

In conclusion, the general view amongst stakeholders consulted was that government buildings already had high building standards and maintained compliance with the BCA. Building control processes for government



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buildings and capital works programs are already detailed, thorough, and largely consistent with commercial and residential buildings.

Therefore, the view of stakeholders is that the extension of building legislation to government buildings is unlikely to significantly increase the costs of planning, compliance with construction licensing or building standards.

This view is consistent with experience in the eastern states, where binding the Crown has had little impact from a cost perspective. Officials surveyed by ACIL Tasman in the eastern states all drew similar conclusions as to the impact of extending building legislation to state government capital works programs.

6 Financial impact of the new Building Act on local government

6.1 Funding of building control activities by local governments

Building control can be split into the following activities:

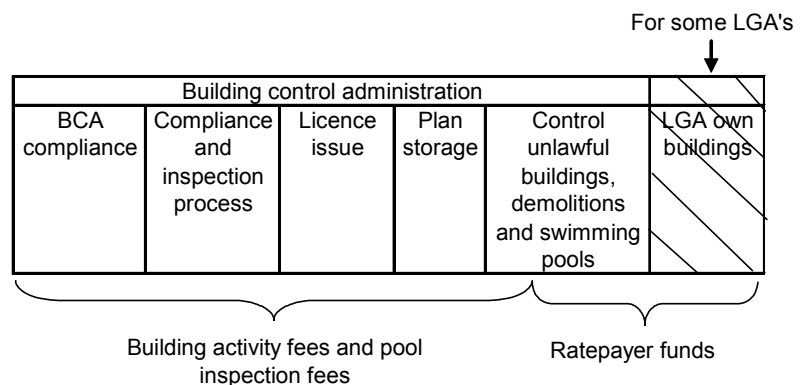
- BCA compliance
- Compliance and inspection process
- Licence issue
- Plan storage
- Building control (including unlawful buildings, demolitions and swimming pools)
- Control of local government buildings.

Funding for these activities typically comes from two sources:

- Building activity fees and swimming pool inspection fees
- Ratepayer funds.

At present a significant proportion of the activities are funded from building activity fees and swimming pool inspection fees, with the remainder funded from ratepayer funds, as illustrated in the income/expenditure model in Figure 2.

Figure 2 **Income/expenditure model of building activities– existing situation**



Note:

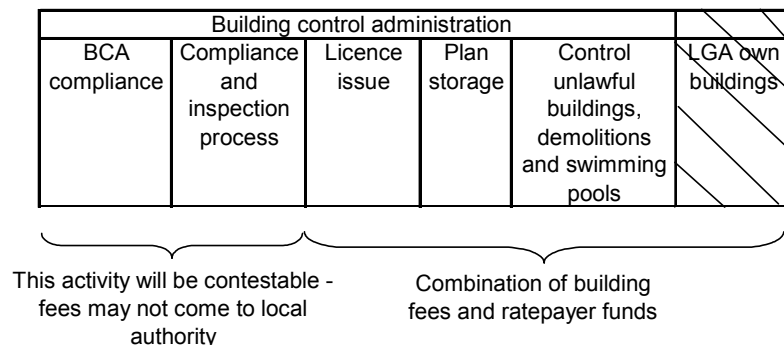
Data source:

Under the proposed new Building Act the certification of compliance with the BCA will be contestable, with suitably qualified and registered private sector people able to compete with local government for this work. Building approvals and the issue of building licences will remain the responsibility of local government as the Licence Issuing Authority.

Making certification of compliance contestable could have important financial implications for some local governments, especially where building activity fees are a significant source of income.

Figure 3 illustrates the potential loss of income from building activity fees due to competition with the private sector. The two activities likely to be impacted by private sector competition are BCA compliance and the compliance and inspection process.

Figure 3 **Income/expenditure model of building activities– new Building Act**



Note:

Data source:

6.2 Quantifying the financial impacts of the new Building Act on local government

6.2.1 Consultation

In order to quantify the extent of the loss in income local governments might experience under the new Act, a selection of local governments were consulted. The aim of the consultation was three-fold:

- To collect financial information to allow quantification of the cost of the various activities shown in the income/expenditure model in Figure 2
- To obtain an estimate of the potential financial impact of the new Building Act on income and expenditure across local governments

- To obtain the views of local government officers as to the likely impact of the new Building Act on local government income and expenditure, staffing and other resources.

6.2.2 Pre-consultation phase

A pre-consultation interview was conducted with the senior manager for building control in one of the larger (in population) metropolitan local governments to test a questionnaire developed to assist data collection.

Although local governments accurately report on the categories of operating income and expenditure shown in Table 9, they generally do not report on the cost of each activity involved in building control²⁶. While this council has adopted best practice in its management processes and procedures, including activity based costing, it became apparent that it would require a considerable amount of work to extract the financial data on building cost activities necessary to estimate the impact on the proposed new Building Act.

Table 9 **Prescribed categories of operating income and operating expenditure**

Operating income	Operating expenditure
Building licences	Salaries building
Building specification fees	Voluntary super building
Fines/penalties building	SGC super building
Copying of plans	Compensation premium building
Property inspection charge	Staff telephone building control
Plan modification fees	Legal expenses building
Building approval inquiries	Sundry office expenses building
Commission BCITF	Vehicle operating building
BRB Licence levy commission	Insurance building
	Health and safety building
	Engineering consultant
	Building specification costs
	Subs – Australian standards
	Conferences – building standards
	Staff training and seminars
	Mobile phones building
	Stationary and paper
	Passenger vehicle replacement

6.2.3 Consultation with local governments

In anticipation of problems in collecting data on building control costs it was decided to abandon the questionnaire approach to collecting the total cost, including overheads, of each building control activity. Instead, the consultation

²⁶ Local governments are required to prepare its public accounts in a prescribed manner (see ABS Cat. No. 8731.0 Building Approvals).

took the form of targeted interviews aimed at gathering information on each local government's underlying variations in the processes and procedures.

As the interviews preceded the Department of Housing and Works information seminars, copies of the Summary of A New Building Act for Western Australia, Discussion Draft and the website address of the Discussion Draft was made available to the relevant local government contact person prior to interview.

Interviews were conducted with the principal building officer at eight of the nine metropolitan local governments contacted. The list of persons contacted is shown in 7A. Each officer's views on the likely impact of the proposed new Building Act on their council's systems, cash flows and external customers were recorded and are discussed in the next section (Section 6.2.4). Interviewees were assured that their data would not be published except in the aggregate of all local governments interviewed.

The interviewees were each provided with copies of the income/expenditure models shown in Figure 2 and Figure 3 and asked to estimate the cost of each building control expressed in dollar terms or as a percentage of total building costs.

Only one local government was able to provide data in the form required. This is discussed in Section 6.2.4.

6.2.4 Key findings from the consultation

Table 10 summarises the key findings from the consultations.

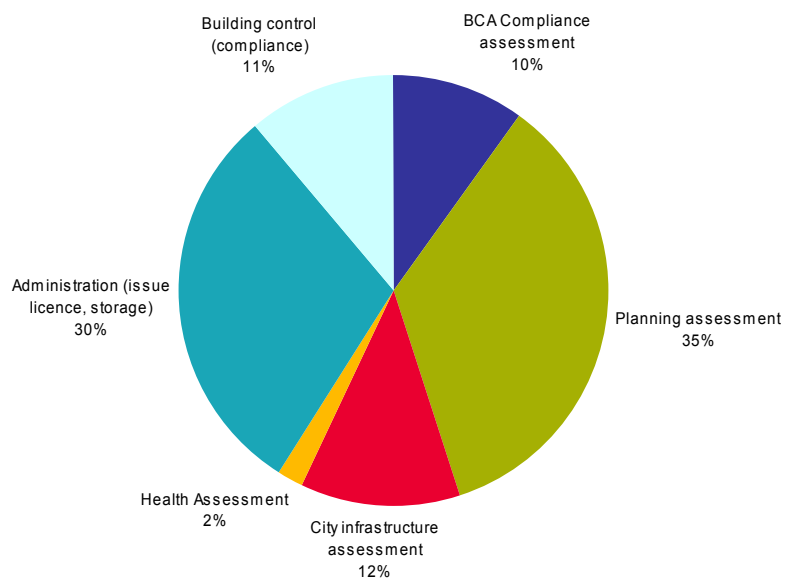
Table 10 **Building surveyor Interviews**

No.	Issue	Comment
1	Expectation of Outcome	Without exception the interviewees held the view that the proposed Building Act would have a positive effect on the industry. Depending on the approach taken, some local governments saw the proposed new Building Act providing an opportunity to expand their business and actively compete with the private sector. Others saw themselves contracting out the BCA compliance and other compliance and inspection activities
2	BL Approval Times	The approval times for a building license is 10 to 14 days with the licence not being issued until after planning approval is granted
3	Shared Staffs	Most local governments had formal arrangements whereby a field officer from one section would perform the field inspections for the other three sections viz Building, Health Town Planning & Engineering. In most local governments the cost of providing the officer was not recovered. The trend seemed to be for the Building section to provide the officer and to bear the cost. This practice may cease under the new Act and lead to significant changes to each local

		government's fees and charges schedule
4	Legal Fees	The consensus view is that currently local governments are averse to initiating prosecutions as total costs incurred are always greater than any fines and costs received even where the party pleads guilty
5	Crown Documentation	All local governments were asked if they expected to provide archive services for buildings plans relating to government buildings. Most had not considered the issue although some do accept minimum documentation now. One local government presently refuses to accept plans for exempt buildings on legal advice due to the possibility of implied liability
6	Detailed Area Plans - DAPs	A number of local governments referred to the relatively recent practice of residential estates requiring private town planning pre-approval before a private certifier could present plans to a local government for the issue of a license
7	BuilderNet	Two of the local governments are participating in the Water Corporation trial of the issue of buildings approvals on-line using software developed by the Water Corporation. The Western Australian Local Government Association (WALGA) is coordinating the local government participation. This trial has very significant Federal Government funding and was proceeding well at the time of the interviews
8	FESA	Councils are not currently required to accept FESA's advice but do work closely with FESA regarding hard standing and fire hydrant location etc. Will FESA requirements be put into legislation to ensure that what currently happens voluntarily is enshrined?

Only one local government was able to provide a breakdown in building control costs as shown in Figure 2 and Figure 3. This information is shown in Figure 4.

Figure 4 **Breakdown of building control costs**



Data source: Confidential

In the absence of this data, the building control income and expenditure data from the Local government Grants Commission (Table 11) provides a crude guide to the likely financial impact of the proposed new Building Act. Of the 10 local governments listed, four incurred expenditure greater than income. It would be reasonable to assume that these local governments would be financially penalised by the proposed new Act. Care needs to be taken in using these figures as the declared expenditure is likely to reflect cross subsidisation of other activities (e.g. planning approvals) by building control.

Table 11 **Comparison of building control income and expenditure (\$) (2003-04)**

Local government	Building control total expenditure	Building control total income
Armadale	700,324	373,357
Canning	557,377	658,354
Cockburn	788,489	876,171
Fremantle	355,266	214,352
Gosnells	599,908	841,656
Joondalup	993,954	1,093,414
Melville	958,882	770,927
Subiaco	585,011	295,600
Swan	763,029	1,163,721
Stirling	1,847,572	2,060,996

Data source: Local Government Grants Commission

6.3 Coverage of the whole of the State

At present some local authority areas or some parts of local authority areas are exempt from the provisions of the *Building Regulations 1989*. The new Building Act proposes extending the coverage of the Act to the whole of the State. This will mean that for those areas currently exempt, building work will be required to submit to the normal requirements of obtaining a building licence.

Table 12 shows that of the 116 local governments bound by the provisions of the Building Regulations approximately half limit the application of the regulations to townsites only. The detailed Schedule is attached as Appendix B.

Extending the coverage of the Building Act to the whole of the State will have an impact on owners and lessees of land outside of townsites, particularly in regions where mining, pastoral and tourism infrastructure has been exempt from the approval process.

Table 12 **Number of local governments in which application is limited**

Building Regulations 1989 – Schedule 2 - Application			
Column 1 District	Column 2 Class 10 Buildings	Column 3 Part 10	Column 4 Rest of Regulations
116	54	51	14

Data source: Building Regulations 1989.

7 Summary and conclusion

Experiences in other Australian jurisdictions

Local governments in the other jurisdictions have moved from being the sole issuer of planning and building approvals to their current roles of:

- Planning, building certification and enforcement (within their own municipality)
- Planning and enforcement (within their own municipality), or
- Planning, enforcement (within their own municipality) and building certification (across their own municipality and other local governments).

The response of local governments has varied with no particular course of action preferred or considered as the optimal approach.

The wide-spread adoption of the BCA has reduced building costs in the Eastern States. Uniform or consistent building standards have allowed greater flexibility for building firms to operate across state borders.

Compliance with the BCA has improved building standards of residential and commercial buildings. Binding the Crown to building regulations appears to have had a negligible effect, however, on the standard of government buildings and amenities in the eastern states.

The Victoria Building Commission estimated that the trade-off between increased monetary costs of private sector certification (allowing for distortionary low mandated prices prior to 1993 and increased regulations) and lower costs of delays has reduced the costs to industry by roughly 4 to 5 per cent. Given a large proportion of the increase in price was due to the adjustment of prices from artificially low levels, the reduced costs of time delays appears larger than any profit margins private surveyors may have built into their pricing (which anecdotally does not appear to be happening).

The benefits to sub-contractors appear less clear. Avoiding or reducing delays in the approval process by private sector certification may increase the volume of work and hence productivity and revenue of sub-contractors. In strong or bullish construction markets, however, delays would be of less concern to sub-

contractors as the volume of work available in the market would be such that they are rarely under-employed and suffer little from construction delays.

The benefits to the community are less clear. Evidence suggests that greater involvement of private sector certifiers and surveyors has led to greater efficiency in the approvals process.

The impact of ‘binding the Crown’ on the cost of the government’s building program

The general view amongst stakeholders consulted was that government buildings already had high building standards and maintained compliance with the BCA. Building control processes for government buildings and capital works programs are already detailed, thorough, and largely consistent with commercial and residential buildings.

Therefore, the view of stakeholders is that the extension of building legislation to government buildings is unlikely to significantly increase the costs of planning, compliance with construction licensing or building standards.

This view is consistent with experience in the Eastern States, where binding the Crown has had little impact from a cost perspective. Officials surveyed by ACIL Tasman in the Eastern States all drew similar conclusions as to the impact of extending building legislation to state government capital works programs.

Cost implications of existing and proposed new building regulations for local government

Although West Australian local governments accurately report on the prescribed categories of operating income and expenditure, they generally do not report on the cost of each activity involved in building approval processes.

The Local Government Grants Commission data together with the anecdotal information gathered during interviews supported the Eastern States’ observations that many local governments subsidised their building control operations from general revenue in addition to cross subsidisation of internal costs between departments.

The introduction of private certification will lead to a shake out of the current accounting and customer services practices which will create a more transparent process.

The most encouraging outcome from the interviews of local stakeholders was a positive view towards the introduction of the proposed new Building Act.

Conclusion

This Study confirms the findings of the Productivity Commission in its 2004 research report on reform of building regulation, that the reform of building regulation has delivered greater certainty and efficiency to the building industry, as well as benefits to the broader community.

The implications for consumers will be found in terms of cost savings from shorter timeframes for building certification procedures, moderately cheaper monetary costs from private certification in some instances, better building standards and more cost effective building products.

Without exception the local stakeholders interviewed held the view that the proposed new Building Act would have a positive effect on the industry. Depending on the approach taken, some local governments saw the proposed new Building Act providing an opportunity to expand their business and actively compete with the private sector. Others saw themselves contracting out the BCA compliance and other compliance and inspection activities

Notwithstanding the difficulties in finding local comparative data on existing building certification processes the Study concludes that the positive outcomes experienced in the other Australian jurisdictions through deregulation of the building certification processes and the adoption of the Building Code of Australia will be duplicated in Western Australia following the implementation of the proposed reforms.

A Local government contacts

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