OVERVIEW

Key points

- Planning systems vary greatly across the states and territories — but all suffer from 'objectives overload' which has been increasing.
- The success of local councils in delivering timely, consistent decisions depends on their resources as well as their processes. It is also influenced by the regulatory environment created by state governments — in particular the clarity of strategic city plans, the coherence of planning laws and regulations, and how well these guide the creation of local level plans and the assessment of development applications.
- Significant differences in state and territory planning systems include the degree of integration between planning and infrastructure plans, and how capably the states manage their relationships with and guidance for their local councils.
- Significant differences between jurisdictions are evident for:
  - business costs — such as the median time taken to assess development applications and the extent of developer charges for infrastructure
  - the amount of land released for urban uses
  - the provision made for appeals and alternative assessment mechanisms
  - community involvement in influencing state and city plans, in development assessment and in planning scheme amendments (such as rezoning).
- Competition restrictions in retail markets are evident in all states and territories. They arise: from excessive and complex zoning; through taking inappropriate account of impacts on established businesses when considering new competitor proposals; and by enabling incumbent objectors to delay the operations of new developments.
- Leading practices to improve planning, zoning and assessment include:
  - providing clear guidance and targets in strategic plans while allowing flexibility to adjust to changing circumstances and innovation (so long as good engagement, transparency and probity provisions are in place)
  - strong commitment to engage the community in planning city outcomes
  - broad and simple land use controls to: reduce red tape, enhance competition, help free up urban land for a range of uses and give a greater role to the market in determining what these uses should be
  - rational and transparent rules for charging infrastructure costs to businesses
  - risk-based and electronic development assessment
  - timeframes for referrals, structure planning and rezoning
  - transparency and accountability, including for alternative rezoning and development assessment processes as well as having limited appeal provisions for rezoning decisions
  - limiting anti-competitive objections and appeals, with controls on their abuse
  - collecting and publishing data on land supply, development assessment and appeals.

Overview

In February 2006, the Council of Australian Governments (COAG) agreed to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden across all levels of government. In particular, governments have indicated that they want to identify unnecessary compliance costs, enhance regulatory consistency across jurisdictions and reduce regulatory duplication and overlap. COAG's concern is with written regulation and also with the role and operation of regulatory bodies.

Purpose and scope of the study

The purpose of this study is to benchmark the states' and territories' planning and zoning systems and their land development assessment processes. From a broader perspective, the study concerns the challenges for citizens in getting the cities they want.

The Commission was asked to go beyond benchmarking business compliance costs and to also examine the impact of the planning and zoning systems on competition and on the efficiency and effectiveness of the functioning of cities. Unlike previous benchmarking studies, the Commission was particularly asked to report on laws and practices which unjustifiably restrict competition and to identify best practice approaches that support competition, including but not limited to:

- measures to prevent 'gaming' of appeals
- processes to maintain adequate supplies of land for a range of activities
- ways to eliminate any unnecessary or unjustifiable protections for existing businesses from new and innovative competitors.

As the Commonwealth, the states and territories and local governments all influence planning, zoning and development assessment all are examined in this report.

The coverage of the study consists of the major and regional cities over 50 000 in population as well as at least two cities in each of the smaller jurisdictions — 24

cities of varying sizes.[1] These cities cover 175 local council areas (see the list of councils and cities in Appendix A). However, much of the analysis focuses on comparing the states and territories and, in some cases, comparing only the capital cities because of the very limited information available for other cities.

Indeed, due to a lack of comparable data generally across jurisdictions, the Commission conducted three separate major surveys of:

- key state and territory planning agencies
- the local councils in the cities being examined
- all the local council communities covered in this review (which comprise 78 per cent of the total Australian population).

In addition, a survey of 16 greenfield developers (who provided information on 29 individual development projects) was conducted and some relevant business associations sent out a questionnaire to their members to further inform this study. Details of the surveys and questionnaires are contained in Appendix B.

This study is intended to: identify among all governments in Australia those planning policies and practices that have proven particularly successful; indicate areas where further reform could be most beneficial; and provide a 2009-10 baseline for any future assessment of the performance of planning systems. While reforms subsequent to 2009-10 are noted in chapter 3, they do not form the basis on which comparisons are made.

This Overview is followed by a section that draws together leading practices from across the jurisdictions.

Big challenges for governments

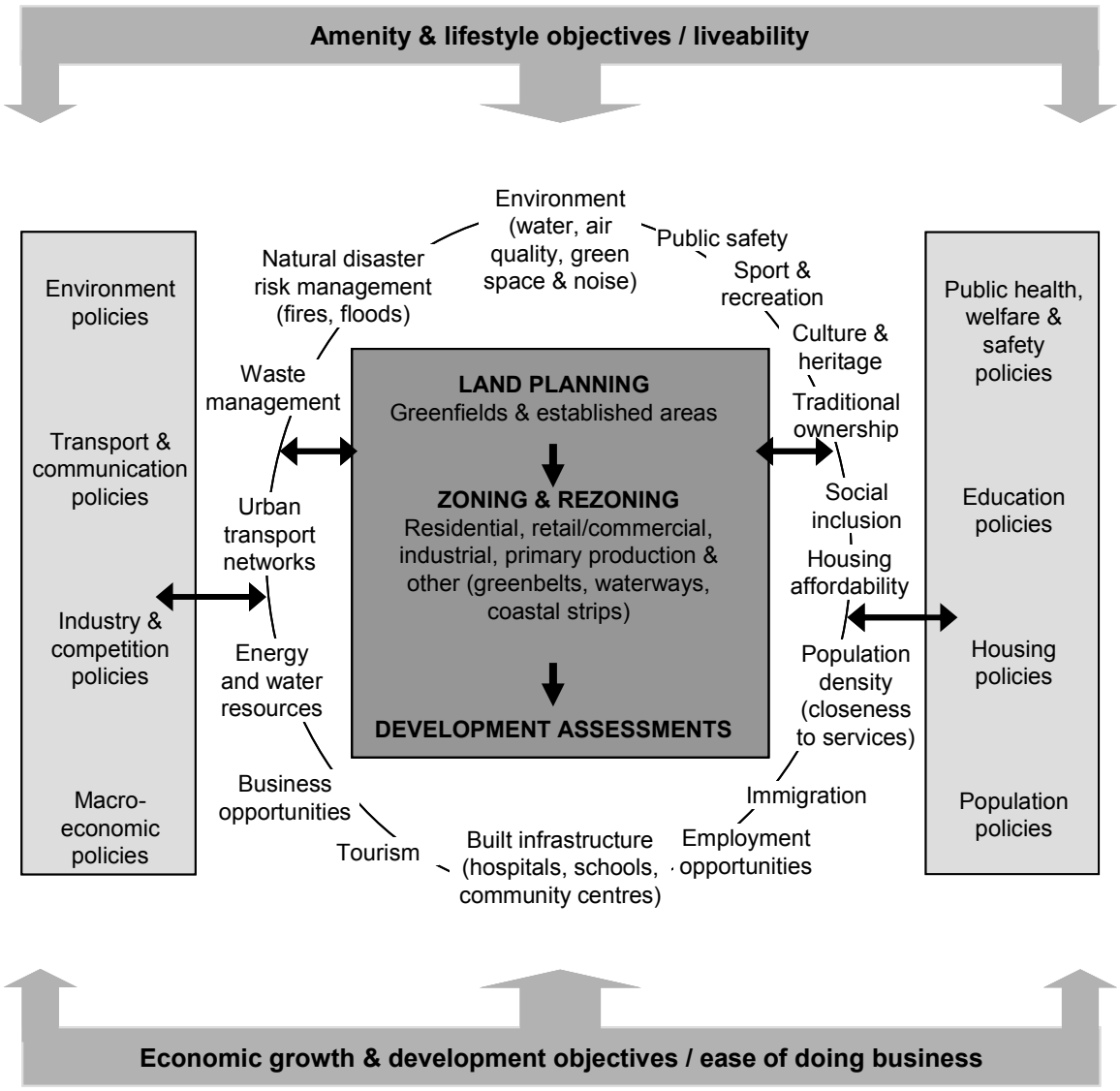
By its very nature, the task of planning and zoning land to enable those land uses which will optimise the welfare of communities and the nation is complicated and is becoming more so. Urban land use falls into the broad categories of residential, industrial, commercial and protected (such as conservation areas). A large number of policy agendas impact on planning and zoning considerations (figure 1).

Whether governments or the private sector or a mix of both determine the uses to which land is allocated, the inherently challenging features of this task include: positive and negative impacts on others (such as on neighbourhood character, traffic congestion, air and sound pollution); insufficient or 'asymmetric' information;

1 Various definitions of cities are used by different reporting agencies in Australia. The Commission used the city strategic plan as the definitional base of the city – so, for example, Blue Mountains City is included in Sydney and Mandurah is included in the Perth plan.

future generations not being part of decisions that ultimately will impact on them; and conflicting preferred outcomes of different stakeholders so that the costs of reaching community consensus on objectives are high.

Figure 1 **Some objectives and policy drivers of urban efficiency**



Over time, the complexity of the task has grown because planners are asked to address pressing and a wider range of problems. Also, community preferences and demands change. Issues confronting planners today include: significant population growth; an ageing population and other demographic change; increasing congestion and delays in getting to work and moving goods and services around cities; ensuring adequate energy and water supplies; adapting to climate change; higher aspirations for liveable cities including green spaces and preserving natural and historical heritage; maintaining buffer zones for ports, etc and natural hazard areas; and the

growing expectation of residents that they should be consulted on changes to their neighbourhood.

With regard to just one of these challenges, in recent years the rate of population growth has been relatively high with rates varying considerably across cities and councils. Hence, the pressures on governments to accommodate population growth have also been varied. Between 2001 and 2009, Sydney's population grew by 9 per cent and Melbourne's by 15 per cent. Perth and Brisbane both grew at about 20 per cent. An added complexity comes from the uncertainty about how much each city's population will grow (immigration being just one of variables affecting this), so that city planning needs to allow for a wide range of alternative population growth rates.

There are also quite unexpected challenges such as the recent widespread flooding of Queensland and parts of Victoria to unprecedented levels which raise questions about the adequacy (and enforcement) of planning in areas at risk of floods. Prior to this, the Victorian bush fires drew similar attention to the role of land use planning in bushfire prone areas.

The state and territory planning systems have also been subject to rolling reforms which are often not fully implemented or evaluated before being replaced with further reforms. City planning systems are characterised by 'objectives overload' including unresolved conflicting objectives, long time lags and difficult-to-correct planning mistakes. There is a significant risk that the systems' capacity to deliver on their objectives will deteriorate.

Leadership and governance

Thus the planning and zoning systems of the states and territories involve a complex interweaving of citizen, business, and government regulatory relationships. They are the prime field on which conflicting community preferences for their cities and local neighbourhoods are played out. Preferences can vary among citizens, between citizens and businesses, businesses with each other, councils and their constituents, and councils with their state.

A core challenge is that posed from the many cases where the costs of some land uses are borne primarily by the people in one or a few local councils while the benefits may be shared across the whole city or region. Examples include the location of ports, airports, roads and railway lines, major residential developments, waste disposal sites, as well as increasing population density. For these types of decisions, no single local council or group of citizens can be expected to adopt the overarching perspective needed by state and territory governments (and in some

cases by the Commonwealth Government) in order to enhance overall community wellbeing.

The section on Leading Practices proposes that wherever possible, conflicts about land uses are better resolved as early as possible in the planning to development chain, during high-level planning or the more detailed structure/master planning rather than during development assessment. The earlier planning stages provide the appropriate opportunity for elected representatives to make the value judgements needed to resolve community differences and set broad objectives. However, as noted, circumstances change and it is often only during the assessment of development or rezoning applications that some final decisions about land uses can appropriately be made. Of course, doing so confers a great deal of discretion on decision makers and it is therefore important that such decisions deliver an overall net benefit to the community. This is most likely to happen through good processes that allow for business and community engagement, transparency, probity and accountability. Ultimately, though — given the nature of 'trade-offs' in many of these planning decisions and the value-judgements that must be made — such decision-making is not, in the end, technical or administrative, but essentially 'political' in nature.

How well are our cities functioning?

In looking at how well our cities are functioning, it is important not to attribute all outcomes to planning. Good planning can create the environment for efficient and effective cities but the outcome is also dependent on the market, governments' investment in infrastructure, and other government policies and actions (such as immigration policy and delivery of services). Some factors, such as the weather and geography, are very important aspects of city liveability but clearly are well beyond the capacity of planning systems to influence. Other factors, such as safety, are very important to people and are at best moderately influenced by planning, while certain other factors, such as housing availability and transport, can be significantly influenced by planning and zoning. Among state and territory governments there is wide agreement that the factors most able to be influenced by planning are:

- managing greenfield development
- accommodating population growth
- transition to higher population densities
- protecting biodiversity
- providing diverse/appropriate housing.

However, there are few aspects of city functioning for which any government thinks planning has no impact. For example, most jurisdictions consider planning has a moderate (and in one case major) impact on reducing traffic congestion and on the provision of new infrastructure; and all consider planning impacts on providing affordable housing though views differ over the extent of the influence (table 1).

In assessing the impact of planning on city outcomes, it is also important to allow that some outcomes are the result of planning decisions made many years ago and, to this extent, do not reflect on current planning systems. For example, transport corridors would need to have been set aside long ago to be making a contribution now to ameliorating city congestion — this highlights the importance of planning well as some decisions influence city liveability for a very long time.

While there is no agreed set of indicators for city liveability, two elements feature prominently in almost all of these measures: housing affordability and traffic congestion.

While Australian cities generally perform well in international rankings, they perform poorly on housing affordability with houses being less affordable in Australia than in New Zealand, the United Kingdom, Canada and the United States of America (Demographia 2011). Within Australia, among the capital cities, Sydney is the least affordable and Hobart is the most affordable (table 2) although outcomes for affordability are affected by a number of factors, not just planning. However, between 2001 and 2010, Sydney's median house price grew the least of all 24 cities benchmarked, while median house prices in Perth, Hobart and Darwin were those that rose the most, being over three times higher in 2010 than 2001. Within cities, there is great variability in prices. For example, across different local council areas in Perth, median house prices ranged from $330 000 to nearly $5 million.

Congestion in our major cities has also been increasing. The Bureau of Transport and Regional Economics (2007) predicted that the avoidable costs of congestion in Australia's five largest capital cities, unless addressed, will double to about $20 billion in 2020. This would include increasingly longer times in getting to work, accessing services and moving goods around cities. In the Commission's community survey, Sydney respondents indicated that a median of 13 minutes could be saved if their work journey (in one direction) was not at peak hour. While for an individual this may appear small, for a city as a whole the aggregate cost is large. Reflecting that contrast, three quarters of all respondents indicated that their travel times were reasonable given their distance to work.

It is the two territories which do best in terms of residents' perceptions of traffic congestion and road networks, though both do poorly with regard to the perceived quality of public transport. Sydney performs poorly on both public transport and

traffic congestion, while Brisbane rates as the best on public transport but second worst on road networks and congestion (table 2) (Auspoll, 2011, pp. 25-26).

Table 1 **The effect of the planning system on city functioning**

No effect ☐ minor effect ▭ moderate effect ■ major effect ■

Challenge	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
City housing and population growth								
Accommodating population growth	■	■	■	■	■	▭	■	■
Providing affordable housing	■	■	■	▭	■	▭	■	▭
Transition to higher pop. densities	■	■	■	■	■	■	■	■
Providing diverse/appropriate housing	■	■	■	■	■	■	■	▭
Managing 'greenfield' development	■	■	■	■	■	■	■	■
City structure and services								
Maintaining a vibrant city centre	■	■	■	■	■	▭	■	■
Securing adequate urban water	▭	▭	☐	■	▭	▭	▭	■
Improving mobility within the city	■	■	■	■	▭	▭	■	■
Attracting skilled labour	■	▭	▭	▭	▭	☐	☐	☐
Reducing traffic congestion	■	▭	■	■	■	▭	■	▭
Providing new infrastructure	▭	■	■	■	■	■	■	■
Maintaining existing infrastructure	▭	▭	■	▭	▭	☐	■	▭
Attracting new industries	■	■	■	■	▭	▭	■	▭
City environment								
Protecting biodiversity	■	■	■	■	■	▭	■	■
Improving air quality	■	▭	■	■	■	▭	■	▭
Adapting to climate change	■	■	■	■	▭	■	■	■
Efficient waste management	▭	■	▭	▭	▭	▭	▭	■
City lifestyle and community								
Maintaining social cohesion	■	■	▭	■	▭	☐	■	▭
Promoting healthy lifestyles	■	▭	▭	■	▭	**b**	■	■
Reduce socio-economic disparities	■	▭	▭	■	▭	**b**	■	▭
Addressing crime and violence	▭	▭	■	■	▭	▭	▭	▭
Connectedness with regional centres	■	▭	■	■	☐	▭	■	■
Improving services for an ageing pop.	■	▭	■	■	■	▭	■	▭

a Jurisdictions were asked: "To what extent can government use the planning, zoning and DA system to positively influence the following challenges?" **b** The question was not answered.

Source: PC State and Territory Planning Agency Survey 2010 (unpublished).

Table 2 **Some indicators of capital city liveability**

Benchmark	*Sydney*	*Melbourne*	*Brisbane*	*Perth*	*Adelaide*	*Hobart*	*Canberra*	*Darwin*
Liveability score for each city[a]	55.1	60.9	60.2	60.6	63.4	60.5	62.3	55.8
Housing affordability of cities – house price to earnings ratio in 2010[b]	8.3	7.5	5.7	6.0	5.1	4.8	6.6	6.4
Increase in median house price from 2001 to 2010 – **%** [c]	88	126	195	220	155	227	162	209
Residents who agree their city has good road transport and minimal traffic congestion – **%** [d]	13	22	21	30	44	44	64	72
Residents who believe their city has good public transport – **%** [d]	32	37	45	42	42	29	24	36
Residents who feel safe walking alone at night in their street – **%** [e]	66	61	68	54	62	72	78	44

a This score is out of 100 and was constructed by Auspoll (2011) using 17 liveability measures such as safety, climate, public transport, cultural entertainment, quality of schooling, attractiveness of the natural environment and affordability of housing. **b** These figures come from Bank West's *Key Worker Housing Affordability Report* (2010). The Bank measures affordability as the ratio of house prices to earnings. Earnings are average earnings by state of nurses, teachers, police officers, fire fighters and ambulance officers from the 2008 ABS Employee Earnings and Hours survey. **c** House prices are annual median house price sourced from Residex and RPdata. **d** These figures come come from the Auspoll (2011) survey. **e** These figures come from the PC Community Survey 2011 (unpublished).

The regulatory framework

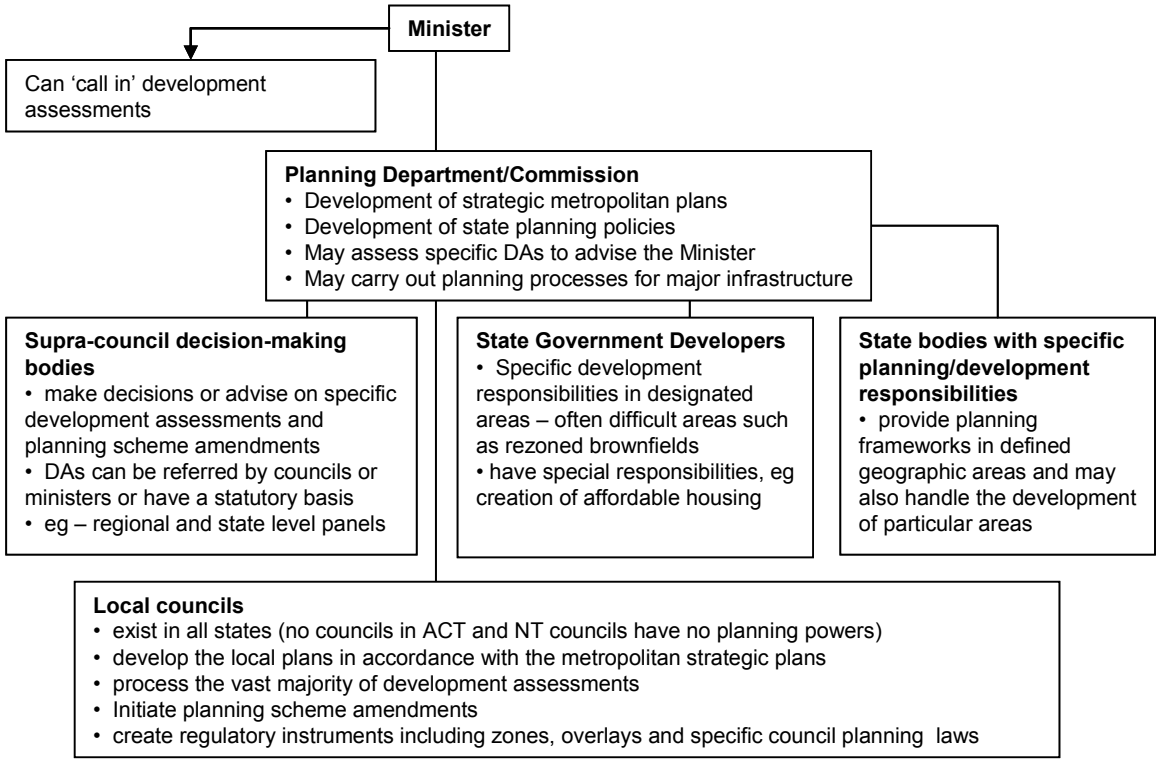
The regulations and agencies involved in planning, zoning and development assessments constitute one of the most complex regulatory regimes operating in Australia. This regulatory system is not like most other regimes which have a clearer delineation between policy making, regulation writing and administration. Because some important policy issues are not fully resolved during strategic and structure planning, de facto policy-making occurs during development assessment and rezoning where significant discretion is exercised. In addition, the planning and zoning regime also has a number of 'special' agencies and processes as an alternative to the standard path to development approval at the local council level.

Figure 2 shows a stylised representation of the main government players and their functions, although as the state and territory planning systems evolved separately, there are many significant differences in their regulatory frameworks. In 2009-10,

all jurisdictions, except Tasmania and the Northern Territory, had capital city strategic spatial plans which set out state planning policy, defined land uses, and guided local government planning and development.[2] Tasmania is now developing metropolitan strategic spatial plans.

Further, the number and structure of planning instruments used by the jurisdictions vary greatly. Tasmania has only one level, for example, while Western Australia has eight and is very difficult for an outsider to navigate. However, not only are the number of levels of planning instruments relevant — all of New South Wales' 47 State Environmental Planning Policies are at the one level, but this does not make them easy to follow.

Figure 2 **Simplified planning system regulatory structure**



Source: Productivity Commission.

Local council plans contain zones, which prescribe in detail the kinds of developments that are permitted or not permitted within that zone. As well as zones, most jurisdictions have even more detailed restrictions for sub-zones within zones. For example, Adelaide City Council has 11 residential zones, Hobart City Council has four residential zones and 25 sub-zones (called precincts) under them. Melbourne, on the other hand, has only three broad residential zones. Zone

2 The Victorian Government is currently developing a new outcomes based metropolitan plan.

terminology is used consistently in Victoria, South Australia and the territories. But names for zones are quite varied not only across the jurisdictions but also within them; for example, Queensland councils include terms such as zones, precincts, precinct classes, area classifications, domains, constraint codes, use codes and planning areas. Overlays are used to set other area-specific requirements, such as for bushfire prone areas, which may apply to a wide area containing many different zones. Other development controls include requirements directed at specific plots of land, and development requirements that apply generally across the entire local council area.

These different and complex planning systems are difficult for businesses and citizens to navigate. They lack transparency, create uncertainty for users and regulators and impose significant compliance burdens, especially for businesses which operate across state and territory boundaries.

Selected performance comparisons

Given the extent of differences, it has proven a challenge to compare the planning systems of the states and territories: individual indicators are often heavily qualified and thus so are comparisons between jurisdictions. Also, a combination of several benchmarks is often needed to reflect system performance. For example, while longer development approval times may seem to be less efficient, if they reflect more effective community engagement or integrated referrals, the end result may be greater community support and preferred overall outcome.

The Commission has not attempted to construct an overall 'league table' of state and territory performance but rather intends that the diverse benchmarks serve as useful pointers to where reform efforts may require concentrated attention.

The supply of land

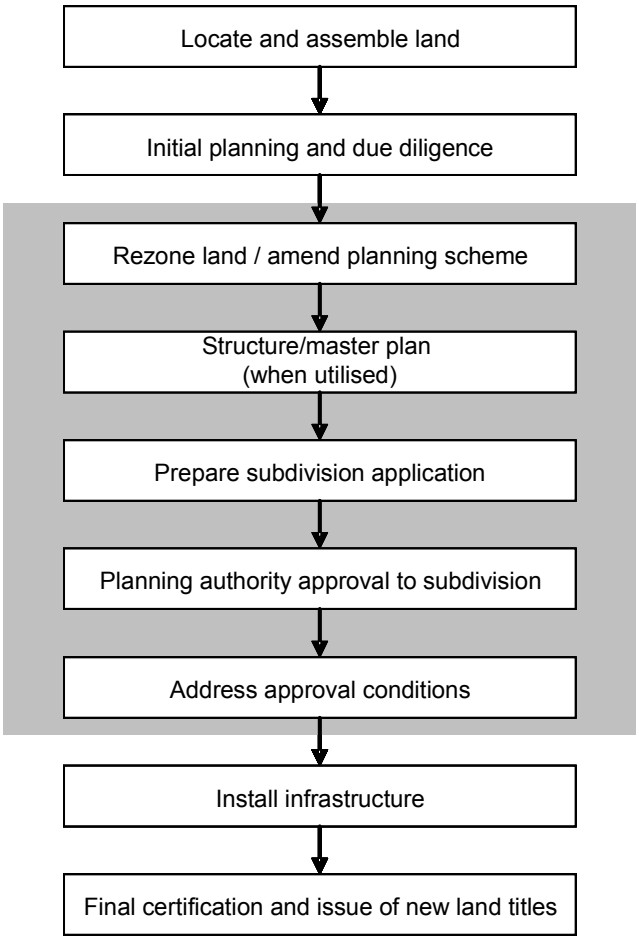
Each jurisdiction takes a somewhat different approach to planning the supply of land for a range of activities and uses for its capital city, most notably in how each defines and plans urban boundaries, activity centres and protected lands (such as conservation areas). While the broad stages can be represented as in figure 3, the terms used by jurisdictions often differ. All of the stages must occur before construction of houses or commercial/industrial buildings can begin.

All jurisdictions monitor and analyse the supply of land for residential uses the most, with industrial land receiving less attention and commercial land the least.

The capital cities have set different targets for infill and greenfield development. For example, Sydney was aiming (before the 2011 election) for 60 to 70 per cent of its residential developments to be infill by 2031,[3] while South-East Queensland is targeting 50 per cent by the same year. Higher infill targets generally foreshadow a more intense use of existing urban land[4] often involving rezoning to accommodate higher population density.

Figure 3 **Stylised land supply process**

Grey shading denotes primary impact and influence of planning systems



Source: Productivity Commission.

Adelaide and Perth have the highest targets for having greenfield land available for development — both require 25 years supply of land for future development and 15 years supply of land zoned for urban uses.

3 The new New South Wales Government has expressed a preference for a revised policy setting.

4 This is not the case for New South Wales given that in recent years approximately 80% of additional housing has been built in existing urban areas.

Information from a sample of 20 residential subdivision developments, together with estimates from planning agencies, were used to gauge indicative times taken to complete various stages in the supply process, as well as overall times taken to complete developments. It takes up to 10 years from the time a developable parcel of land has been assembled and the subdivision of that land is completed (figure 3). The assembly of land and the initial private planning and due diligence (which occur before engaging with the public planning system) can add an additional 5 years to the process (table 3).

Table 3 **Some performance benchmarks on the supply of land**

Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Elapsed time for land subdivision projects[a] — months	up to 119	30–60 plus	14–172	36–120	24–133	na	na	na
Vacant land zoned residential in capital cities – lots per thousand people, 2009 [b]	15.2	23.0	125.6[c]	89.4	26.7	na	150.6	0.1
Change in population – %, 2008-09	1.69	2.28	2.76	3.23	1.28	1.08	1.82	2.57
Gap between 'underlying demand' and supply[d] in number of dwellings[e] per thousand people as at June 2009	8.1	4.2	12.7	13.5	0.1	2.0	1.4	44.7

[a] This measures the time between the initial assembly of land parcels and a subdivision being approved and completed with infrastructure installed. [b] In some instances, the number of 'lots' has been inferred from the estimated dwelling yields of the subject land. [c] Number of 'conventional lots' and community title lots in 2009-10. [d] This was estimated by the National Housing Supply Council by determining the dwelling needs of the population, given assumptions about the number of persons in each dwelling, compared to the supply of dwellings. [e] A dwelling is a self-contained suite of rooms, including cooking and bathing facilities, intended for long-term residential use. Units within buildings offering institutional care, such as hospitals, or temporary accommodation such as motels, hostels and holiday apartments, are not considered to be dwellings.

Sources: Productivity Commission analysis of subdivision projects; National Housing Supply Council 2010.

The most common causes of delays in land supply are: rezoning/planning scheme amendment; structure planning; and dealing with community concerns. The long time taken to complete structure planning (one to six years) is not surprising given its complexity. If done well, it should reduce subsequent delays and assist planning because, for example, structure plans facilitate the coordinated delivery of infrastructure into new development areas. Only Queensland applies statutory timeframes to structure planning, taking into account the particular features of each project.

Both South East Queensland and Perth in 2009-10 had among the highest supplies of greenfield land zoned for residential use and land with subdivision approval (relative to population). However, Queensland and Western Australia appear to have significant housing shortfalls (see table 3) due to the more rapid population growth they have been experiencing.

State and territory government land organisations hold significant 'development inventories' and often take on the more difficult and time-consuming projects.

Infrastructure

Sound planning for major state infrastructure — such as roads and rail, water and energy delivery systems — are fundamental to the outcomes for cities. The regimes in Victoria, Queensland and South Australia have a number of characteristics that facilitate delivery of infrastructure, including: detailed infrastructure plans with a level of committed funding from the state budget and committed delivery timeframes (see table 4); and scope to apply alternative planning processes to infrastructure projects.

It is difficult to discern the basis for decisions on how much infrastructure developers should contribute to their developments, what level of charges should be borne by the private sector and what infrastructure government should provide.

Developer contributions are applied and collected in different ways across Australia and may include levies (calculated either per lot, hectare or dwelling or as a proportion of development value depending on the location and type of development) or impact fees (which recognise the actual impact of the proposal on particular local infrastructure or amenities).

Table 4 **Some performance benchmarks on infrastructure**

Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Integration of planning and infrastructure [a]	Low	Med	High	Med	Med+	Very Low	Med	Very Low
Infrastructure charges — $ per dwelling, 2009-10								
Infill	15 000	1 609	25 000	5 000	5 577	na	na	na
Greenfield	37 300	11 000	27 000	20 000	3 693	na	na	na

[a] This relates to the estimate made by KPMG of how well strategic planning systems are integrated across functions — such as transport, infrastructure, and environmental assessment — and across government agencies. It should also be noted that KPMG indicated in a separate part of its report (pp. 48-49) that the Western Australian Planning Commission had a strong and integrated approach to infrastructure and planning.

Sources: KPMG (2010); Urbis (2010); ABS (Australian Demographic Statistics, Jun 2010, Cat. No. 3101.0); Department of Planning and Community Development (Vic) (2010a); Department of Planning and Local Government (SA) (2010b); Department of Planning (NSW) (2010c); NHSC (2010).

In 2009-10, New South Wales had the highest residential infrastructure charges imposed on developers, at an average of $37 300 per lot for greenfield developments, and covered the broadest range of infrastructure items. Queensland's

charges have risen significantly to be the second highest in 2009-10 (at about $27 000 per greenfield lot). South Australia and Tasmania charged for the narrowest range of infrastructure items and South Australia had the lowest charges though unusually the average infill charge ($5577) was higher than the average greenfield charge ($3693) (see table 4).

In 2009-10, New South Wales ($550 000 per hectare) and Queensland ($340 000 per hectare) had the highest infrastructure charges applying to commercial and industrial land. Victoria had the lowest charges ($175 000 per hectare).

Business compliance costs

The main compliance costs associated with seeking planning scheme amendments (rezoning) or development approval include: requirements to prepare, submit and provide supporting material; meeting specified development controls; paying fees and charges; and holding costs associated with the time taken to obtain planning approval. This can involve considerable in-house staff costs, and an extensive range of impact and consulting studies which must all comply with specific standards.

Single residential developments that comply with prescribed standards and do not trigger special conditions (such as heritage or small lot size) in planning schemes are treated fairly uniformly across most jurisdictions. Such developments did not require planning approval or attract a planning fee in Victoria, South East Queensland, Western Australia, the ACT or the Northern Territory in 2009-10 and required relatively low lodgement fees in South Australia. However, in most New South Wales councils such developments were subject to development assessment and an associated planning fee during 2009-10. Also, in Hobart, as the whole city has a heritage overlay, almost all dwellings trigger the requirement to be assessed.

Retail/commercial or industrial applications cost considerably more than residential developments. Victoria was the least expensive jurisdiction to apply for planning approval for a mid-size retail or industrial development in 2009-10. Charges were considerably higher in the ACT, New South Wales and Queensland (see table 5).

Approval timeframes (and the associated impact on holding costs) are a major concern for developer interests. They can reflect a multiplicity of factors such as the scope and nature of approval requirements, the quality of the information developers provide, referrals, public consultation, appeals and the efficiency of development assessment staff.

The figures produced in table 5 are indicative only, being based on estimates provided by councils and planning agencies without taking account of differences in

residential, industrial and commercial development applications or the scale of the proposed developments. For those jurisdictions where comprehensive approvals data were available, Victoria's median approval time (73 days) was the highest. The Victorian figure may in part be explained by the much higher proportion of development applications being referred to external agencies (27 per cent) and the tendency for some councils to include appeal times in their estimates. New South Wales' and Queensland's times were about half those of Victoria in 2009-10 (see table 5). The ACT had the fastest approval times with a median of 27 days.

Table 5 **Selected performance benchmarks for compliance costs**

Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Median elapsed time for DA approval — days, 2009-10[a]	41	73	38	na	na	na	27	67
Minimum approval fee — $								
Single residential dwelling	1 277	0	0	0	50	300	0	0
Commercial development	4 365	815	2 900	2 700	2 390	1 170	5 933	870
Industrial development	4 037	815	4 107	2 220	2 140	1 020	5 130	870

[a] Figures are jurisdiction-wide, except for Queensland which relate to the 19 high growth councils for which data were collected by the Department of Planning and Infrastructure.

Source: LGPMC 2011, New South Wales Local Development Performance Monitoring 2009-10, Planning Permit Activity in Victoria 2009-10, Queensland Department of Infrastructure and Planning (personal communication), WAPC and Department of Planning Annual Report 2009-2010, PC State and Territory Planning Agency Survey 2010 (unpublished), jurisdictional fee regulations, council fees and charges schedules.

Competition and retail markets

Most planning regulation affecting retail markets concerns defining, setting aside land for and controlling the entrance of businesses into different types of activity centres. This produces a number of restrictions on competition. Many of these are imposed to serve important objectives, such the viability and vibrancy of existing centres, the amenity of community developments, releasing land at a rate to achieve 'orderly' or 'desirable' development, and maintaining the existing character and structure of communities. However, there is little to indicate that impacts on competition — or an analysis of the benefits of the desired outcome versus the costs of restricted competition — were considered in establishing planning regulations.

Planning guidelines, on where retailers can locate, are extremely complicated, often prescriptive and exclusionary. As well as activity centres and zones, there are other layers of development controls, including sub-zones, overlays, 'policy areas', precinct controls, development codes and highly prescriptive requirements (which vary by locality) for floor areas, plot ratios, building heights, street frontage and setbacks, car parking requirements, etc. Hence, any assessment of the extent to

which competition is limited in council areas cannot be based just on the layering of activity centres or the number of zones (table 6) but should also take account of all these other measures. Further, the cumulative impact of restrictions on businesses is difficult to ascertain and it is generally not possible to conclude that one type of restriction has a greater impact on competition than another.

While the prescriptive requirements provide some clarity to prospective developers, they also make it hard for some innovative businesses to find suitable land and thus enter the market. More generally, they also work to prevent the market from allocating land to its most valued uses.

Table 6 **Some performance benchmarks for competition**

Competition Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Zones: avg. no. within council area	20	17	40	12	25	17	23	32
Activity centres: no. city centres & major regional centres in capital city[a]	18	26	15	11	7	**b**	1	**b**
Activity centres: no. district centres in capital city[a]	62	79	28	19	9	**b**	4	**b**
Activity centres approach (% councils or territory govts which enforce approach)	23	91	82	71	56	40	100	0
Impacts on existing businesses a major consideration (**%** councils)	24	11	27	7	31	0	0	0
Viability of nearby centre a major consideration (**%** councils)	79	58	100	64	69	50	0	0

a Queensland figures applies to SEQ. **b** Equivalent centre hierarchies are not formally used in Tasmania and the Northern Territory.

Sources: Analysis of local council and territory plans; PC Local Government Survey 2010 (unpublished).

The lack of large sites and the highly prescriptive and limiting requirements on activity centres leads businesses to push for special consideration and/or attempt to locate in out-of centre locations and industrial zones. These 'fixes' produce uncertainty, are inefficient and create an anti-competitive unlevel playing field. New South Wales and the ACT appear the most susceptible to this approach while, in Victoria, it appears easier for businesses to find large sites for commercial purposes.

While most governments recognise that limits on competition are not desirable for economic development, they still take into account impacts of proposed developments on the viability of existing businesses and/or activity centres, though Victoria, Western Australia, Tasmania and the territories do this to a lesser extent.

To progress planning objectives for viable centres with minimal adverse impacts on competition, it is necessary to assess the impacts on existing centres as a whole without concern for the likely impacts on particular existing businesses within those centres.

In most jurisdictions, there is considerable scope for competitors of a proposed development to use planning rules as a basis for objecting to developments and/or appealing development decisions. Prescriptive zoning; alternative development assessment paths (including ministerial call-ins); and inconsistency in decision making and in the application of planning principles all provide incentives for business to 'game' the system by using objection and appeal mechanisms to block or delay establishment of competing enterprises.

Governance and accountability

The planning resources and outcomes of local councils differed across jurisdictions:

- on a per capita basis in 2009-10, Queensland councils appeared to have the highest level of resourcing (in terms of staff levels and planning expenditure) but also incurred the highest median level of expenditure per development assessed, and approved the smallest median number of developments per staff. In contrast, South Australia incurred the lowest median expenditure and assessed the highest median number of developments per staff (table 7). These results probably reflect differences between the two states. South Australia requires the largest proportion of applications to be assessed by councils, while Queensland councils have adopted a sophisticated risk-based approach to development with fewer applications requiring formal council assessment. Councils in other states fall in between these approaches with most allocating basic applications to fast tracks
- workload pressure was identified by councils as a major impediment to their performance in planning processes
- over half of all respondents to a business questionnaire (sent by their associations) indicated that a lack of competency of council staff and inability of staff to understand commercial implications of decisions were some of the greatest hindrances in development assessment processes.

Jurisdictions also differed with respect to their accountability mechanisms, such as:

- the availability of appeals including third party appeals — Victoria and Tasmania provided the greatest access to appeals, while Western Australia did not allow any third party appeals (table 7)
- while rezoning and other planning scheme amendment decisions by local councils cannot be appealed in a court, some jurisdictions, including New South

Wales and Victoria, provided scope for rezoning decisions (meeting certain criteria such capital value of the proposal) to be taken to regional or state level panels

- the availability of appeal mechanisms outside the court system (not involving legal representation) which increases the likelihood that matters will be settled without recourse to more expensive and time-consuming formal avenues of legal redress — such as Queensland's Building and Development Dispute Resolution Committee
- whether comparable data on council outcomes is published — New South Wales, Victoria and Queensland publish detailed outcomes data and the ACT publishes aggregate outcomes data
- the degree of access to rules and regulations such as information on zones — all state councils and territory agencies publish this but Queensland's and New South Wales' rules are the most difficult to understand and use, while the councils in Victoria and South Australia format this information consistently and clearly, and also make it easier to locate.

Table 7 **Some benchmarks on governance**

Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Councils in capital city — number	43	33	8	33	26	7	1	3
Planning expenditure by local councils — median $'000 per 1000 population[a]	29	21	35	19	29	18	**b**	**b**
Planning expenditure by local councils — median $ per DA[a]	3 588	2 560	9 745	1 865	790	1 541	**b**	**b**
DAs per local council planning staff[a] — median	31	44	14	62	136	82	**b**	**b**
Local council planning staff per 10 000 population — median	2.4	2.5	2.9	1.7	2.8	1.8	**b**	**b**
Third party appeals	limited	allowed	limited	none	limited	allowed	limited	limited
Relationship between state govt & local councils — % [c]	42	49	61	55	57	43	**b**	**b**

a These comparisons do not take into account the mix of different types of DAs. **b** Not applicable. **c** Per cent of councils which agreed or strongly agreed with questions on positive engagement between local government and the relevant state government.

Sources: PC Local Government Survey 2010 (unpublished); state and territory planning legislation.

While many factors influence the nature of arrangements between states and councils — such as the size of councils, the way state priorities are communicated and implemented, how council performance is evaluated — better relationships are more likely to deliver broad state goals in a more timely and effective way. New South Wales and Tasmanian councils seem to have the most difficult relationship

with their state government while those in Queensland, Western Australia and South Australia appear to have the most cooperative relationships between state and councils (table 7).

All jurisdictions provide mechanisms by which development assessment and rezoning can be referred beyond the council. However, the criteria which trigger them, the person or persons who assess them, and the assessment criteria all vary significantly — though in some cases this is difficult to determine because they are not always clearly stated.

Community involvement

Jurisdictions differed in the ways they interact with the community. While active community participation, as self-reported in surveys of jurisdictional planning agencies, motivates some state agencies in New South Wales, Victoria and Tasmania, most state agencies tend to use more limited forms of community interaction by way of information dissemination and consultation.[5] In contrast, local governments were generally more likely to emphasise empowering their communities rather than simply minimising the potential for community opposition. In general, city councils in South Australia appear to be most motivated to have active community participation.

Community views on government efforts in engaging them in planning processes reveal that governments have considerable scope for improvement in this area. The vast majority of communities reported that they feel their governments are not concerned with community preferences on planning issues. This response was particularly marked in Alice Springs, Geelong, Gold Coast and in the NSW regional coastal cities. Local councils in Wodonga, Albury and the Sunshine Coast were rated as caring the most about community preferences. Furthermore, most communities consider that local government consultation on planning issues happens only sometimes or not at all (table 8).

Consultation during the development of state level planning instruments is a legislative requirement in Queensland (consistent with the Local Government and Planning Ministerial Council agreed best practices) and to a more limited extent in

5 Those government agencies which interact with the community on planning, zoning and development assessment, were asked which of the following motivations were important:
- discover community preferences
- help the community understand the implications for their local area of proposed developments at a regional or metropolitan level
- empower the community in the decision-making process
- ensure community concerns are considered
- minimise the potential for community opposition and avoid delays.

the ACT, and occurs at the discretion of the Minister and/or planning department in other jurisdictions. While community engagement, at the strategic planning stage and where structure planning required, is crucial to improve outcomes and the perceived openness and fairness of the process, it is unlikely to resolve most of the specific concerns of individuals or community groups who oppose a particular development 'on their doorstep'. Many community members will not engage with the planning process at higher levels and will only focus on plans that directly affect them or when a proposal is sufficiently concrete to enable its potential impact to be recognised — often at the specific development application stage. This does not reduce the case for early community engagement but indicates that good practice requires significant engagement through all stages. However, as with any process, there will be costs and benefits, requiring government bodies to give due consideration on how best to allocate efforts over community engagement.

Table 8 **Some benchmarks on community engagement**

Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
State/territory govt are effective in planning — % of capital city community which agree	14	18	21	22	19	17	20	17
Local govts are effective in planning — % of capital city community which agree	15	14	17	21	17	20	na	na
Community views on extent of consultation — % of community which consider consultation to occur often	14	10	11	12	14	13	25	11
Community views on 'being heard' — % of community which consider govt cares for their planning preferences	8	7	8	9	9	9	10	6

Sources: PC Local Government Survey 2010 (unpublished); PC Community Survey 2011 (unpublished); state and territory planning legislation.

Most communities considered their state and local governments to be 'somewhat effective' in planning for a functioning and liveable city, with those in New South Wales and the Northern Territory least satisfied with the planning of their governments (table 8). Based on the questionnaire distributed by business associations, the New South Wales planning system was considered by business to be the most difficult to operate under.

One explanation for the apparent dissatisfaction of communities with planning of their governments may be the substantial disjunction in planning priorities. Communities identified personal safety, public transport and congestion as their top planning priorities in the Commission community survey, whereas most governments reported accommodating higher population growth, transitioning to higher population densities through greater infill and managing greenfield development to be their top planning priorities.

Furthermore, accommodating population increases appears to be a thankless task. When asked 'How would you feel about having more people living in your suburb or community and the increase in housing required for this?', 51 per cent of those surveyed across 24 cities indicated that they would not like the population in their community to increase and only 12 per cent indicated that they would like an increase in population. Of those against an increase, the most common reason was congestion. Of those favouring an increase, the most common reason was because they thought it would bring increased services.

State and territory referrals

The jurisdictions have different bases for how referrals to specialist government agencies, such as environmental or heritage protection authorities, are triggered. The nature and number of the legal instruments containing the referral provisions also differ. In New South Wales, 101 local and state statutory instruments provide the bases for referrals. In contrast, all of South Australia's referral requirements are contained in one location (its planning legislation).

The number of departments/agencies to which referrals are made varies greatly across the jurisdictions. South Australia had the most referral departments/agencies (19), whereas Tasmania (2 departments/agencies) and the Northern Territory (1 department) had the fewest.

Most jurisdictions require referrals under two broad categories:

- *prescribed matters* — where the development has an effect on, or is near to nominated 'prescribed matters', such as occupational health and safety and heritage areas
- *prescribed actions and activities* — where the development site will ultimately be used for a prescribed action or activity, such as alcohol production, or one of the actions or activities will occur in completing the development, such as abrasive blasting and dredging.

The number of matters and of actions and activities in each jurisdiction are outlined in table 9. The jurisdictions differ in the thresholds for these activities, the type of threshold, and actions for which referral is required. Some jurisdictions, such as Victoria, Western Australia and Queensland, do not list all referral requirements in the legislation referenced in table 9.

Further, requirements vary across the jurisdictions. For example, reconfiguring a lot within 100 metres of an electrical substation is a prescribed matter and requires a referral in Queensland, but not in South Australia. In contrast, the construction of a

substation is a prescribed activity and requires referral in South Australia, but not in Queensland.

Table 9 **Some performance benchmarks for state and territory coordination**

Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Number of **matters** that require a referral if a development will affect them	20	7	14[a]	1[b]	10	2	na	2
Number of **actions and activities** that require the referral of a development application	44	37	55[a]	**b**	36	25	na	na

a The matters listed here are based on legislation listed in the sources for this table. The Queensland Government (14 February 2011) advise that these sources alone do not capture the full scope of referrals required in Queensland. **b** The Western Australian Government (April 2011) advise that these sources alone do not capture the full scope of referrals required, as the *Planning and Development Act 2005* (WA) (s.142) requires that, when the Western Australian Planning Commission considers that a subdivision proposal may be affected by public and non-public service providers (such as water, telecommunications, energy) as well as local government and other relevant government agencies (such as environment, health and Indigenous Affairs) then the proposal should be referred for comment to them. The Government also says these requirements are implied for DAs.

Sources: *Queensland Development Code;* Department of Planning (NSW) 2010; *Development Regulations 2008* (SA); *Environmental Management and Pollution Control Act 1994* (Tas); *Environmental Planning and Assessment Act 1979* (NSW); *Environmental Protection Act 1986* (WA); *Environmental Protection Regulation 2008* (Qld); *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007* (Vic); New South Wales Government, pers. comm., 17 January 2011; *Northern Territory Planning Scheme*; *Planning and Development Regulations 2008* (ACT); RPDC (2003); *Victorian Planning Provisions*.

New South Wales, Victoria, Queensland, Western Australia, South Australia and the ACT all have established but different timeframes in which referral departments/agencies must respond to referrals. The ACT is the only jurisdiction not to allow referral departments/agencies to 'stop the clock'. The ACT, Queensland and Western Australia have provisions which, if no response is received within the statutory timeframe, allow the person assessing the development application to proceed with the assessment as if that referral agency had supported the application and set no conditions.

Impact of Commonwealth environmental requirements

Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act), a business can undertake a substantial amount of compliance work only to learn it is not required to take any action (such as obtaining the Minister's approval or completing their project in a certain way). In 2009-10, 36 per cent of referrals (137 referrals) required no further action, suggesting that business could be

provided with better initial advice from the Commonwealth as to whether they need to proceed with a fully documented case.

Based on data supplied to the Commission by developers, the cost of the environment studies and flora and fauna assessments necessary for an EPBC Act referral can range from $30 000 to $100 000 per study.

For the period 2005-06 to 2009-10, the average amount of time taken from the lodgement of the EPBC Act referral to the Minister's final decision for 'controlled actions' was 1 year and 7 months for residential, commercial and industrial developments in urban areas. This was also the average for 2009-10.

The need for all developers to consult two lists of threatened species (one Commonwealth list and one state/territory list) for each jurisdiction in which they operate creates unnecessary duplication and confusion (Hawke 2009).

Leading practices

Adoption of leading practices outlined below would significantly improve governance, transparency, accountability and efficiency; however, leadership from state and territory governments — as articulated in the city spatial strategic plans — remains essential to resolving the often conflicting objectives imposed on planning systems. While the study has focused on Australia's largest cities and in places only on the capital cities, many of the leading practices could be applied more widely, especially in areas experiencing strong economic and population growth.