



FINAL REPORT

Digital technology in regulatory processes

Better Regulation Statement

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NSW Treasury
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Summary

The NSW Government implemented a number of changes to legislation and regulations in response to COVID-19. These changes had the various objectives of:

- better enabling businesses and employees to respond to the economic changes occurring as a result of COVID-19
- reducing pressure on public health systems that might need capacity to focus on COVID-19
- allowing for interactions consistent with social distancing, instead of in-person interactions.

While some of the measures introduced were only relevant to the COVID-19 pandemic circumstances, others could have longer term benefits. The NSW Government is now systematically reviewing regulatory changes made in response to COVID-19 to consider whether these should be continued, or whether regulations should revert to what was in place prior to COVID-19, or some other alternative. This process is being undertaken in stages. This document is a Better Regulation Statement (BRS) covering changes made to allow greater use of digital technology in regulatory processes. It includes changes to the following regulatory instruments:

- Associations Incorporation Act 2009
- Strata Schemes Management Act 2015
- Community Land Management Act 1989 (it is anticipated that the new Community Land Management Act 2021 will commence in December 2021)
- Conveyancing Rules, made by the Registrar General under section 12E of the Real Property Act 1900
- Crown Land Management Act 2016
- Protection of the Environment Operations Act 1997
- Biodiversity Conservation Act 2016
- Water Management Act 2000
- Fisheries Management Act 1994
- Mining Act 1992
- Mental Health Act 2007.

The specific changes are detailed in table 1.

1 Summary of temporary regulatory changes

Summary of temporary change	Relevant regulatory instrument	Scheduled expiry of temporary changes
All Incorporated Associations allowed to meet and vote using digital technology	Incorporated Associations Act 2009	31 March 2022
<p>Changes to the management of strata and community schemes as follows.</p> <ul style="list-style-type: none"> ▪ Meetings can be notified via email ▪ All strata and community schemes allowed to vote via: <ul style="list-style-type: none"> – Electronic means during a meeting; or – Pre-meeting electronic voting ▪ Documents can be signed by a specified person and witnessed via audio-visual link as an alternative to affixing the seal of the owners corporation or community association 	<ul style="list-style-type: none"> ▪ Strata Schemes Management Act 2015 and Strata Schemes Management Regulation 2016 ▪ Community Lands Management Act 1989 and Community Lands Management Regulation 2018 	<p>Regulations currently expire on 20 January 2022</p> <p>Regulation making power under the Act expires 31 March 2022</p>
Some conveyancing documents can be signed electronically and witnessed via audio-visual link	Conveyancing Rules	31 December 2021
Regulators allowed to conduct interviews via audio-visual link	<ul style="list-style-type: none"> ▪ Crown Land Management Act 2016 ▪ Protection of the Environment Operations Act 1997 ▪ Biodiversity Conservation Act 2016 ▪ Water Management Act 2000 ▪ Mining Act 1992 ▪ Fisheries Management Act 1994 	31 March 2022
All assessments/examinations to determine whether a patient should be detained in a mental health facility can be conducted via audio-visual link.	Mental Health Act 2007	31 March 2022

Source: NSW Government.

Process for evaluating regulatory changes

The regulatory changes have been evaluated through a process of considering the objectives of the regulation, alternative options to meet these objectives and evaluating these options both quantitatively and qualitatively using cost benefit analysis.

For each of the regulatory changes considered, stakeholder consultation has involved:

- online forums with targeted stakeholders identified by lead agencies
- one-on-one discussions with interested stakeholder groups
- invitation for written submissions from interested stakeholder groups.

Summary of evaluation

A summary of the evaluation of options is shown in table 2.

2 Summary of temporary regulatory changes

Summary of temporary change	Summary of evaluation
All incorporated associations allowed to meet and vote using digital technology	<p>The benefits of allowing all incorporated associations to meet and vote using digital technology would avoid the need for some incorporated associations to change their constitution and provide others with additional flexibility. These benefits are estimated at around \$236 million in net present value terms over 10 years, using a discount rate of 7 per cent.</p> <p>The cost of providing incorporated associations with an additional option is likely to be minimal. The only potential downside is the conflict between the legislation and the constitution of some incorporated associations. However, this could be managed through clear communication of the change.</p>
<p>Changes to the management of strata and community schemes as follows.</p> <ul style="list-style-type: none"> ▪ Meetings can be notified via email ▪ All strata and community schemes allowed to vote via: <ul style="list-style-type: none"> – Electronic means during a meeting; or – Pre-meeting electronic voting ▪ Affixing the seal of the owners corporation can be witnessed via audio-visual link 	<p>There are estimated to be significant benefits (around \$213.6 million in present value terms over 10 years, using a discount rate of 7 per cent) from permanently allowing:</p> <ul style="list-style-type: none"> ▪ electronic voting during meetings to allow meetings to occur via electronic means (\$97.1 million) ▪ meeting notifications via email (\$107.4 million) ▪ signing and witnessing documents via AVL as an alternative to affixing the seal of the owners corporation (\$9.2 million). <p>Based mostly on qualitative evidence, the use of pre-meeting electronic voting (without a conscious decision of owners) could make strata committees or strata managing agents less accountable to owners; and reduce the transparency of decisions.</p> <ul style="list-style-type: none"> ▪ These are considered critical elements for the effective functioning of strata and community schemes. As such there is a risk that the use of pre-meeting electronic voting without a conscious decision of owners could lead to worse management outcomes and more disputes. ▪ If all strata and community schemes are permitted to use electronic voting during meetings, pre-meeting electronic voting is not needed to allow the meeting to proceed via AVL (which are the benefits that have been measured).
Some conveyancing documents can be signed electronically and witnessed via audio-visual link	<p>Allowing some conveyancing documents – including those related to plans – to be signed electronically and witnessed via AVL will reduce costs and regulatory delays.</p> <ul style="list-style-type: none"> ▪ The net benefits are estimated at around \$195 million in present value terms over 10 years, using a discount rate of 7 per cent. ▪ There are potentially some risks associated with relaxing the signing standards, including: the risk a plan is deliberately altered or inadvertent errors. However, these risks are likely to be small, particularly as NSW is proposing to transition from paper to digital survey plans. ▪ There was widespread support among stakeholders for extending the temporary arrangements permanently.
Regulators allowed to conduct interviews via audio-visual link	<p>There was general support from both regulators and industry stakeholders for permanently allowing interviews under the various Acts to be conducted via AVL. Time and travel costs for authorised officers, interviewees and in some cases their legal representatives associated with in-person interviews could be avoided through allowing interviews to be via audio-visual link.</p>

Summary of temporary change	Summary of evaluation
	Regulators suggested that interviews via audio-visual link may not be appropriate in all circumstances. Nevertheless, based on expected uptake, cost savings for both regulators and interviewees are estimated at around \$xx in net present value terms over 10 years, using a discount rate of 7 per cent.
All assessments/examinations to determine whether a patient should be detained in a mental health facility can be conducted via audio-visual link.	<p>As the Mental Health Act already permits medical practitioners to examine a patient to assess whether they should be detained in a mental health facility via AVL, the main impact of the proposed changes is to allow accredited persons to conduct examinations/assessments via AVL.</p> <ul style="list-style-type: none"> ▪ This could deliver some modest benefits, mainly in rural and regional areas, where practitioners with the relevant experience and qualifications are not necessarily available at all times. In some circumstances, transporting a patient to another declared mental health facility in a different town for an assessment could be avoided. <ul style="list-style-type: none"> – Based on evidence of uptake during the COVID-19 period, the benefits could be around \$2.2 million in present value terms over 10 years, using a discount rate of 7 per cent. – If uptake increases, the benefits could increase up to around \$4 million in present value terms over 10 years. ▪ The limited evidence available suggested that there is little reason to suspect that AVL assessments by accredited persons would be any less reliable than assessments that are permitted under the Mental Health Act. ▪ There was general support among stakeholders for the use of AVL assessments by an Accredited Person in circumstances where transporting the person to another declared mental health facility could be avoided. However, some stakeholders were concerned about the overuse of AVL assessments.

Source: NSW Government.

In total, making the temporary COVID-19-related regulatory changes to allow greater use of digital technology in regulatory processes permanent could deliver net benefits of around \$655 million in net present value terms over 10 years, using a discount rate of 7 per cent (table 3).

3 Estimated net benefits under different discount rates

	3 per cent	7 per cent	10 per cent
	\$ million	\$ million	\$ million
Incorporated associations	274.7	236.1	213.1
Strata and community land schemes	251.6	213.6	191.2
Electronic signing and witnessing of some conveyancing documents ^a	181.9	194.6	199.8
Interviews via AVL	7.7	6.6	6.0
Assessments under the MHA via AVL	5.1	4.4	4.0
Total	721.0	655.3	614.0

^a Results are less sensitive to the discount rate because estimates of delay costs were linked to the discount rate. This partly offset the impact of discounting.

Note: Net benefits expressed in net present value terms over 10 years.

Source: CIE estimates.

Recommendations

Based on the evaluation of alternative options, the recommended options are set out in table 4.

4 Summary of recommendations

Summary of temporary change	Recommendation
All incorporated associations allowed to meet and vote using digital technology	<ul style="list-style-type: none"> ▪ The temporary changes should continue permanently. ▪ This should be accompanied by clear communication (including on DCS's website) on the impact of the changes to reduce confusion as a result of a conflict between the legislation and the constitution of some incorporated associations.
<p>Changes to the management of strata and community schemes as follows.</p> <ul style="list-style-type: none"> ▪ Meetings can be notified via email ▪ All strata and community schemes allowed to vote via: <ul style="list-style-type: none"> – Electronic means during a meeting; or – Pre-meeting electronic voting ▪ Affixing the seal of the owners corporation can be witnessed via audio-visual link 	<ul style="list-style-type: none"> ▪ The following elements of the temporary reforms should be retained permanently: <ul style="list-style-type: none"> – electronic voting during meetings to allow meetings to occur via electronic means – meeting notifications via email – signing and witnessing documents as an alternative to affixing the seal of the owners corporation. ▪ The use of pre-meeting electronic voting should be a conscious choice of the owners corporation or community association, as per pre-COVID-19 arrangements.
Some conveyancing documents can be signed electronically and witnessed via audio-visual link	<ul style="list-style-type: none"> ▪ The temporary arrangement should continue permanently. ▪ Further reforms opportunities in relation to execution of documents (including electronic execution of Deeds and consideration of whether they need to be witnesses) should be explored.
Regulators allowed to conduct interviews via audio-visual link	<ul style="list-style-type: none"> ▪ The temporary arrangements should continue permanently. ▪ Some aspects relating to the conduct of interviews via AVL should be clarified as part of the implementation arrangements.
All assessments/examinations to determine whether a patient should be detained in a mental health facility can be conducted via audio-visual link.	<ul style="list-style-type: none"> ▪ The temporary arrangements should be continued permanently.

Source: The CIE.

1 Background and introduction

This report is a Better Regulation Statement (BRS) for the permanent retention of regulatory relaxations which remove barriers to the use of digital technology in regulatory processes. The temporary measures were initially introduced in response to the COVID-19 pandemic and are currently scheduled to lapse by the end of March 2022. The changes considered in this BRS are those that apply to the following regulatory instruments:

- Associations Incorporation Act 2009
- Strata Schemes Management Act 2015
- Community Land Management Act 1989 (it is anticipated that the new Community Land Management Act 2021 will commence in December 2021)
- Conveyancing Rules, made by the Registrar General under section 12E of the Real Property Act 1900
- Crown Land Management Act 2016
- Protection of the Environment Operations Act 1997
- Biodiversity Conservation Act 2016
- Water Management Act 2000
- Fisheries Management Act 1994
- Mining Act 1992
- Mental Health Act 2007.

Background

The NSW Government implemented a number of changes to legislation and regulations in response to COVID-19. These had the various objectives of:

- better enabling businesses and employees to respond to the economic changes occurring as a result of COVID-19
- reducing pressure on public health systems that might need capacity to focus on COVID-19
- allowing for interactions consistent with social distancing, instead of in-person interactions.

While some of the measures introduced were only relevant to the COVID-19 pandemic circumstances, others could have longer term benefits, suggesting that they should be evaluated to assess if there is merit in making them permanent. The NSW Productivity Commission 2020 Green Paper, and subsequent 2021 White Paper, recommended that

these changes be evaluated, and retained permanently unless it is shown they do not deliver a net benefit.

This BRS considers several specific changes made that allowed greater use of digital technology in various regulatory processes. These are described in table 1.1. The purpose of the BRS is to consider whether these should be continued permanently, continued in part or with adjustment or whether the regulatory arrangements should revert to those in place pre-COVID-19.

These changes were introduced via many different Acts and instruments. The *COVID-19 Recovery Act 2021*, and other changes to regulations and guidelines, extended the measures being evaluated.

1.1 Summary of temporary regulatory changes

Summary of temporary change	Relevant regulatory instrument	Scheduled expiry of temporary changes
All Incorporated Associations allowed to meet and vote using digital technology	Incorporated Associations Act 2009	31 March 2022
<p>Changes to the management of strata and community schemes as follows.</p> <ul style="list-style-type: none"> ▪ Meetings can be notified via email ▪ All strata and community schemes allowed to vote via: <ul style="list-style-type: none"> – Electronic means during a meeting; or – Pre-meeting electronic voting ▪ Documents can be signed by a specified person and witnessed via audio-visual link as an alternative to affixing the seal of the owners corporation or community association 	<ul style="list-style-type: none"> ▪ Strata Schemes Management Act 2015 and Strata Schemes Management Regulation 2016 ▪ Community Lands Management Act 1989 and Community Lands Management Regulation 2018 	<ul style="list-style-type: none"> ▪ Regulations currently expire on 20 January 2022 ▪ Regulation making power under the Act expires 31 March 2022
Some conveyancing documents can be signed electronically and witnessed via audio-visual link	Conveyancing Rules	31 December 2021
Regulators allowed to conduct interviews via audio-visual link	<ul style="list-style-type: none"> ▪ Crown Land Management Act 2016 ▪ Protection of the Environment Operations Act 1997 ▪ Biodiversity Conservation Act 2016 ▪ Water Management Act 2000 ▪ Mining Act 1992 ▪ Fisheries Management Act 1994 	31 March 2022
All assessments/examinations to determine whether a patient should be detained in a mental health facility can be conducted via audio-visual link.	Mental Health Act 2007	31 March 2022

Source: NSW Government.

The government is also evaluating the continuation of other changes made in response to COVID-19, and this report forms part of a broader suite of analysis. For example, evaluations are being conducted about continuation of changes to allow greater employment flexibility, digital justice reforms relating to use of pre-recorded evidence in criminal proceedings, and increased flexibility for licensed venues to provide takeaway and home delivery of alcohol.

Better Regulation requirements in NSW

The Better Regulation requirements provide a formal framework to help policy-makers think through the impacts of regulatory proposals in a disciplined and comprehensive way. This helps to ensure that policy decisions are based on best practice regulatory principles (see box 1.2) and the best available evidence, which may result in better policy outcomes for the community. The document itself which is produced as a result of this framework is a BRS. The *Guide to Better Regulation*¹ provides details on how to apply the Better Regulation principles.

1.2 Better Regulation Principles

- **Principle 1:** The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.
- **Principle 2:** The objective of government action should be clear.
- **Principle 3:** The impact of government action should be properly understood by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.
- **Principle 4:** Government action should be effective and proportional.
- **Principle 5:** Consultation with business and the community should inform regulatory development.
- **Principle 6:** The simplification, repeal, reform or consolidation of existing regulation should be considered.
- **Principle 7:** Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

Scope

A key element of the regulatory impact assessment process is consideration of a range of options (see principle 3). However, to a significant extent the nature of this assessment (i.e. considering whether temporary changes that have already been made should be made permanent) limits the range of options that can be considered.

¹ NSW Government, *NSW Guide to Better Regulation*, January 2019, p. 5, <https://www.treasury.nsw.gov.au/sites/default/files/2019-01/TPP19-01%20-%20Guide%20to%20Better%20Regulation.pdf>

In this regard, consideration of minor variations from the temporary changes under review are considered within the scope of this analysis. This would include variations that could affect the uptake of digital options, such as:

- removing any additional regulatory barriers that have prevented greater use of digital technology in regulatory processes; or
- including some additional safeguards around the use of digital technology that may help to mitigate any risks/costs associated with greater use of digital technology.

However, broader regulatory options that could potentially improve the operation of the various regulatory framework are outside the scope of this report.

Structure of the report

The remainder of the report is structured as follows.

- Chapter 2 provides some context on the use of digital technology among members of the community, including some recent trends as a result of the COVID-19 pandemic, some of which may persist beyond the pandemic
- Subsequent chapters are structured around following the BRS process (i.e. sets out the case for government action and the overarching objectives of the Act, considers what alternative options are available in addition to making permanent the Emergency Measures, and assess the impacts of each option) for each set of reforms.
 - Chapter 3 examines changes that allow all incorporated associations to meet and vote using digital technology
 - Chapter 4 examines changes to the management of strata and community schemes that allow
 - ... meetings to be notified via email
 - ... all strata and community schemes allowed to vote via: electronic means during a meeting; or pre-meeting electronic voting
 - ... alternatives to affixing the seal of the owners corporation.
 - Chapter 5 examines changes that allowed some conveyancing documents to be signed electronically and witnessed via audio-visual link
 - Chapter 6 examines changes that allows environmental and natural resource regulators to conduct interviews via audio-visual link when investigating breaches of the legislation
 - Chapter 7 examines changes that allowed all assessments/examinations to determine whether a patient should be detained in a mental health facility to be conducted via audio-visual link.

2 *Digital trends*

Key points

A move toward greater use of digital technology in regulatory processes raises questions around accessibility for some members of the community. To provide some context to the consideration of whether the temporary COVID-19-related measures should be retained permanently, this chapter considers recent trends in the use of digital technology by households. Key points are as follows.

- **Most Australians – including Australians over the age of 55 – have access to the internet at home. This suggests that accessibility of digital processes for households is of limited concern.**
 - A recent survey found that around 95 per cent of Australian households have access to the internet at home.
 - A large gap in access to the internet at home between people aged 18-55 years and people aged 55+ years had been gradually closing prior to the COVID-19 pandemic.
 - A significant increase in internet access for the 55+ cohort in response to the COVID-19 pandemic has largely closed this gap.
- **There has also been a recent trend towards working from home. Although this is clearly linked to the COVID-19 pandemic, this trend is expected to persist, even if COVID-19-related concerns subside as vaccination rates increase. Reverting to pre-COVID-19 restrictions on the use of digital technology in regulatory processes has the potential to either:**
 - limit the ability of people to work from home as much as they would prefer; or
 - delay paper-based processes.

Uptake of digital technologies

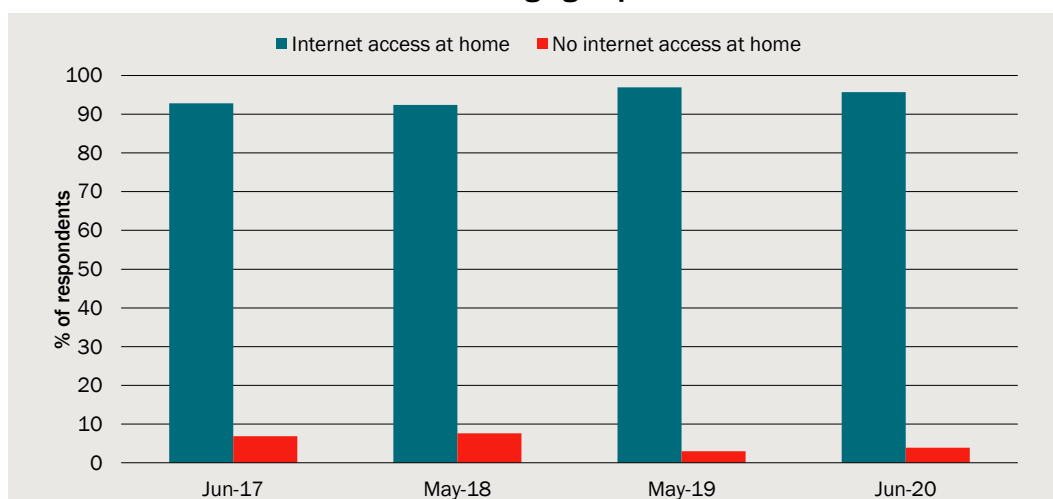
The use of internet for business and personal activities has been steadily increasing as it reaches a high level of saturation within Australia. While younger generations are considered digital natives, there is a concern that older generations may be excluded from certain essential activities when delivered via a digital format in place of legacy methods such as by phone, fax or mail. Pre COVID-19, internet usage for the over 55 cohort was significantly lower than younger cohorts, however this gap has significantly reduced as society transitioned towards digital processes due to the restrictions brought on by COVID-19.

To show Australia's recent engagement with the internet, we rely upon the report *Communications and media in Australia: how we use the internet*² by the Australian Communications and Media Authority and the Social Research Centre. This survey was conducted using their probability-based panel, Life in Australia³. 2,009 surveys were completed from 9–21 June 2020, representative of the Australian population aged 18 years and over.

Internet access at home

The internet has reached a high level of saturation such that 95 per cent of all respondents to the survey in 2020 had access at home. The younger cohort aged between 18-55 has slightly higher access than the average, with approximately 96 per cent of homes with access (see chart 2.1). The proportion of 18-55 year-olds with internet access at home has remained relatively flat over the past 3 years, suggesting that it has reached saturation point.

2.1 Internet access at home for 18-55 age group



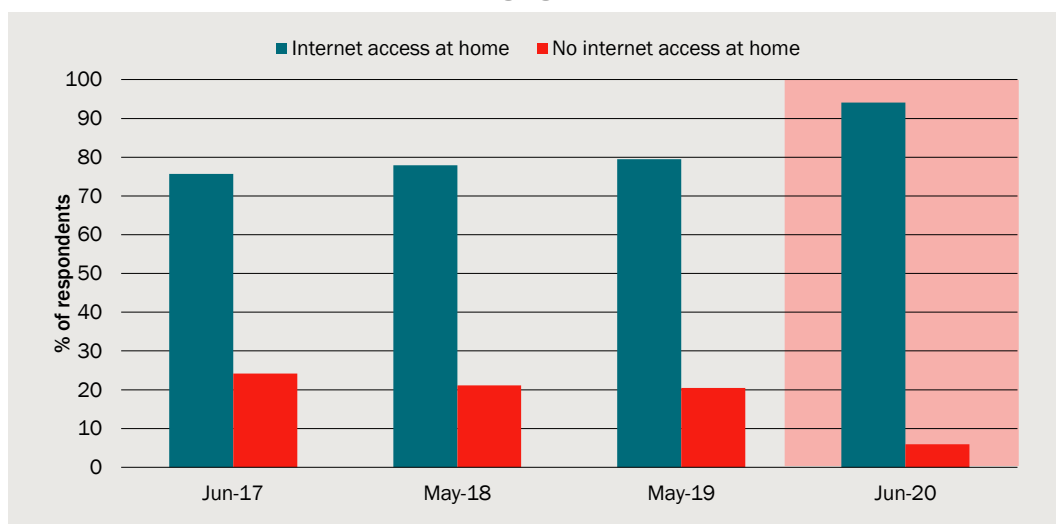
Data source: The CIE, ACMA.

For the 55+ cohort, internet access at home had been gradually increasing prior to the COVID-19 pandemic. However, the 2020 survey saw a significant increase in access, likely as a result of COVID-19 (chart 2.2). The gap between the two cohorts has significantly reduced, with the proportion of the older cohort without internet access in 2020 lower than the 18-55 age cohort in 2017 and 2018.

² ACMA 2021, *Communications and media in Australia: How we use the internet*, <https://www.acma.gov.au/publications/2021-05/report/communications-and-media-australia-how-we-use-internet>, accessed 28 June 2021

³ See survey methodology here: <https://www.acma.gov.au/publications/2021-05/report/how-we-use-internet-methodology>

2.2 Internet access at home for 55+ age group

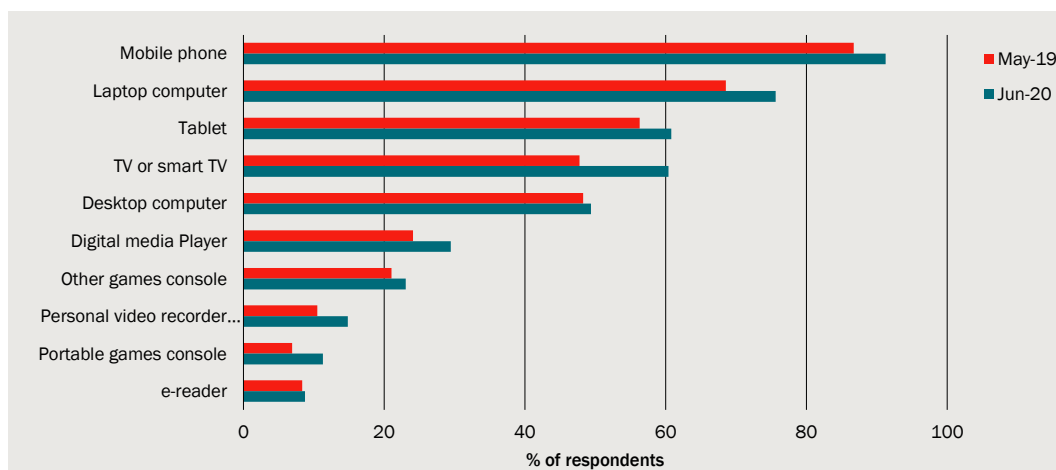


Data source: The CIE, ACMA.

Share of households using various technologies

According to the survey, 99 per cent of Australians accessed the internet in the first 6 months of 2020, which was up from 90 per cent in 2019. Australians used a broad range of devices to access the internet, see chart 2.3. Mobile phones and laptop computers were the dominant devices, which both experienced significant increases in 2020. These devices, along with tablets and desktop computers would be most likely used for organising business and personal activities, such as electronic voting.

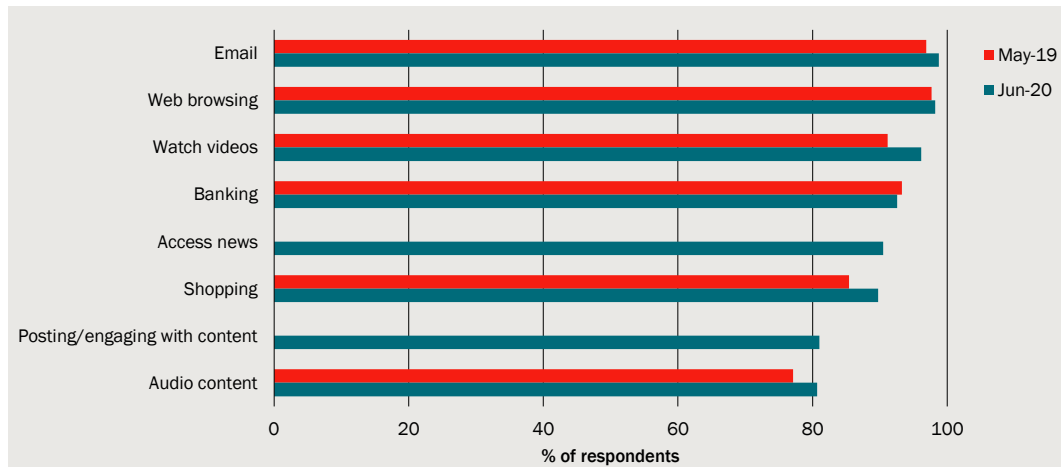
2.3 Devices used to access the internet



Data source: The CIE, ACMA.

Australians use the internet for a broad range of business, personal, entertainment and social activities. The 18-54 cohort were using the internet to undertake activities at a high rate prior to COVID-19 (chart 2.4). There was a slight increase in usage post-COVID-19, however most of the key activities have reached a point of saturation where further growth will be limited.

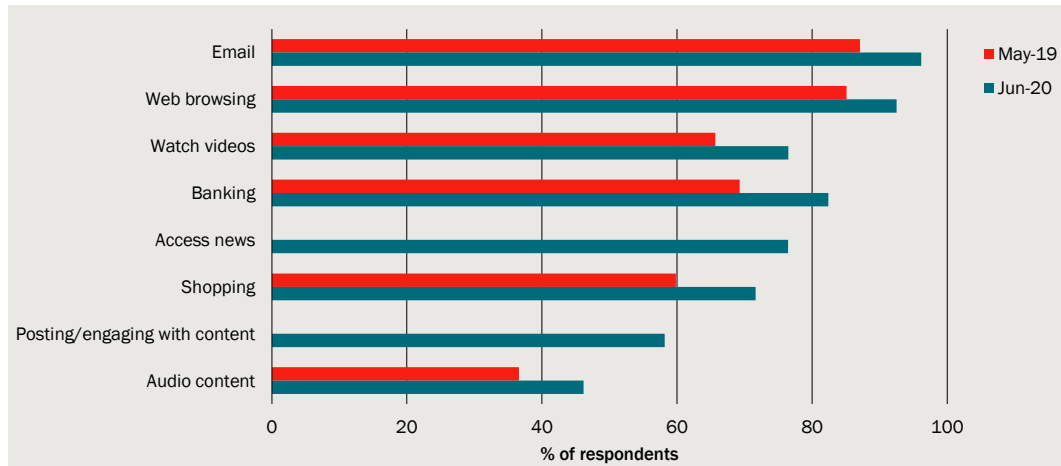
2.4 Activities performed online in the past 6 months for 18–54 age group



Data source: The CIE, ACMA.

The older cohort comparatively used the internet less across all activity categories prior to COVID-19 (chart 2.5). However, there was significant growth across all categories during the COVID-19 period. In particular, the use of email in 2020 reached similar levels to the younger cohort in 2019. The survey also revealed that the older cohort undertook more telehealth, legal, financial or other professional consultations compared to those aged 18-54.

2.5 Activities performed online in the past 6 months for 55+ age group



Data source: The CIE, ACMA.

Working from home

Working from home has persisted from the first lockdown in March 2020 and expectations are that it will continue to a significant extent as agreements are formalised and expectations are set, according to the February 2021 release of the ABS Household

Impacts of COVID-19 Survey⁴. People with a job were more likely to work from home one or more times a week in February 2021 (41 per cent) — a period with fewer COVID-19-related restrictions — than before COVID-19 restrictions began in March 2020 (24 per cent).

Working from home arrangements

Workplaces are now undertaking formal agreements to allow working from home. For Australians 18 years and over with a job in February 2021, 44 per cent had an agreement with their employer to work flexible hours, with 15 per cent having their agreement in writing. Over the following six months:

- 47 per cent of employed Australians expected the amount of work from home to remain the same
- 11 per cent expected a decrease in work from home
- 8 per cent expected an increase in work from home.

Working from home preferences

Working from home has become regular practice and as such preferences for the long-term arrangements have been revealed. When asked about preferences for working from home:

- 42 per cent of employed Australians wanted the amount of work from home to stay the same
- 14 per cent wanted the amount of work from home to increase
- 8 per cent wanted the amount of work from home to decrease
- 9 per cent would prefer to not work from home
- 26 per cent had jobs that could not be done from home.

Working from home pre-COVID-19 vs expectations

Business Indicators, Business Impacts of COVID-19.⁵ The collection was conducted through a telephone survey between 10 September and 16 September 2020. The sample size was 2,000 businesses and the final response rate was 64 per cent (1,279 responding businesses).

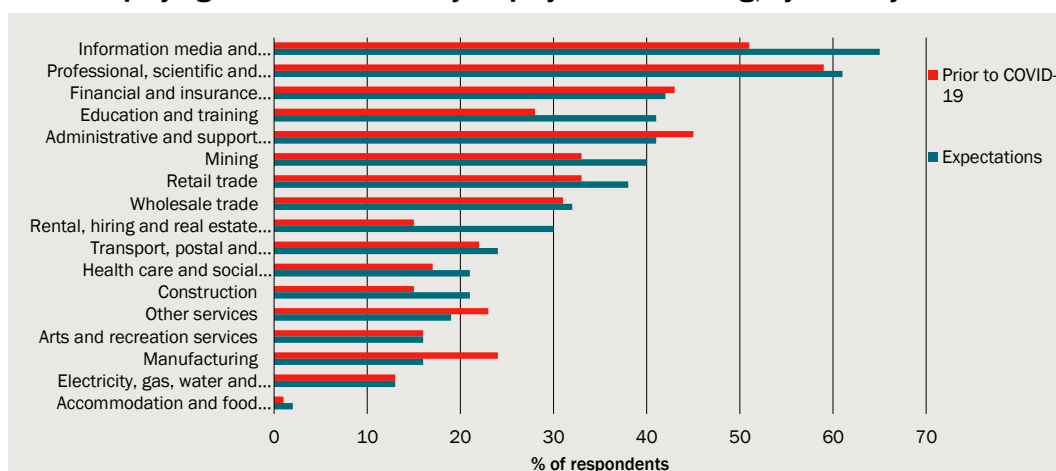
Once COVID-19 restrictions are lifted and conditions stabilise, employing businesses from the following three industries are most likely to report they expect some of their employees to be working remotely:

⁴ ABS (2021), Household Impacts of COVID-19 Survey, <https://www.abs.gov.au/statistics/people/people-and-communities/household-impacts-covid-19-survey/feb-2021>

⁵ ABS (2020), Business Indicators: Business Impacts of COVID-19, <https://www.abs.gov.au/statistics/economy/business-indicators/business-conditions-and-sentiments/sep-2020#teleworking-and-expected-changes-to-working-hours>

- Information, media and telecommunications (65 per cent);
- Professional, scientific and technical services (61 per cent); and
- Financial and insurance services (42 per cent).

2.6 Employing businesses with any employees teleworking, by industry



Note: Survey date September 2020

Data source: ABS Business Indicators, Business Impacts of COVID-19 methodology, September 2020, The CIE.

Relevance for digital processes

The trend towards working from home strengthens the case for greater digitisation of business processes.

- In-person or paper-based processes could limit the ability of people to work from home as much as they would prefer.
- Alternatively, the trend towards ‘working from home’ has the potential to increase delays for paper-based processes.
 - The inverse of the trend towards working from home is that people will be working from the office less. This could mean it is more likely that paper-based processes experience greater delays.
 - Some processes may require two members of staff to be present in the office at the same time, such as where specific staff members are delegated the responsibility for signing and witnessing documents. Working from home arrangements will reduce the number of days the relevant officers will be present in the office together to sign and witness documents. For example, two people that work 3 days per week in the office (and 2 days from home) would have (assuming random selection of days): a 60 per cent probability of being in the office together 1 days per week; a 30 per cent probability of being in the office together 2 days per week; and a 10 per cent probability of being in the office together 3 days per week.

3 *Meeting and voting via audio-visual link for incorporated associations*

Background

Under pre-COVID-19 arrangements associations incorporated under the *Associated Incorporations Act 2009* (the Act) were able to meet via AVL (or other technology) and vote via postal or electronic ballot only if allowed to do so by the association's constitution.

As a result, COVID-19-related restrictions that prevented face-to-face meetings that have been in place at various times during the pandemic, have meant some incorporated associations have been effectively unable to operate. Furthermore, these associations would have been unable to conduct a meeting or to vote on a special resolution to change the constitution to enable meetings to occur via AVL and voting via electronic or postal ballots.

In response, the NSW Government temporarily inserted a new provision into the Act (Schedule 4, Part 6) which:

- allows committee meetings and general meetings to be held at 2 or more venues using any technology that gives each of the committee members a reasonable opportunity to participate, even if the association's constitution does not provide for the committee meeting or general meeting to be held in that way
- allows postal or electronic ballots to be conducted in relation to an ordinary resolution or a special resolution even if the association's constitution does not permit the ordinary or special resolution to be voted on in that way (so long as the postal or electronic ballot is conducted in accordance with the regulation).

These temporary arrangements were initially due to expire on 31 March 2021, but were subsequently extended by 12 months. They are now due to expire 31 March 2022.

Need for government action

There were 36 991 associations incorporated under the *Associations Incorporation Act 2009* as at April 2021. The requirement for an association's constitution to explicitly allow meetings to occur via AVL (or other technology) and voting on resolutions to occur via postal or electronic ballot is potentially a barrier to uptake of convenient and efficient technologies that have become routine for many during the pandemic.

When the temporary arrangements expire:

- Some associations will incur a cost in changing their constitution to allow them to continue to meet via AVL (or other technology) and vote on resolutions via electronic or postal ballot.
- Other associations will lose the option of meeting via AVL (or other technology) and voting on resolutions via electronic or postal ballot.

Options

Objectives

The *Associations Incorporation Act 2009*:

- establishes a scheme for the registration of associations that are constituted for the purpose of engaging in small-scale, non-profit and non-commercial activities
- sets out the corporate governance and financial accountability of registered associations.

Options

The NSW Government is now considering permanently changing the legislation to permit all associations to meet via AVL and vote on any issue via electronic or postal ballots.

Some stakeholders were concerned about a legislative change creating inconsistencies between the legislation and the constitution of some associations. An alternative approach was suggested whereby the temporary arrangements are extended to allow for an extensive education campaign to encourage associations to amend their constitution voluntarily. This is considered as an alternative option.

In summary the options considered are as follows.

- **Option 1** — this option involves allowing the temporary arrangements to expire and reverting to pre-COVID-19 arrangements where incorporated associations are permitted to meet via AVL and vote via electronic or postal ballots only where this is explicitly permitted by the association's constitution. This option is used as the base case against which the impacts of the other options are assessed.
- **Option 2** — this option involves making the temporary COVID-19-related changes permanent.
- **Option 3** — this involves extending the temporary changes for an extra year and an information campaign to encourage associations to amend their constitution voluntarily.

Impacts of proposed changes

Cost-benefit analysis (CBA) involves assessing the impacts of the above proposal against a clearly defined base case. In this case, the base case used is no further action by the

Government. No further action from the NSW Government would mean that the temporary arrangements would expire on 31 March 2022 and revert to the pre-COVID-19 arrangements.

The proposed changes would have no impact on associations that under their constitution, are already permitted to: hold committee and general meetings via AVL; and can vote on all matters via postal or electronic ballot. The impact on the remaining associations will depend on how they respond to the expiry of the temporary arrangements.

- For those associations that would respond to the expiry of the temporary arrangements by changing their constitution, the impacts of each option would be as follows.
 - Option 2 would allow these associations to avoid the costs associated with changing the constitution. This would provide a one-off benefit.
 - Option 3 would have no impact on these associations.
- For those associations that would choose not to change their constitution (or would be unable to do so) under the base, the impact of the proposed options would be as follows.
 - Option 2 would give these associations the flexibility to hold committee and general meetings via AVL and vote on all matters via postal or electronic ballot.
 - Under Option 3, the Government would incur some cost from an information campaign and some proportion of these associations would choose to change the constitution. These associations would:
 - ... Incur a cost associated with changing the constitution
 - ... Receive a benefit of additional flexibility of being able to hold some meetings via AVL.

In net present value terms over 10 years using a discount rate of 7 per cent, we estimate that (table 3.1):

- Option 2 could deliver benefits of \$236.1 million to \$260.9 million, with most of the benefits relating to more associations being able to hold general meetings via AVL
- Option 3 would also deliver a net benefit, albeit a significantly smaller one at between \$54.4 million to \$56.4 million.

3.1 Estimated net benefits from proposed options

	Option 2	Option 3
	\$ million	\$ million
Avoided cost of changing constitution ^a	7.7– 32.5	-0.6– - 2.7
Avoided costs of attending committee meetings in person	21.5	5.4
Avoided cost of attending general meetings in person	206.8	51.7
Total	236.1–260.9	54.4 – 56.4

a Given the high level of uncertainty around the cost of changing the constitution, a range is given based on the alternative estimates shown in table 3.7 below.

Note: Benefits estimated over 10 year, using a discount rate of 7 per cent.

Source: CIE estimates.

These estimates draw on a survey open to members of associations (see box 3.2 for details).

3.2 Survey of incorporated associations

To gather relevant information to prepare a cost-benefit analysis of the proposed reforms, the CIE prepared an online survey open to members of associations incorporated in NSW.

The survey link was distributed in July 2021:

- via the NSW Fair Trading twitter account
- via the *Not-for-profit* monthly newsletter by Justice Connect.

We received only 16 responses and not all respondents answered all questions. Given the small sample size and the fact that self-selecting surveys are not necessarily representative of all associations, some caution needs to be exercised over the reliability of the results.

One reason for the limited responses to the survey may be that the temporary arrangements would be considered relatively uncontroversial. This is because they do not significantly impact associations but rather add an additional option to increase ease of use for certain processes. The responses during consultation confirmed this, as the sentiment was shared that the changes were positively received and did not pose any serious risks.

Number of associations affected

Under pre-COVID-19 regulatory arrangements:

- committee and general meetings could be conducted via AVL (or other technology), so long as:
 - it provides members a reasonable opportunity to participate; and
 - it is permitted in the association's constitution
- voting on ordinary and special resolutions can be conducted via postal or electronic ballots if the resolution is of a kind specified in the association's constitution.

As stated above, there are 36 991 associations incorporated under the associations Incorporation Act 2009 as at April 2021. However, the number that are not permitted by their constitution to meet via AVL (or other technology) and vote via postal or electronic ballot is not known.

The Act specifies the matters that must be included in the constitution and a model constitution is prescribed in the regulations. Since 26 August 2016 (when the current regulations came into effect), the model constitution has allowed:

- committee and general meetings to be conducted by AVL

- postal or electronic ballots (as the committee determines) can be held to determine any issue or proposal (other than an appeal against a committee decision to discipline a member).

The model constitution set out in the previous regulations (Associations Incorporation Regulation 2010) allowed postal ballots on any issue, but did not explicitly allow: committee and general meetings to be conducted by AVL; or electronic ballots. However, any changes made to the model constitution automatically apply to all associations that have adopted the model constitution (without modification).

- Where an association's constitution is silent on some specified matters, the relevant provisions of the model constitution apply.
 - If an association's constitution does not specify the kinds of resolutions that may be voted on by means of a postal or electronic ballot, the model constitution would apply (i.e. all matters can be resolved through postal or electronic voting).
 - The use of technology for meetings is not specified as a matter that must be addressed in a constitution. As such, if not specified in the constitution, the model constitution would not apply.

Table 3.3 summarises whether the use of digital technology for meeting and voting (as well as postal ballots) are permitted under various scenarios relating to the model constitution. The constitution of other associations may directly address these matters without reference to the model constitution.

3.3 Permitted use of technology under various scenarios

	Committee meetings via AVL	General meetings via AVL	Voting via postal ballot	Voting via electronic ballot
Adopted previous (2010-2016) model constitution without modification	Yes	Yes	Yes	Yes
Adopted relevant elements of previous model constitution (but not the full model constitution without modification)	No	No	Yes	No
Adopted current (2016-) model constitution without modification	Yes	Yes	Yes	Yes
Adopted relevant elements of current model constitution	Yes	Yes	Yes	Yes
Constitution does not specify	No	No	Yes	Yes

Source: The CIE.

The Register of Incorporated Associations has only been able to record whether an association adopts the model constitution since September 2012 and records 8214

associations as having adopted the model constitution (around 22 per cent of all associations).

Of the remaining 28 777 associations, the Register does not note what type of constitution is adopted or alternatively indicates they have adopted their own constitution. This means that the details of the provisions relating to these matters cannot be ascertained by a search of the Register and would require accessing and reviewing the individual constitutions for each association.

- **For the purposes of the CBA, we assume that the proposed change would affect around half of associations incorporated in NSW.**
- **This implies that the other half of associations are unaffected as they are already permitted by their constitution to:**
 - **meet via AVL**
 - **vote on all issues via postal or electronic ballots.**

This estimate is based on the limited evidence set out below.

Evidence from stakeholders

Justice Connect reported that 23 associations participated in their 2021 NSW Governance Health Check Program. Of these associations, close to half were permitted by their constitution to hold committee and general meetings via AVL (table 3.4), although it is not clear whether this sample is representative.

3.4 Associations permitted to meet via AVL – Justice Connect sample

	Number of organisations	
	No.	Share of total Per cent
Constitution permits both committee and general meetings via AVL	10	43.5
Constitution silent on permitting committee and general meetings via AVL	10	43.5
Constitution permits committee meetings, but not general meetings via AVL	2	8.7
Constitution permits general meetings, but not committee meetings via AVL	1	4.3
Total	23	100.0

Source: Justice Connect.

Evidence from survey

The small number of responses to our survey were also broadly consistent with the sample of participants in the Justice Connect program, suggesting that approximately half are permitted by their constitution to meet via AVL (table 3.5).

3.5 Association's meeting and voting via AVL

Constitution allows:	Yes	No	Share allowed
	No.	No.	Per cent
Committee meetings via AVL	4	4	50.0
General meetings via AVL	3	4	42.9
Voting via postal ballot	5	3	62.5
Voting via electronic ballot	3	4	42.9

Source: CIE survey.

Avoided costs of changing the constitution

As discussed above, under the base case scenario (where the temporary arrangements are allowed to expire), some associations could choose to change the constitution to allow them to continue to meet via AVL and/or vote via postal or electronic ballot.

For these associations, the benefit of the proposed change (Option 2) is the avoided costs associated with changing the constitution. That said, some associations could potentially choose to change the constitution anyway to ensure consistency between the legislation and the constitution.

Number of associations likely to change constitution

There were limited survey responses on whether associations were likely to change their constitution if the temporary arrangements were allowed to expire. In general, most of the few survey responses received indicated it was either likely or highly likely to change the constitution (table 3.6). However, this is relatively weak evidence, given the small sample size and it is not clear that the sample is representative of all associations that would be affected by the proposed changes.

3.6 Survey responses – likelihood of changing constitution

	Not relevant (already permitted by constitution)	Highly unlikely to change constitution	Unlikely to change constitution	Likely to change constitution	Highly likely to change constitution	Share highly likely or likely ^a
	No.	No.	No.	No.	No.	Per cent
Committee meetings	2	0	0	2	2	100
General meetings	2	1	0	1	2	75
Voting via postal ballot	3	0	1	2	0	67
Voting via electronic ballot	2	0	1	1	2	75

^a The share of those that are currently not permitted under their constitution (i.e. excludes those associations where the relevant activity is already permitted under their current constitution).

Source: CIE survey.

- **Despite the above caveats, we assume that 75 per cent of associations affected by the proposal (i.e. those that do not already allow meeting via AVL and voting via**

postal and electronic ballots on all issues) would choose to change their constitution if the temporary arrangements were allowed to expire.

- This equates to 37.5 per cent of all associations, around 13 872 associations (based on a total of 36 991 associations in total).

Unit cost of changing the constitution

Changing the constitution of an association involves passing a special resolution at a general meeting. In general, would involve the following steps:

- preparing proposed change to constitution
- preparing special resolution
- notifying members of general meeting
- conducting vote
- registering the changes to the constitution with NSW Fair Trading within 28 days of the special resolution being passed — this involves preparing an application that must:
 - be made on a specified form (A6)⁶
 - include details of the proposed change
 - include a copy of the special resolution as passed
 - include a payment of the prescribed fee (currently \$53).⁷

The costs incurred by committee members to change the constitution are estimated as follows (see table 3.7).

- Where the time spent by committee members is based on the average across survey responses, the cost of changing the constitution is estimated at around \$2345 based on 64 hours across committee members (where committee members time valued at \$36 per hour based on the median hourly wage rate) plus the administration fee to lodge the change.⁸ This is used as a high estimate.
 - The survey responses suggest that most of this time would be spent: preparing proposed changes to the constitution (43 hours); and preparing the special resolution (13 hours). However, these estimates from the survey are based on only 3 responses and seem implausibly high.
 - Qualitative evidence from a stakeholder suggested this would be a relatively uncontroversial change and the relevant provisions in the model constitution could be used as a template. Furthermore, the strata survey (based on significantly more responses — see chapter 4) suggested that preparing a resolution would take 3 hours (although these processes are not necessarily comparable).

⁶ See: https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0004/903163/Form-A6-Application-to-register-change-of-objects-or-constitution.pdf, accessed 11 May 2021.

⁷ See: https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0004/903163/Form-A6-Application-to-register-change-of-objects-or-constitution.pdf, accessed 11 May 2021.

⁸ ABS website, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>, accessed 6 August 2021.

- It is possible that some survey respondents may have based their response on previous changes to the constitution that may have been more controversial and involved significant debate among committee members and multiple drafts before the proposed change was put to members.
- Adjusting the time spent on the steps that seem implausibly high to 3 hours gives a more conservative (and possibly more realistic) estimate of the cost of changing the constitution of around \$557.

3.7 Estimated cost of changing an association's constitution

	Estimate based on survey results		Conservative estimate	
	Hours	Cost	Hours	Cost
	No.	\$	No.	\$
Preparing proposed change to constitution	43	1 536	3	108
Preparing special resolution	13	468	3	108
Notifying members of general meeting	2	72	2	72
Conducting vote	1	36	1	36
Preparing and sending form to notify NSW Fair Trading of change to constitution	1	36	1	36
Other	4	144	4	144
Total time	64	2 292	16	504
Fee		53		53
Total		2 345		557

^a Committee members time is valued at \$36 per hour based on the median wage rate as at August 2020.

Source: ABS website, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>, accessed 6 August 2021; NSW Fair Trading website, <https://www.fairtrading.nsw.gov.au/help-centre/fees/association-fees>, accessed 11 August 2021; CIE Survey.

Time and cost savings for meetings held via AVL

The evidence presented above suggest that under the base case scenario, around 12.5 per cent of associations are unlikely to change the constitution to allow meetings to be held via AVL and voting via postal or electronic ballots. This equates to around 4624 associations.

For these associations, the potential benefits of the proposed reform is to provide the option to meet via AVL and/or vote via postal or electronic ballots should they choose to. It is reasonable to infer that associations that choose not to change the constitution (or have not already done so) would not have a strong preference for meeting via AVL or voting via postal or electronic ballots. Nevertheless, they may on occasions choose to use the option of meeting via AVL and/or voting via postal or electronic ballots.

Additional committee meetings held via AVL

The number of additional meetings held via AVL is estimated as follows.

- Each affected association (i.e. those that would be unlikely to change the constitution to allow AVL meetings under the base case) would hold 1.6 committee meetings via AVL per year based on:
 - An average of 9.6 committee meetings per year — this is based on the average across all survey responses)
 - An estimated 17 per cent of committee meetings to be held via AVL — this is based on the average of the small subset of responses from respondents that indicated their association was unlikely to change the constitution to allow meeting via AVL. As discussed above, associations that would choose not to change their constitution to allow meeting via AVL are unlikely to have a strong preference for AVL meetings.
- Each affected association would hold 2.1 general meetings via AVL per year based on:
 - An average of 2.6 general meetings per year (including the Annual General Meeting) — this is based on the average across all survey responses.
 - An estimated 80 per cent of general meetings would be held via AVL — this is based on the average across survey responses.

Number of attendees

The number of attendees at each meeting is estimated as follows.

- Each committee meeting would be attended by 6.9 committee members — this is based on the average number of committee members across the survey sample (note that this assumes that all committee members attend all meetings, so may overstate)
- Each general meeting would be attended by around 56.1 members based on:
 - An average of 62.3 members per association based on the average across survey respondents. This potentially overstates the average of affected associations (i.e. those that would choose not to change the constitution under the base case). It is possible that smaller associations may be less inclined towards meeting via AVL.
 - ... An average attendance at Annual General Meetings of 90 per cent — although all of the 4 non-committee members that responded to the survey indicated they would be either likely or highly likely to attend a general meeting, we estimate around 90 per cent of members would attend. The survey sample may be skewed towards members that are more engaged in the management of the association.
 - ... An average attendance at other general meetings of 50 per cent — this is based on survey responses from non-committee members.

Cost savings from attending meetings via AVL

Based on survey responses, we estimate that the cost savings for each meeting held via AVL (relative to an in-person meeting) would be around \$56 for each attendee (table 3.8). This is based on:

- a time saving⁹ of 85 minutes (based on survey responses) valued at the median hourly wage of \$36 per hour¹⁰
- other cost savings (including transport costs etc.) of around \$5 per meeting (based on survey responses).

3.8 Cost savings per meeting attended via AVL

	Minutes per attendee	Cost per attendee
	No.	\$
Time costs	85	51
Other costs		5
Total		56

Source: ABS website, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>, accessed 6 August 2021; CIE Survey.

Impact of information campaign

Under Option 1, these benefits could potentially apply to all associations that would not choose to change the constitution under the base case. However, the benefits (and costs) of Option 2 would depend on how effective an information campaign to encourage associations to change their constitution.

- **It is not known how effective such as campaign would be. However, for the purposes of the CBA we estimate the indicative costs and benefits under a scenario where the information campaign was effective in encouraging 25 per cent of Incorporate associations to change their constitution.**
- **This implies 1156 associations would be encouraged to change their constitution (that would not have otherwise done so).**

These associations would:

- benefit from the flexibility of holding some meetings via AVL (as per the assumptions set out above)
- incur a cost of between \$557 and \$2345 associated with changing their constitution (see table 3.7 above).

Potential costs

The main concern raised by stakeholder relates to the potential for confusion where the legislation is not consistent with the association's constitution. Several stakeholders referred to the importance of an association's constitution in sound governance practices. association members seeking advice from regulators or others are often referred to their own constitution as the single source of truth on governance matters.

⁹ A significant portion of this time saving would relate to travel time

¹⁰ ABS website, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>, accessed 6 August 2021.

That said, this issue could be managed through clearly communicating the change (and what it means for associations) via NSW Fair Trading's website and other communication channels. We would not therefore expect these costs to be significant.

In general, there were no other governance-related concerns about making the temporary arrangements permanent.

Under Option 2, the NSW Government would also incur some costs associated with an information campaign (possibly a maximum in the tens of thousands of dollars).

However, these costs would be expected to be relatively modest in comparison to other costs and benefits and have not been included in the CBA.

Stakeholder consultation

Stakeholder consultation was undertaken through written submissions responding to the issues paper and one-on-one consultations, summarised below.

Targeted consultation

The stakeholder consultation process included the following activities.

- An Issues Paper was prepared and targeted stakeholders (see below) were invited to attend online forums at the following times:
 - 2-3 pm on 2 June 2021
 - 10-11 am on 3 June 2021.
- Stakeholders were also invited to provide written submissions.

The invitation list was compiled by the lead agency and included representatives from the following organisations:

- Associations Forum
- Justice Connect
- Council of Social Services NSW (NCOSS)
- ProBono Australia
- Australian Council for International Development (ACFID)
- Law Society of NSW
- CPA Australia
- Financial Rights Legal Centre
- Association Management Institute
- NSW Business Chamber
- Governance Institute of Australia
- Public Fundraising Regulatory Association
- Community Industry Group
- Australian Institute of Company Directors (AICD)
- Australian Charities and Not-for-profits Commission (ACNC)

Engagement was received via online discussions and written submissions from various groups. Their feedback has been incorporated into the BRS with the survey responses.

- Separate discussions were held with:
 - Australian Charities and Not-for-profits Commission (ACNC) 11 June 2021
 - Justice Connect on 18 June 2021.
- Written submissions were also received from:
 - CPA Australia
 - The Governance Institute
 - Australian Charities and Not-for-profits Commission (ACNC).

Themes from stakeholder feedback

Key themes from stakeholder feedback were as follows.

- In general, stakeholders supported allowing greater use of digital technology in the management of associations.
- As noted above, the main concern related to the potential for inconsistencies between the legislation and an association's constitution.
- There were no other concerns that the proposed changes would reduce the quality of governance of incorporated associations.

Preferred option

A permanent change to the legislation to allow all associations to meet via AVL and vote via postal or electronic ballots (i.e. Option 1) could potentially deliver significant benefits, particularly time savings for attendees at general meetings and avoided costs from changing an association's constitution. This is therefore the preferred option. While there is some uncertainty about the magnitude of the benefits, due to limited evidence about the number of associations that would benefit, the potential costs are very low and the changes do not present any major risks if they were to be permanently adopted.

Stakeholders were broadly supportive of allowing greater use of technology in managing associations. However, some were concerned at the potential confusion that could arise as a result of conflicts between the legislation and some association's constitution.

Although this is an important issue, it could be managed through clear communication of the change and what it means for associations via the NSW Fair Trading website and other communication channels. Encouraging associations to change their constitution to maintain consistency with the legislation could also help to resolve any confusion, although this would reduce some of the estimated benefits.

4 *Flexibility for strata and community land schemes*

Background

There are various legal structures involving common property owned by multiple owners (see box 4.1). Legislation that sets out the arrangements for managing these schemes and resolving disputes includes:

- the *Strata Schemes Management Act 2015* (SSMA), which sets out arrangements for: the management of strata schemes and resolving of disputes arising from strata schemes.
- the *Community Land Management Act 1989*¹¹ (CLMA) sets out similar arrangements for: community associations, precinct associations and neighbourhood associations.

¹¹ The Community Land Management Act 2021 received assent in March 2021 and is proposed to commence by the end of 2021. That Act will replace the Community Land Management Act 1989 and will provide associations with the same arrangements for meetings and voting as strata schemes

4.1 Types of ownership structures

- A strata scheme is a building or group of buildings that has been divided into 'lots' which may be individual apartments, office, industrial, commercial or retail units, townhouses or houses.
 - When a person buys a lot, they also share ownership of common property with other lot owners. Lot owners are members of the owners corporation, which owns and manages the common property. An owners corporation is automatically created when a strata plan is registered.
 - A strata committee is formed when committee members and the nominated roles (chairperson, secretary and treasurer) are elected at an AGM to represent the owners corporation's interests. They carry out decisions made at committee meetings on behalf of the owners corporation. They are often the first contact point for owners with a strata-related matter they wish to discuss or a common property maintenance issue.
- Community schemes are an alternative type of ownership structure involving shared association property. A community association is created with the registration of a community plan (a type of deposited plan) typically by a developer. As the individual lots are sold or subdivided, the membership of the association builds. Within a community scheme can be precincts and neighbourhood schemes. Community and precinct schemes can also have strata schemes as subsidiaries within their boundaries.
 - A Precinct Scheme, like a Community Scheme, is necessary only where community lands are developed in stages and requires a multi-tiered management structure. It subdivides the community development lot (or lots) to create a precinct with other lots proposed for further development.
 - A Neighbourhood Scheme is the most widely used within this system and may be used in tiered, stand-alone and staged developments. It commonly consists of freestanding houses or terrace-style homes with the only shared property being a driveway.

Under the restrictions that were put in place in response to the COVID-19 pandemic, some of the bodies involved in the management of these schemes (including owners corporations, strata committees, community associations, precinct associations and neighbourhood associations)¹² may have been unable to function effectively.

The problems arising from the pre-COVID-19 legislation included:

- requirements for the use of physical documentation between parties when transferring documents or providing notice
- requirements for physical presence in meetings.

¹² In this chapter, community associations, precinct association and neighbourhood associations are referred to as associations.

To enable strata schemes and community schemes to function effectively under COVID-19-related restrictions, the NSW Government made some temporary changes to the regulatory arrangements for strata schemes and associations (see table 4.3).

4.2 Summary of temporary changes

Change	Description
Notice of meetings	Notice of, or any other document in relation to, a relevant strata meeting may be given to a person by email to an email address specified by the person for the service of documents.
Electronic voting	Alternative arrangements for voting permitted, even where an owners corporation has not adopted those means by resolution. This includes: <ul style="list-style-type: none"> ▪ voting by means of teleconference, video-conferencing, email or other electronic means while participating in a meeting from a remote location ▪ voting by means of email or other electronic means before the meeting at which the matter (not being an election) is to be determined by the corporation or committee (pre-meeting electronic voting).
Alternatives to affixing common seal	Documents can be signed and witnessed via audio visual link

Source: The CIE.

A temporary legislative change which enabled the making of these regulations has been extended until the end of March 2022. The regulations were subsequently extended to 20 January 2022.

- The alternative means of executing documents without affixing the seal has been extended for both owners corporations and associations, as well using email to give notice of meetings.
- The temporary arrangements for electronic voting by owners corporations were briefly allowed to lapse but have since been reinstated on 21 July 2021. Associations have been given temporary access to the same arrangements as owners corporations that will become permanent when the *Community Land Management Act 2021* commences.

The need for government action

Pre-COVID-19 regulatory arrangements for strata schemes and community land associations have limited the use of digital technology in the management of strata and community schemes in various ways.

- Pre-COVID-19 regulatory arrangements allow the use of digital technology for meetings and voting by strata schemes only if the scheme has explicitly voted to allow it. This requires a resolution be passed by the owners corporation which is by a simple majority of those present at the meeting.
- The secretary of the owners corporation or association (or a managing agent acting in that role) can notify members of a meeting via email only where an email address is entered on the strata or association roll¹³.

¹³ Under the CLMA 2021.

- For schemes that are not managed by a professional managing agent, two members of the owners corporation or association must be present to affix the common or association seal to a document.

Costs associated with limited use of digital technology

The consequences of limiting the use of digital technology for meeting and voting for strata and community land schemes include:

- higher time and travel costs than are necessary associated with attending meetings in-person;
- the need to attend meetings in-person (and the associated costs) could potentially discourage some owners from participating in the management of the scheme.

Additional costs

Higher than necessary costs associated with limitations on the use of digital technology include the following.

- The requirement to physically attend meetings means that some owners may be required to travel to attend a strata/executive committee meeting.
 - Where meetings are held on-site, time and other costs associated with travelling to the meeting may not be significant for owner-occupiers. However, in some cases, meetings may be held at other venues (such as the offices of the strata managing agent), which would require owner-occupiers to travel to attend a meeting.
 - Travel costs may be more significant for investors. Meetings are likely to be held at or near the relevant building. However, investors do not necessarily live near the building. As such, the cost associated with attending a meeting may be higher for investors, particularly those who live in a different city/town, state or country.
- In general, email is a convenient and low-cost approach to notifying scheme members of a meeting. However, where members of a scheme have not provided an email address on the strata or association roll, the secretary of the owners corporation or association (or a strata managing agent acting on its behalf) is required to notify members of the meeting via other means (such as by post or hand delivery). In these circumstances, the associated costs are higher.
- The need to have two members of the owners corporation or association present to affix the seal may be inconvenient and impose unnecessary costs, where at least one of the designated people must travel to a common location.

Reduced participation in the management of the scheme

Some stakeholders noted that well-informed and engaged members contribute to successful owners corporations and associations. However, previous research has identified a number of issues relating to a lack of participation in the management of strata schemes (although it should be noted that the research preceded the current Act). Community land schemes are likely to face similar issues.

- A lack of engagement and apathy of owners was identified as an issue that limited cooperation between owners in strata schemes.¹⁴
- A survey of executive committee (strata committee) members found that:
 - around 37 per cent of respondents had trouble recruiting people to sit on their executive committee
 - around 22 per cent of respondents indicated that the membership of their committee did not change often enough.¹⁵
- The research found that investors are less likely to get involved in the running of their schemes than owner-occupiers.¹⁶

Easthope et. al. (2012) found that some owners may be unable to exercise their right to have a say in their scheme. The reasons suggested included: some owners do not know their rights; some may feel they do not have time to get actively involved; they may have been bullied or intimidated by other owners and as a result feel unable to vote at all, vote in a particular way, and/or sit on the committee; they may not feel their vote or input will make a difference.¹⁷

Although not specifically identified as a separate reason, the need to travel to attend in-person meetings may contribute to a lack of involvement for some owners, particularly investors who are more likely to need to travel.

The case for reform

Although pre-COVID-19 regulatory arrangements allow the use of digital technology in the management of strata and community land schemes, there are nevertheless barriers to greater uptake. As such, there is potentially a case to remove some of the legislative barriers.

¹⁴ Easthope, H. Randolph, B. and Judd, S. *Governing the Compact City: The role and effectiveness of strata management*, Final Report, City Future Research Centre, Faculty of the Built Environment, University of NSW, May 2012, p. 54.

¹⁵ Easthope, H. Randolph, B. and Judd, S. *Governing the Compact City: The role and effectiveness of strata management*, Final Report, City Future Research Centre, Faculty of the Built Environment, University of NSW, May 2012, p. 55.

¹⁶ Easthope, H. Randolph, B. and Judd, S. *Governing the Compact City: The role and effectiveness of strata management*, Final Report, City Future Research Centre, Faculty of the Built Environment, University of NSW, May 2012, p. 54.

¹⁷ Easthope, H. Randolph, B. and Judd, S. *Governing the Compact City: The role and effectiveness of strata management*, Final Report, City Future Research Centre, Faculty of the Built Environment, University of NSW, May 2012, p. 55.

Options

Objectives

The specific objectives of the reforms are to:

- reduce unnecessary costs associated with restrictions on the use of digital technology in the management of strata and community schemes
- encourage greater participation in the management of these schemes.

However, it is also important to keep in perspective the overarching objects of the SSMA and the (new) Community Land Management Act 2021, which are:

- to provide for the management of the relevant schemes,
- to provide for the resolution of disputes.

For strata owners, a strata unit is a major financial asset (in many cases their main financial asset) and for many, their home. Effective management of these schemes is therefore critical.

Options under consideration

As part of the broader project, the NSW Government is now considering whether to introduce the COVID-19-related temporary arrangements permanently. To a large extent, each of the three temporary arrangements are independent of each other. As such, each element should be considered separately, rather than considering all measures as a package.

- 1 For each element of the reform, one option is to revert to pre-COVID-19 arrangements. This option is used as the base case.
 - For strata schemes, this would require no further action from the NSW Government. With no further action, the temporary arrangements would expire and revert to the pre-COVID-19 arrangements.
 - For associations, the new *CLMA 2021* has already been passed and will commence when the new regulations have been approved. As such, the NSW Government will need to draft new regulations regardless. This option would therefore involve drafting the new regulations to reflect the pre-COVID-19 arrangements for strata schemes.
- 2 The other option under consideration is to permanently adopt the temporary arrangements.
 - Each of the temporary arrangements is considered separately as follows.
 - ... Allowing meetings to be notified via email (regardless of whether an email address is on the strata or community roll).
 - ... Allowing electronic voting during a meeting.
 - ... Allowing pre-meeting electronic voting.
 - ... Allowing alternatives to affixing the common seal of the owners corporation.
 - Implementing this option would require the following action from the NSW Government.

- ... For strata schemes, the *Strata Schemes Management Regulation 2016* (SSMR) would need to be permanently amended to reflect the temporary arrangements. The legislation would also need to be amended to provide the power to make the regulation.
- ... For associations, the new regulation would need to be drafted to reflect the temporary arrangements. As above, an amendment to the Act may also be needed to provide the regulation making powers.

To a large extent, each element of the temporary arrangement is a binary choice. As such, no other options have been considered.

Impacts

Cost-benefit analysis (CBA) involves assessing the impacts of the above proposal against a clearly defined base case. In this case, the base case used is no further action by the Government.

We estimate that in total, the reforms could deliver benefits of around \$213.6 million in present value terms over 10 years, using a discount rate of 7 per cent (table 4.3).

- The most significant potential benefits are from the increased use of email to notify members of meetings. In general, the benefits for each additional notification that occurs via email (rather than post or hand delivery) is relatively modest. However, there are a relatively large number of members (a significant proportion of whom appear to be receiving meeting notifications by post), each receiving multiple meeting notifications every year.
- The benefits of the electronic voting reforms are also relatively significant. Electronic voting could avoid the need to meet in-person and therefore avoid the associated time and travel costs. However, changes to voting arrangements (particularly pre-meeting electronic voting) could potentially reduce the transparency of decision-making and reduce the accountability of committees and/or strata managing agents.
- Allowing alternatives to affixing the seal of the owners corporation is estimated to have modest benefits.

4.3 Estimated benefits of proposed reforms

	Strata schemes	Community associations	Total
	\$ million	\$ million	\$ million
Electronic voting	93.9	3.2	97.1
Meeting notifications	104.3	3.1	107.4
Alternatives to affixing seal	9.0	0.2	9.2
Total	207.1	6.5	213.6

Note: Benefits estimated over 10 years, using a discount rate of 7 per cent.

Source: CIE estimates.

These estimates largely draw on a survey open to both strata managing agents and owners of lots in strata and community land schemes (see box 4.4 for details).

4.4 Survey of strata and community schemes

To gather relevant information to prepare a cost-benefit analysis of the proposed reforms, the CIE prepared an online survey open to:

- Strata managing agents
- Owners of lots in strata and community land schemes

The survey link was distributed in July 2021:

- via a NSW Fair Trading strata e-newsletter
- to members of the Strata Community Association (NSW)
- via an update provided to members of the Owners Corporation Network.

We received 254 responses, although not all respondents answered all questions (partly because there were separate sections of the survey for strata managing agents and owners).

Where survey results are used as inputs into the CBA, these inputs are generally based on a simple average (mean) across responses. However, in some cases, the simple average did not appear representative of the responses. Where more analysis of the responses was necessary, this is provided in appendix A.

As the survey sample was self-selecting it is not necessarily clear that the sample is representative. As such, some caution needs to be exercised in interpreting the results.

Number of schemes and lots

Key drivers of the benefits of the proposed reforms (and any costs) are the number of schemes and lots over time.

- As at April 2021, there were 85 726 strata and community land schemes, with around 97 per cent being strata schemes.
- We estimate there could be around 973 353 lots within these schemes.
 - There are 946 075 strata lots, an average of 11.4 per scheme.
 - The number of lots in community schemes, precinct schemes and neighbourhood associations is estimated based on the average number of lots in new plans registered in 2020 (table 4.5).

4.5 Number of schemes and lots

	Schemes	Lots
	No.	No.
Strata schemes	82 770	946 075
Community schemes	1 026	12 291 ^a
Precinct schemes	69	2 167 ^b
Neighbourhood schemes	1 861	12 820 ^c
Total	85 726	973 353

^a Assumes an average 11.98 lots per scheme based on new plans registered in 2020. ^b Assumes an average 31.4 lots per scheme based on new plans registered in 2020. ^c Assumes an average 6.89 lots per scheme based on new plans registered in 2020.

Source: Data provided by NSW Fair Trading and CIE assumptions.

The numbers of new schemes per year are estimated as follows (table 4.6).

- The number of new strata plans is based on the average over the period from 2017-18 to 2020-21. We assume 12.79 lots per plan, based on the average number of lots in new strata plans registered in 2020.
- The number of new community, precinct and neighbourhood plans and lots is based on new plans registered in 2020.

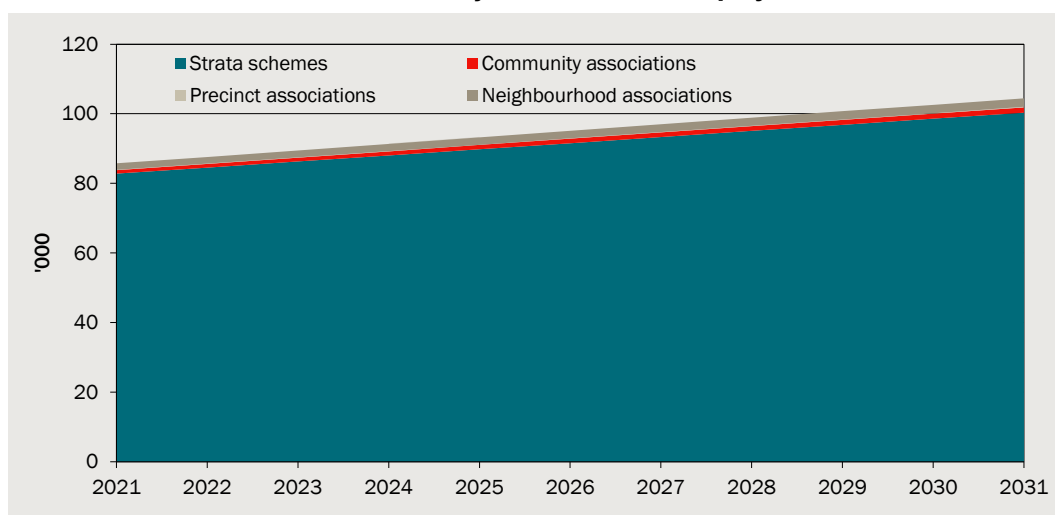
4.6 New schemes and lots per year

	Schemes	Lots
	No.	No.
Strata	1 756	33 983
Community associations	50	599
Precinct associations	5	157
Neighbourhood associations	63	434
Total	1 874	34 477

Source: Number of plans registered in 2020.

Based on these assumptions, future projections of the number of schemes are shown in chart 4.7.

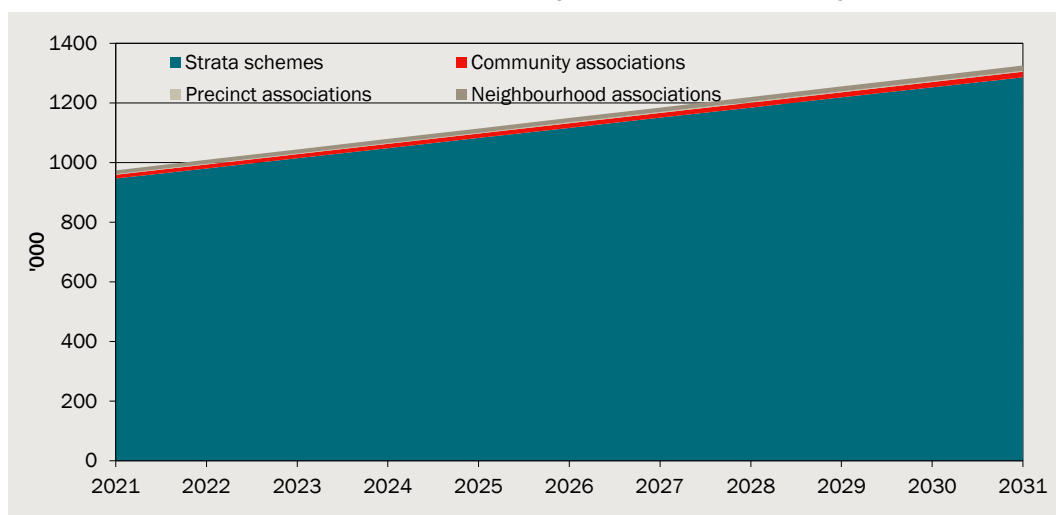
4.7 Number of strata and community schemes – future projections



Data source: CIE based on data provided by NSW Fair Trading.

Future projections of the number of lots is shown in chart 4.8.

4.8 Number of lots in strata and community schemes – future projections



Data source: CIE based on data provided by NSW Fair Trading.

Electronic voting

The benefits of electronic voting are estimated at around \$97.1 million over 10 years, using a discount rate of 7 per cent (table 4.9).

4.9 Benefits of electronic voting

	Strata schemes	Community associations	Total
	\$ million	\$ million	
Avoided cost of passing a resolution	3.3	0.2	3.5
Cost savings - committee meetings	42.1	1.6	43.7
Cost savings - general meetings	48.4	1.4	49.9
Total	93.9	3.2	97.1

Note: Benefits estimated over 10 years, using a discount rate of 7 per cent.

Source: CIE estimates.

Pre-COVID-19 arrangements

Under the *Strata Schemes Management Regulation 2016* (clause 14), an owners corporation or strata committee may, by resolution, adopt any of the following means of voting on a matter determined by the corporation or committee:

- voting by means of teleconference, video-conferencing, email or other electronic means while participating in a meeting from a remote location,
- voting by means of email or other electronic means before the meeting at which the matter (not being an election) is to be determined by the corporation or committee (*pre-meeting electronic voting*).¹⁸ This may include requiring voters to access a voting website and to vote in accordance with directions contained on that website.

¹⁸ Pre-meeting electronic voting is subject to various requirements under the regulation.

Prior to the temporary COVID-19-related amendment, electronic voting was not allowed under the CLMA 1989 and the only mechanism to vote when not present at the meeting was via a proxy (Schedule 6, Part 1). The CLMA 2021 states that the means of voting will be detailed in the regulations.

Impacts of electronic voting

Under the base case arrangements (see above) electronic voting (including when a meeting is conducted via AVL and for pre-meeting voting) is permitted so long as the owners corporation had passed a resolution allowing it. The temporary arrangements allowed electronic voting, even when a resolution allowing this to occur had not been passed. This allowed all owners corporations to continue to operate under the COVID-19 restrictions.

The temporary arrangements for community lands extended the ability to meet and vote electronically to community lands for the first time as the new Act was either not yet passed or not yet in force. The temporary measures sought to align the CLMA with the strata provisions.

Electronic voting allows both strata/executive committee meetings and general meetings to occur via electronic means. This may have never been previously contemplated by some owners corporations and not previously allowed for associations. However, with improvements in the AVL technology and increased familiarity with it as a result of the pandemic, many strata and community land schemes may find it convenient to retain this option once the temporary changes expire.

The impacts depend on the choices made by owners corporations under the base case (i.e. the case where the temporary arrangements are allowed to expire and revert to pre-COVID-19 arrangements).

- Where an owners corporation has already passed a resolution to allow electronic voting, the permanent legislative change to allow all schemes to vote electronically would have no impact¹⁹.
- Some owners corporations and associations may respond to the expiry of the temporary measures by choosing to pass a resolution to enable electronic voting. In this case, the impact of the permanent change to the legislation would be the avoided costs associated with passing a resolution.
- Some owners corporations and associations may choose not to pass a resolution (for example, due to the costs involved or insufficient support among members) that allows voting via electronic or postal ballots.
 - For these associations, the benefit of the permanent legislative change would be retaining the option of voting via electronic ballot. This could facilitate increased participation in meetings.

¹⁹ This would depend on whether the need for the secretary to take reasonable steps to prevent disadvantage was extended more broadly. If this became a permanent feature than it could be an additional compliance burden on those owners corporations that had already passed a resolution authorising electronic meetings/voting.

- Note that a permanent legislative change would not **require** the association to meet via AVL; and/or vote on resolutions via electronic or postal ballot. These decisions would generally be made by the committee.

Evidence from the survey suggests that a significant proportion of strata schemes have already passed a resolution to allow electronic voting. Once the CLMA 2021 commences, associations will have the same opportunities as owners corporations to use electronic voting. This may lead to a similar uptake, however there is insufficient data to support this.

The survey included questions for both strata managing agents and strata owners relating to the proportion of strata schemes that have passed a resolution to allow electronic voting during a meeting.

- Both parts of the survey suggest a majority of strata schemes have already passed a resolution to allow electronic voting during a meeting, although the responses of strata managing agents suggest a significantly greater proportion than the responses of owners (table 4.10).
- Both parts of the survey suggest that most of the schemes that have not already passed a resolution to allow electronic voting during a meeting intended to do so when the temporary arrangements expire in January 2022.
- Only a relatively small proportion of schemes are unlikely to pass a resolution to allow electronic voting during a meeting.

4.10 Resolution to allow electronic voting during a meeting

	Managing agents	Owners	Average
	Per cent ^a	Per cent ^b	Per cent
Already passed a resolution	77	57	67
Are likely to pass a resolution	17	31	24
Unlikely to pass a resolution	6	12	9
Total	100	100	100

^a Based on the average of 49 responses, ^b Based on the average of 58 responses

Source: CIE Survey.

The responses of strata managing agents in relation to pre-meeting electronic voting were similar to electronic voting during meetings (table 4.11). However, owners indicated that a smaller proportion of schemes had already passed a resolution to allow pre-meeting voting, with a corresponding higher share unlikely to pass a resolution. This finding is consistent with specific stakeholder concerns about pre-meeting electronic voting.

4.11 Resolution to allow pre-meeting electronic voting

	Managing agents	Owners	Average
	Per cent ^a	Per cent ^b	Per cent
Already passed a resolution	76	47	62
Are likely to pass a resolution	17	33	25

	Managing agents	Owners	Average
	Per cent ^a	Per cent ^b	Per cent
Unlikely to pass a resolution	7	20	14
Total	100	100	100

^a Based on the average of 49 responses. ^b Based on the average of 55 responses.

Source: CIE Survey.

For the purposes of the CBA, we use the average of the two surveyed groups. As either electronic voting during meetings or pre-meeting electronic voting would allow meetings to be conducted via electronic means, the CBA is based on the survey results for electronic voting during meetings, which indicated a slightly higher share of schemes had already passed a resolution.

Avoided cost of passing a resolution

The survey results suggest that around 25 per cent of strata schemes have not yet passed a resolution to allow electronic voting, but are likely to do so. A permanent legislative change to allow all strata schemes to vote electronically would mean that those schemes could avoid the costs associated with passing a resolution.

■ We estimate the costs associated with passing a resolution is around \$108.

This estimate is based on the following.

- For all strata committee members that responded to the survey, the median response was that the committee would spend around 3 hours to prepare a resolution (see appendix A for details).
- This time is valued based on the average hourly wage rate (around \$36 per hour).²⁰

This estimate is applied to:

- 25 per cent of existing strata schemes in the first year (i.e. the share of strata schemes that indicated they had not yet passed a resolution to allow electronic voting, but are likely to do so); and
- 91 per cent of **new** strata schemes in subsequent years (as the survey results suggest that 91 per cent of schemes had either already passed a resolution already or are likely to do so).

There could also be costs incurred by non-committee members that participate in the vote. Where a separate general meeting is held specifically to vote on a resolution to allow electronic voting, the costs associated with attending the meeting could be non-trivial. However, if the vote is conducted as part of a meeting that would have happened anyway (such as an Annual General Meeting or a general meeting that votes on multiple resolutions) the additional costs for members would be minimal. For that reason, these costs have not been included in the CBA.

²⁰ ABS website, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>, accessed 6 August 2021.

Time and cost savings for meetings held via AVL

The survey results suggest that a relatively small proportion of strata schemes are unlikely to pass a resolution to allow electronic voting under the base case scenario. The permanent legislative change allowing electronic voting would give these schemes additional flexibility to conduct meetings via AVL or other electronic means.

It is possible that schemes that are unlikely to pass a resolution to allow electronic voting would continue to hold all strata/executive committee meetings and general meetings in-person. In those circumstances, there would be no impact from a permanent legislative change.

However, it is also plausible that these schemes could take advantage of the additional flexibility and hold at least some meetings via AVL or other electronic means.

- Some schemes may not currently have majority support for passing a resolution. However, support for and acceptance of electronic meetings could increase over time, as people continue to become more familiar with the technology.
- Some stakeholder comments (provided through the Fair Trading survey) also suggested that some committees refuse electronic voting because they lose control of votes.
- Those with the power to determine how meetings are held (such as committee members or the managing agent) will change over time.

For each meeting held via AVL (rather than in-person), estimated cost savings are shown in table 4.12.

- Estimated time savings are based on:
 - Average minutes saved across survey respondents for committee meetings and general meetings
 - The time of meeting attendees was valued at \$36 per hour, based on the median hourly wage rate across Australia.
- Other cost savings were estimated based on average survey responses for committee meetings and general meetings.

4.12 Cost savings per attendee per meeting

	Committee meetings	General meetings
	\$	\$
Time costs ^a	33.66 ^b	30.84 ^c
Other costs ^d	51.50	11.30
Total	85.16	42.14

^a Time costs are valued at \$36 per hour, reflecting average hourly earnings as at August 2020. ^b Assumes 56.1 minutes per committee member per meeting, based on the average across survey responses. ^c Assumes 51.4 minutes per member per meeting, based on the average across survey responses. ^d Based on average survey responses.

Source: Australian Bureau of Statistics, Employee earnings, August 2020, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>, accessed 6 August 2021; CIE Survey.

These costs estimates are applied to the estimated number of additional meetings that would be held via AVL or other electronic means (i.e. the number of meeting attendances

that would otherwise have been in-person). The number of meeting attendances are estimated as follows.

- The additional flexibility from a permanent legislative change applies to 9 per cent of lots, based on the estimated proportion of schemes that are unlikely to pass a resolution to allow electronic voting at meetings (see table 4.10 above).
- For committee meetings, the estimated number of meeting attendances is based on the number of schemes over time (see chart 4.7). Other key assumptions include the following:
 - an average of 3.7 committee meetings per year per scheme (based on the average of 81 survey responses)
 - an average of 5.4 members per committee (based on the average of 79 survey responses). Note that this implicitly assumes that all committee members attend all meetings, but does not take into account attendances by non-committee members (non-committee members are permitted to attend committee meetings as an observer)
 - an estimated 40 per cent of meetings would be held via AVL (based on the average of 59 survey responses).
- For general meetings, the number of meeting attendances is based on:
 - the estimated total number of lots (as each lot-owner is eligible to vote)
 - an estimated 2.3 general meetings per year, based on 1 Annual General Meeting and 1.3 other general meetings (based on the average of 100 survey responses)
 - we assume that all general meetings would be held via AVL
 - attendance estimates for general meetings are based on the following.
 - ... 42 per cent of lots in strata schemes are owner-occupied, with the remaining 58 per cent are owned by investors. This is based on the tenure (owner-occupied or rented) of townhouses and apartments in NSW from the 2016 Census
 - ... 80 per cent of owner-occupiers are estimated to attend, based on the proportion of owner-occupier survey respondents indicating they are either very likely or likely to attend a general meeting held in-person (79 responses).
 - ... 60 per cent of investors are estimated to attend, based on the proportion of investor survey respondents indicating they are either very likely or likely to attend a general meeting held in-person (19 responses). Note that this could potentially overstate the proportion of investors that would attend as the investors that responded to the self-selecting survey could potentially be more engaged than the average investor

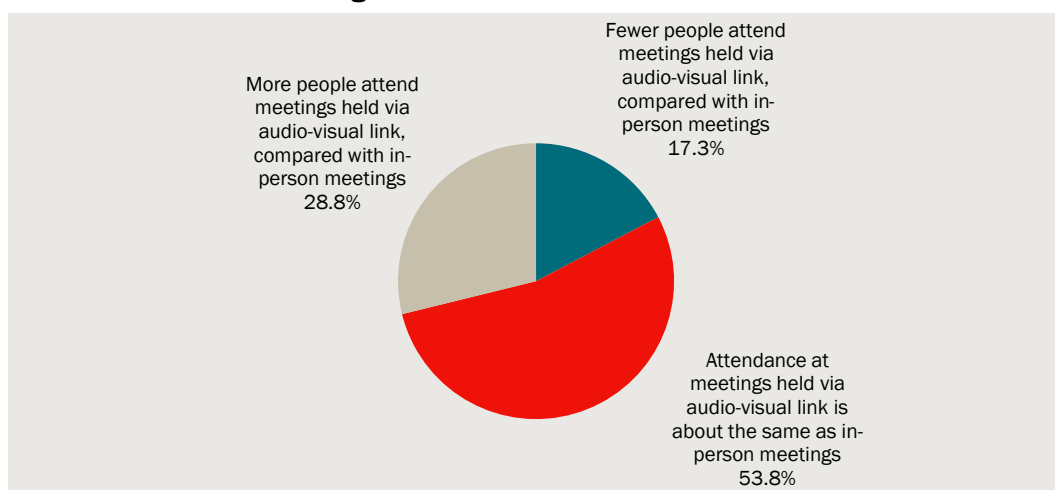
Note that a significantly higher share of investors that responded to the survey indicated they would attend a meeting held via AVL (see below) and these investors would incur costs of attending a meeting via AVL that they would not have otherwise attended. However, there would presumably be some intangible benefits for these lot owners from attending the meeting (such as the ability to ask questions, have their voice heard etc.) that would outweigh the cost of attending (otherwise they would not attend).

Potential impact on participation

- **There is some qualitative and quantitative evidence that holding meetings electronically (rather than in-person) could increase attendance at meetings, particularly for investors.**

The survey provides some evidence that holding meetings via AVL could increase attendance at both strata/executive committee and general meetings. During the COVID-19 period, strata/executive committee members were more likely to report that more people attended meetings held via AVL (29 per cent), than fewer people attended (17 per cent) (chart 4.13). That said, more than 50 per cent of respondents reported that attendance at strata/executive committee meetings held via AVL were about the same as in-person meetings.

4.13 Attendance at meetings held via AVL



Data source: CIE survey.

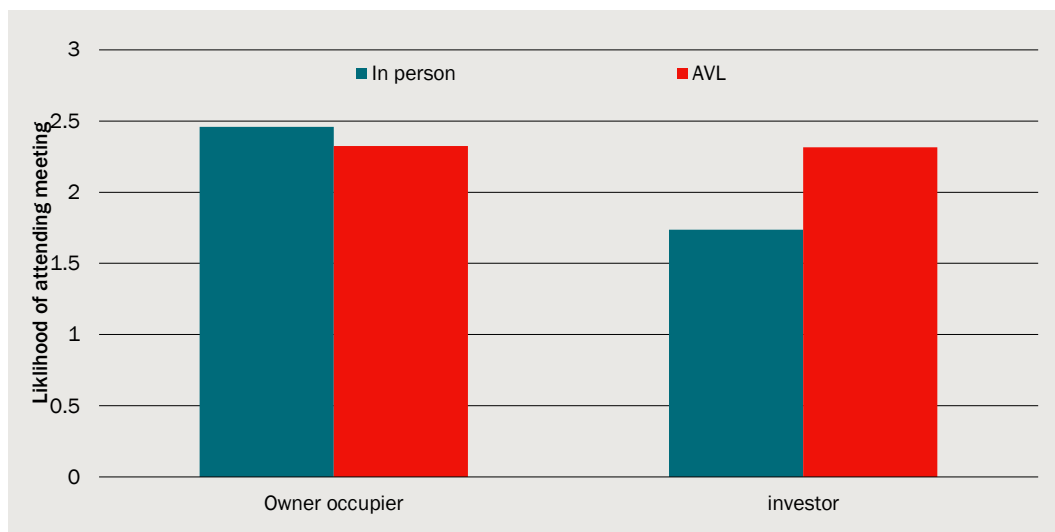
Survey participants were also asked how likely they were to attend (very unlikely, unlikely, likely or very likely) Annual General Meetings and other general meetings held in-person and via AVL. Chart 4.14 shows the likelihood of attending general meetings via AVL, compared with in-person (where a higher score reflects a higher likelihood to attend).²¹ Responses were similar for Annual General Meetings (see appendix).

- In general, most owner-occupiers (around 80 per cent) indicated they were either likely or very likely to attend general meetings and their responses were little changed regardless of whether the meeting was held in-person or via AVL. To the extent that responses changed, they generally suggested that owner-occupiers may be slightly **less** likely to participate in general meetings held via AVL.
 - There was a modest **reduction** in the share of owner-occupiers that indicated they would be very likely to attend a meeting held via AVL.

²¹ The likelihood of attending a meeting is calculated by scoring the survey responses as follows: very unlikely to attend = 0; unlikely to attend = 1; likely to attend = 2; and very likely to attend = 3. A weighted average is then calculated to compare in person and AVL. A summary of responses to this question is presented in the appendix.

- This was only partly offset by a small increase in the share of owner-occupiers likely to attend a meeting held via AVL
- By contrast, investors indicated they were generally significantly less likely to attend in-person general meetings than owner-occupiers. However, a significant proportion of investors are much more likely to attend general meetings held via AVL (although only 19 investors answered these questions, so some caution needs to be exercised in interpreting these results). The share of investors that are very likely to attend general meetings increased by more than 25 percentage points if the meeting is to be held via AVL, with a corresponding decrease in the share of respondents that are unlikely to attend.

4.14 Impact of AVL on likelihood of attending general meetings



Note: Survey responses were allocated scores as follows: Very unlikely to attend = 0; Unlikely to attend = 1; Likely to attend = 2; Very likely to attend = 3.

Data source: CIE survey.

For schemes that do not allow pre-meeting voting, if a member was unable to attend a general meeting, they would have the choice of either voting via proxy or not voting. If pre-meeting voting is allowed, they can vote via pre-meeting and choose to attend or not, as well as not vote at all. According to survey responses:

- in the absence of pre-meeting voting, the likelihood of voting when unable to attend the meeting was 81 per cent
- this increased to 92 per cent if pre-meeting voting was allowed.

This suggests that allowing pre-meeting voting can increase member engagement by allowing more members to vote at general meetings.

Potential impact on management outcomes and accountability

- **There is some evidence to suggest that greater participation from investors in decision-making could potentially reduce spending on repairs and maintenance.**
 - **However, it is not clear whether that would be a better or worse outcome for owners collectively.**

- **Furthermore, an objective of the reforms was to encourage greater participation from all owners, including investors who may be disadvantaged by a requirement to attend meetings in person.**
- **There are also concerns that pre-meeting electronic voting could reduce accountability of strata managing agents and strata committees and possibly lead to worse management outcomes.**

A strata lot is both a major financial asset (for many owners, their main financial asset) and for many, their home. Effective management of these assets is therefore of high importance to owners.

Previous research has noted the different priorities and potential for conflict between various stakeholders, including between owner-occupiers and investors, owners in different economic positions and between residents (including both tenants and owner-occupiers).²² The legislation sets out the process for resolving strata-related disputes, including a mediation process that may progress onto a hearing at the NSW Civil and Administrative Tribunal (NCAT). In 2019-20, NCAT received around 1500 applications relating to strata schemes.²³ This suggests that disputes among strata schemes is a relatively significant issue.

In principle, participation from a wider range of members should mean that decisions relating to the management of the scheme should better reflect the preferences of members. There is some qualitative evidence (from comments from the Fair Trading survey) of some committees trying to achieve their preferred outcome (that may not reflect the view of members) through tactics such as: refusing electronic voting (to avoid losing control of votes), as well as intimidation of owners.

However, some stakeholders are concerned that greater participation from investors could lead to worse management outcomes.

- Owner-occupiers (and tenants) directly benefit from spending on maintenance and repairs, while investors do not (although in the longer-term they may be able to charge higher rents in a building that is better maintained). Many investors (in some cases via their agent) focus on keeping costs as low as possible. Respondents to a previous survey noted disagreements in their schemes about whether certain repair or maintenance projects were necessary, including disagreements between owner-occupiers and investors regarding costs and standards.²⁴

²² Easthope, H. Randolph, B. and Judd, S. *Governing the Compact City: The role and effectiveness of strata management*, Final Report, City Future Research Centre, Faculty of the Built Environment, University of NSW, May 2012, p. 42.

²³ NCAT Annual Report 2019-20, p. 40.

²⁴ Easthope, H. Randolph, B and Judd, S. *Managing Strata Repairs, Managing Major Repairs in Residential Developments in New South Wales*, A study by the City Futures Research Centre at UNSW with assistance of the NSW Office of Fair Trading, July 2009, p. 52.

- Research has also noted that owners that may be intending to sell their property may be less willing to pay higher levies for longer term maintenance and repairs.²⁵
- There is also some quantitative evidence that the composition of owners can influence spending patterns by strata schemes.
 - An analysis of the expenditure of residential strata schemes in NSW found that investor dominated schemes (defined as schemes where investors comprise more than 60 per cent of owners) proportionally spent less on ‘repairs’, compared with owner-occupier dominated schemes (i.e. schemes where owner-occupiers comprise more than 60 per cent of owners).²⁶
 - ... Investor dominated schemes on average spent \$23 per dwelling per month
 - ... Owner-occupier dominated schemes on average spent \$30 per dwelling per month.
 - Investor dominated schemes spent proportionally less on ‘maintenance and cleaning’.
 - ... Investor dominated schemes spent \$20 per dwelling per month
 - ... Owner-occupier dominated buildings spent \$26 per dwelling per month.

That said, it is not clear that less spending on some items is necessarily either a good or bad outcome. This depends on context.

- Where necessary repairs are unattended to, this can reduce amenity for residents (including owner-occupiers and tenants). Previous research has also reported cases where delays due to such disagreements or general inaction have led to further damage to property.²⁷
- On the other hand, some spending on non-essential works (such as cosmetic improvements) could potentially be wasteful and lead to higher costs than is necessary for members. Previous research has noted owners may have different expectations and preferences.

Another concern of some stakeholders relates particularly to pre-meeting electronic voting. The key concerns are as follows.

- In-person meetings have historically provided an opportunity for questioning and for alternative views and suggestions to be heard before a vote was taken. This can help meeting participants to more fully understand the issue at hand before voting.
- However, electronic voting may occur well before the meeting. In some cases, a ‘meeting’ may not even occur. An exchange of emails may be sufficient to meet regulatory requirements.

²⁵ Easthope, H. Randolph, B and Judd, S. *Managing Strata Repairs, Managing Major Repairs in Residential Developments in New South Wales*, A study by the City Futures Research Centre at UNSW with assistance of the NSW Office of Fair Trading, July 2009, p. 7.

²⁶ Hudson, S. *An analysis of the expenditure of residential strata schemes in NSW*, A thesis submitted in fulfilment of the requirements of the degree of Master of the Built Environment in the Faculty of the Built Environment, University of NSW, July 2011, p. 162.

²⁷ Easthope, H. Randolph, B and Judd, S. *Managing Strata Repairs, Managing Major Repairs in Residential Developments in New South Wales*, A study by the City Futures Research Centre at UNSW with assistance of the NSW Office of Fair Trading, July 2009, p. 7.

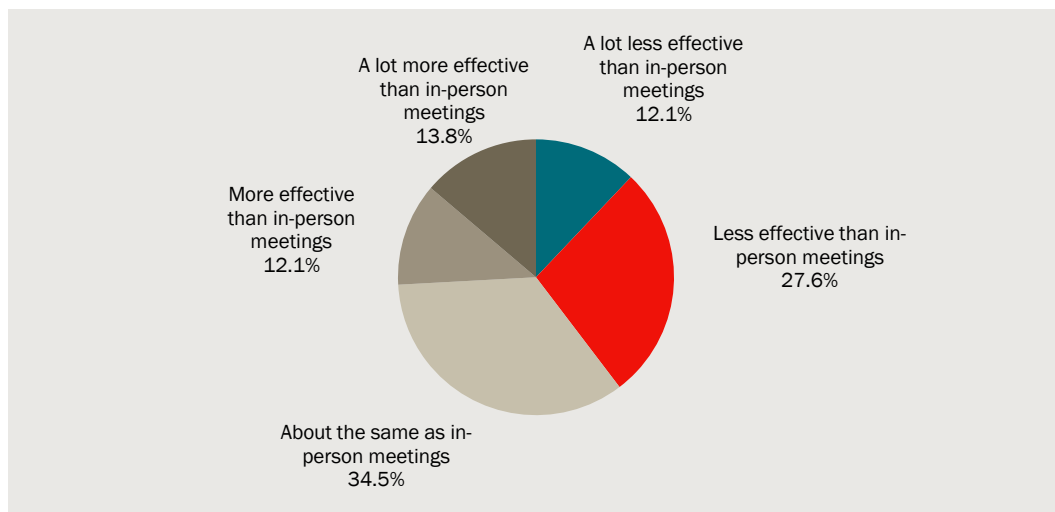
- In these circumstances, owners are completely reliant on the adequacy of the ‘explanatory notes’ to form their view. The motions and notes may not have been exposed to owner feedback before being finalised. Stakeholders provided anecdotal evidence of strata managing agents and/or strata committees not fully explaining the potential consequences of a motion prior to voting.

This suggests there is some risk that pre-meeting electronic voting could reduce the accountability of strata committees or strata managing agents and the transparency of decisions. This could lead to management outcomes that do not reflect the true preferences of owners. Given this risk, some stakeholders argued that allowing pre-meeting electronic voting should be a conscious collective decision (i.e. pre-COVID-19 arrangements should be maintained).

There is also some evidence from the survey that meetings via AVL may be slightly less effective at resolving issues and holding the strata committee and strata managing agents accountable than in-person meetings.

- Around 40 per cent of respondents indicated that meetings held via AVL are either less effective or a lot less effective than in-person meeting in resolving issues and holding strata managing agents accountable (58 responses).
- This compares to around 26 per cent that indicated that meetings held via AVL are either more effective or a lot more effective than in-person meetings.

4.15 Effectiveness of meetings held via AVL



Data source: CIE survey.

Meeting notices

- We estimate that greater uptake of email to notify members of meetings could potentially deliver benefits of around \$107.4 million in present value terms over 10 years, using a discount rate of 7 per cent.

This reflects a relatively modest benefit for each meeting notification provided via email (rather than post or hand deliver). However, there are a relatively large number of

members (a significant proportion of whom appear to be receiving meeting notifications by post), each receiving multiple meeting notifications every year.

Pre-COVID-19 arrangements

The SSMA specifies how the secretary of the owners corporation must give notice of a meeting (table 4.16). In many strata schemes, these responsibilities are performed by a managing agent.

4.16 Notice of meetings

Type of scheme/association	Notice of meetings
Strata Schemes Management Act 2015	
Large strata schemes	The secretary of the owners corporation of a large strata scheme must give notice of a meeting to each other member of the strata committee (including any tenant member) at least 3 days before the meeting and to each owner. Notice is to be given: <ul style="list-style-type: none"> ▪ As set out in table Error! Reference source not found. (under section 263 of the Act); and ▪ by displaying the notice on the notice board (if any) maintained by the owners corporation.
Other strata schemes	The secretary of the owners corporation of other strata scheme must give notice of a meeting to each other member of the strata committee at least 3 days before the meeting and to each owner. Notice is to be given: <ul style="list-style-type: none"> ▪ as set out in table 3.1 (under section 263 of the Act); or ▪ by displaying the notice on the notice board (if any) maintained by the owners corporation.
Community Land Management Act 1989	
Community association	The notice of a general meeting of a community association must be given in writing to the members of the association shown on the community roll.
Precinct association	The notice for a general meeting of a precinct association must be given in writing to— <ul style="list-style-type: none"> ▪ the members of the association shown on the precinct roll, and ▪ each person shown on the precinct roll as first mortgagee, or as a covenant chargee, of a precinct development lot.
Neighbourhood association	The notice for a general meeting of a neighbourhood association must be given in writing to: <ul style="list-style-type: none"> ▪ the members of the association shown on the neighbourhood roll, and ▪ each person shown on the neighbourhood roll as first mortgagee, or as a covenant chargee, of a neighbourhood lot.

Source: SSMA and CLMA.

The permitted means to serve documents under the SSMA are shown in table 4.17.

4.17 Permitted means to serve documents under SSMA

Group	Permitted means to serve documents
Occupier of lot	A notice or other document may be given to the occupier of a lot: <ul style="list-style-type: none"> ▪ by post at the address of the lot, or ▪ by leaving it at the address of the lot with a person apparently of or above the age of 16 years.
Where address is included on strata roll	If an address for the service of notices on a person is recorded in the strata roll or has been notified in a tenancy notice, a document may be given to the person: <ul style="list-style-type: none"> ▪ in the case of a postal address, by post at that address, or ▪ by leaving it at that address with a person apparently of or above the age of 16 years, or in the case of an email address, by email to an email address specified for the service of documents.
Owner of lot	A document may be given to the owner of a lot in accordance with subsection (3) or if no address for service is recorded on the strata roll— <ul style="list-style-type: none"> ▪ personally, or ▪ by post at the address of the lot, or ▪ by leaving it on a part of the lot that is the owner's place of residence or business (otherwise than on a part of the lot provided for the accommodation of a vehicle or as a storeroom), or ▪ by leaving it in a place provided on the parcel for receiving mail posted to the lot, or ▪ in any other manner authorised by the by-laws for the service of notes on owners.

Source: SSMA.

These arrangements effectively allow notices of meetings to be provided via email where the email address is provided on the strata roll. If not, notices must be provided by post or the other means set out above.

Impact of proposed changes

The responses of strata managing agents, owners and individuals to the survey suggests that between 55-80 per cent of lot owners receive notices of meetings (including strata/executive committee and general meetings) via email (table 4.18). The proposed permanent change to the legislation would therefore have no impact on those owners.

4.18 Method of receiving notices of meetings

	Strata managers	Owners	Individuals
	Per cent ^a	Per cent ^b	Per cent ^c
Email	55.2	80.0	68.24
Post	44.3	7.6	22.35
Hand delivered	0.5	10.9	4.12
Other	0.1	1.5	5.29
Total	100.0	100.0	100.0

^a Weighted average (lots under management) from 52 responses ^b Average from 52 responses ^c Average from 140 responses

Note: Individuals can also receive notice via a noticeboard at the building

Source: CIE Survey.

Most of the remaining owners receive notices of meetings via post. The proposed regulatory change would allow the secretary (or the strata managing agent fulfilling these duties) to deliver meeting notices via email, even when the member has not explicitly agreed to receiving notices in that way by including an email address on the strata roll.

Email is a more convenient (i.e. lower cost) method of providing than the alternative methods. Once an email address has been added to a group mailing list, the marginal cost of emailing an additional member of the owners corporation would be close to zero. On the other hand, the time and cost involved in sending an additional letter by post would be non-trivial. Estimated time/cost savings from providing email notice via email, compared to post for strata managers and committee members are shown in table 4.19.

- The time savings per member per meeting are based on the median of the survey responses. We use the median strata manager estimation as an input for the CBA (rather than the mean) because a number of outlier results (that seem implausibly high) appear to be over-inflating the mean (see appendix A for further details).
- These time savings are valued at \$36 per hour based on median hourly earnings as at August 2020, as reported by the ABS.²⁸

4.19 Time savings from providing meeting notice by email

	Time saving	Estimated cost ³
	Minutes	\$
Median compared to post for strata managers	10.0	6.00
Compared to post for committee members	15.0	9.00

Source: Australian Bureau of Statistics, Employee earnings, August 2020, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>, accessed 6 August 2021; CIE Survey.

The estimated number of notices is based on the estimated lot profile shown above. Other key assumptions are as follows.

- We assume that as a result of the proposed permanent legislative change, 35 per cent of lots that previously received meeting notice by post would subsequently receive them via email. This is based on:
 - Survey results indicating that prior to the COVID-19 pandemic, 37 per cent of lot owners receive meeting notice via post
 - We also assume that 2 per cent of lot owners do not use email (and therefore would continue to receive meeting notifications via post). This is based on a survey that found that 98 per cent had used email in the past 6 months, up from 94 per cent in the 2019 survey.²⁹
- On average, each lot owner receives 6 meeting notices per year. This is based on the survey results which suggest that on average, each scheme holds:
 - 3.7 committee meetings per year; and

²⁸ ABS website, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>, accessed 6 August 2021.

²⁹ Australian Communications and Media Authority, Trends in online behaviour and technology usage, ACMA consumer survey 2020, Quantitative research, September 2020, p. 6.

- 2.3 general meetings per year.

Affixing seal of owners corporation

Pre-COVID-19 arrangements

The seal of an owners corporation or an association is a rubber stamp unique to each strata or community land scheme. It is used to execute binding documents and verify an agreement or contract and is used as evidence of the agreed position of the owners corporation or association.

The *Strata Schemes Management Act* (section 273) sets out the requirements for affixing the seal to a document (see table 4.20).

4.20 Requirements for seal to be affixed to a document

Requirements for seal to be affixed to a document	
Owners corporation with 1 or 2 owners	In the presence of: <ul style="list-style-type: none"> ▪ the owner/owners; or ▪ the strata managing agent of the owners corporation
More than 2 owners	In the presence of: <ul style="list-style-type: none"> ▪ 2 persons, being owners of lots or members of the strata committee; or ▪ (in the absence of a determination), the secretary of the owners corporation and any other member of the strata committee, or ▪ the strata managing agent of the owners corporation.

Source: SSMA.

Similar requirements apply for community, neighbourhood and precinct associations, subject to the number of members in each association.

Impacts

This proposed change allows documents to be signed and witnessed via AVL, as an alternative to affixing the seal of the owners corporation. Effectively, this affects only schemes that are not managed by a professional strata managing agent. Schemes that are managed by a professional strata managing agent are unaffected by the proposed change as the pre-COVID-19 arrangements permit a strata managing agent to affix the seal of the owners corporation or association, without the need for another person to be present.

For schemes that are not managed by a professional strata managing agent, two people must be present when the seal of the owners corporation or association is affixed to a document. The purpose of the temporary arrangements was to avoid the need for face-to-face meetings.

In a post-COVID-19 environment, allowing documents to be signed and witnessed via AVL as an alternative to affixing the seal of the owners corporation or the association in the presence of two people would avoid the need for two people to be present in the same

room at the same time. This would potentially avoid the need to travel to a common location.

Based on average survey responses, we estimate that the associated costs savings could be around \$85 per document (table 4.21).

- On average, survey respondents estimated that the time saving would be around 47 minutes per document. Based on the median hourly wage rate of \$36 per hour, the time cost saving would be around \$28 per document.
- Other cost savings are estimated at around \$57 per document based on the average survey response.

4.21 Estimated cost saving for signing and witnessing documents via AVL

	Estimated cost saving
	\$ per document
Time saving	28
Other costs	57
Total	85

Source: Australian Bureau of Statistics, Employee earnings, August 2020, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>, accessed 6 August 2021; CIE Survey.

The estimated number of documents is based on the number of schemes over time (see above). Other key assumptions are as follows.

- Based on survey responses, we assume 11 per cent of schemes are not managed by a professional strata managing agent.
- Of these schemes, survey responses suggest that around 81 per cent are likely to take up the option of signing and witnessing documents via AVL as an alternative to affixing the seal of the owners corporation or association.
- On average, each scheme normally affixes the seal to 1.7 documents per year.

Stakeholder consultation

The NSW Government has been consulting industry and the community on a wide range of strata issues as part of the statutory review and other reforms. Additional consultation was undertaken to inform the specific issues covered by this BRS, including discussions with targeted stakeholders.

The targeted consultation for this BRS involved discussions with:

- the Strata Community Association on 10 June 2021
- the Owners Corporation Network on 7 July 2021.

Consultation as part of the statutory review

As part of the statutory review of the SSMA, NSW Fair Trading undertook a survey that was open to the public. The survey covered a wide range of issues, which are mostly outside of the scope of this report.

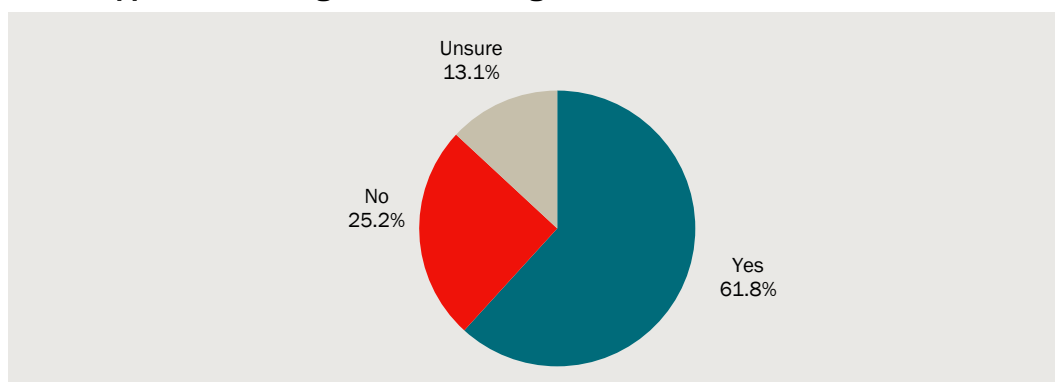
Quantitative results

The main question of direct relevance to this BRS was:

Question 34: Should the law be changed to permanently allow electronic voting in all circumstances without the need to first pass a resolution?

There were 489 responses with around 62 per cent supporting reform to allow electronic voting without the need to first pass a resolution (chart 4.22).

4.22 Support for allowing electronic voting



Note: Q34: Should the law be changed to permanently allow electronic voting in all circumstances without the need to first pass a resolution.

Data source: NSW Fair Trading Survey.

Qualitative feedback

Some survey respondents also provided comments via the survey. Key themes were as follows.

- Several comments noted that electronic voting and meetings via AVL had worked well and should continue.
- Other comments indicated concern, particularly in relation to pre-meeting voting. The general sentiment was that too much reliance is placed on the explanatory notes to guide voting decisions, there was an inability to table variations (in addition to yes/no answers) and that people may tend to vote no instead of abstaining due to insufficient information.
- Some responses indicated concern around access arrangements for people who do not use computers such as the elderly or technologically uneducated.
- Some comments related to implementation issues, such as lot owners who do not have access to an electronic tool, insufficient education and communication on voting, insufficient audit trails of issues voted, cybersecurity and privacy safeguards and protections against vote harvesting.

Targeted consultation

Key points from the targeted consultation were as follows.

- One group noted that members were overwhelmingly supportive of making the temporary changes permanent.
 - Members noted that the temporary changes had resulted in increased engagement and attendance at meetings.
 - Greater engagement and participation potentially lead to better outcomes and fewer disputes.
- The main (although not only) concern related to pre-meeting electronic voting.
 - In some cases, no physical meeting occurs. The meeting occurs via email instead. As such members lose the opportunity for interaction and to ask questions.
 - Owners are entirely reliant on the explanatory notes provided by the strata management or strata committee. There have been cases where a strata managing agent or strata committee has not provided full information of the potential consequences of a contentious decision.
 - Given these concerns, one view was that allowing pre-meeting electronic voting should be a conscious decision made by each scheme.
- There was some concern that electronic meeting/voting could potentially hand more power to absent landlords (i.e. investors). As investors do not live in the property, they can be less willing to fund maintenance and repairs as these decisions do not affect their everyday life.
- There was some concern around the ability of people without access to the relevant digital technology to participate in the management of a scheme. On the other hand, it was also noted that people unable to access the relevant technology can be accommodated by setting up video facilities at the strata managing agent's office.

Preferred option

The quantitative estimates suggest that there could be significant benefits from implementing the temporary COVID-19-related measures permanently. As discussed above, each element of the strata reforms is largely independent of each other and as such, should be considered separately, rather than as a package.

- **The preferred option is to permanently allow:**
 - **electronic voting during meetings to allow meetings to occur via electronic means**
 - **meeting notifications via email**
 - **signing and witnessing documents as an alternative to affixing the seal of the owners corporation.**
- **Based mostly on qualitative evidence, the use of pre-meeting electronic voting should be a conscious choice of the owners corporation or community association, as per pre-COVID-19 arrangements.**

Electronic voting

Allowing electronic voting for all strata and community land schemes could also deliver significant benefits by avoiding the need for some owners corporations to pass a resolution to allow electronic voting; and providing some schemes with additional flexibility. It would also remove the need for associations to pass a resolution once the 2021 Act commences.

There is also some evidence that allowing electronic voting (and therefore electronic meetings) can potentially increase participation, particularly from investors. Although there is some concern that greater participation from investors could lead to worse outcomes, it is reasonable for investors to have an equal opportunity to participate in the management of the scheme and this aligns with the objectives of the reform.

There are some specific concerns relating to pre-meeting electronic voting. In particular, pre-meeting electronic voting means that members lose the opportunity to ask questions, discuss potential outcomes and amend a motion before it is voted on.

- There is some qualitative evidence that pre-meeting electronic voting can:
 - make strata committees or strata managing agents less accountable to owners
 - reduce the transparency of decisions.
- These are considered critical elements for the effective functioning of strata and community schemes. As such there is a risk that the use of pre-meeting electronic voting without a conscious decision of owners could lead to worse management outcomes and more disputes.
- As all strata and community schemes would be permitted to use electronic voting during meetings (as per the recommendation above), pre-meeting electronic voting is not needed to allow meeting to proceed via AVL.

Meeting notifications via email

Although the benefits of providing meeting notices via email are relatively modest on a per notification basis, aggregate benefits are significant given the large number of meeting notifications each year (and a significant proportion of members still receive meeting notifications via post).

There appears to be limited downside from introducing this change permanently, although there remains a small proportion of the community who do not actively use email (around 2 per cent). As such, there would need to allow for these people to receive meeting notifications via post (or other means). Some other members may also have a preference to receive notices via post or other means; however, even making email the default option (unless the member specifically requests an alternative means of receiving meeting notifications) is likely to significantly increase uptake and deliver significant benefits.

Alternatives to affixing the seal of the owners corporation

The benefits of allowing documents to be signed and witnessed via AVL as an alternative to affixing the seal of the owners corporation would be relatively modest, but have limited downside.

5 *Electronic signing and witnessing of conveyancing documents*

Background

Most conveyancing transactions involving land within NSW now occur through eConveyancing, which avoids the need for the various parties to be present in the same room for a transaction to occur. However, some paper-based land plans, dealings and instruments remain (i.e. outside of the eConveyancing system), including:³⁰

- Various plans, including deposited plans and strata plans and associated plan documents (such as section 88B instruments and management statements)
- Dealings affecting a Water Access Licence (WAL).

Under pre-COVID-19 arrangements, the *Electronic Transactions Act 2000* did not apply to these paper-based transactions. Rather, these dealings and plans were required to take a specific form set out in their primary legislation, and required traditional means of authentication, including witnessing of signatures in-person in some cases.

To assist parties to complete various transactions during the COVID-19 pandemic, Conveyancing Rules³¹ were temporarily amended to allow some land dealings and plan documents to be signed electronically, and witnessing to occur remotely, via AVL. Under the temporary Conveyancing Rules, parties are able to use a range of technologies to electronically sign instruments (see box 5.1). Regardless of the technology used, the electronically signed document must confirm the signatory's identity and their intention to sign by including a particular statement set out in the Rules.

³⁰ Deeds and instruments registered in the General Register of Deeds are also paper-based; however, these are outside of the scope of the BRS.

³¹ Conveyancing Rules are made by the Registrar General under s12E of the Real Property Act 1900 to prescribe requirements for the preparation and lodgment of documents to give effect to conveyancing transactions.

5.1 Electronic signature options

- An electronic signature is essentially any form of electronic communication that is intended to be a person's signature. This may be effected in several ways, including:
 - signing a tablet or mobile device with a stylus;
 - using a scanned image of a person's signature in electronic communications;
 - a person typing their name into a webpage within a document and acknowledging this to be a signature;
 - through the use of an encrypted 'digital signature'.
- A **digital signature** is a particular type of electronic signature. It is a commercial product that uses public key cryptography to provide a more secure method of identifying the author of a document. The process requires a mathematically linked pair of randomly generated numbers, being a private key and a public key. The private key is used solely for signing documentation, while the public key is used by the recipient to verify the signature is that of the person purporting to sign, and that the document has not been altered.
- While digital signatures may provide added safeguards, the costs of these commercial products mean that they are not accessible to all potential signatories.
- Parties who sign land documents using an electronic signing platform (like DocuSign) that includes a time/date stamp do not need to add an additional statement confirming their electronic signature – see Rule 12.6 Conveyancing Rules.

These temporary arrangements were first introduced in April 2020 and, after having been extended twice, are currently due to expire on 31 December 2021 (see Conveyancing Rules (COVID-19 Pandemic) Amendment version 3).³²

Need for government action

Technological change has allowed many manual processes to be digitised. Manual paper-based systems are becoming increasingly obsolete. Penrith City Council noted that the endorsement of subdivision certificates required to accompany a plan for registration, and associated land title dealings, are the only land development-related processes that still require some element of hard copy processing and do not have an ongoing digital solution.

To register a deposited plan or a strata plan, relevant documents must be signed by multiple parties (including a surveyor, the land owner, the relevant local council, and the mortgagee, if any). Under pre-COVID-19 arrangements, a single document had to be signed (and some signatures witnessed) by all relevant parties.

³² Conveyancing Rules (Covid-19 Pandemic) Amendment-Oct 2021 commences 11 October 2021, but will still cease on 31 December 2021.

- In most cases, this involves a single original document being securely transported (i.e. couriered) between all relevant parties. There is a risk that the document is either lost or damaged (the land registry has particular requirements relating to the quality and legibility of documents lodged for registration and damaged documents may not be acceptable).
- Alternatively, there are cases where all parties gather in the same place at the same time to sign (and witness) the relevant documents.

Requirements for wet-signing and in-person witnessing of documents can:

- Delay registration of plans — stakeholders provided qualitative evidence that current requirements can delay the execution and registration of documents, particularly where a signatory is not conveniently located. Several stakeholders noted delays where a signatory is located in rural or regional NSW.
 - Couriering an original document between signatories to be signed and returned can take some time. If the document is lost or damaged, the process may need to be repeated.
 - The need for all signatories to be in the same place at the same time can be difficult to arrange, means that arrangements may need to be made for signatories based in rural or regional NSW to attend a meeting in Sydney to execute relevant documents.
 - A submission also noted that major delays (more than a month) have been experienced where an owner is overseas.
 - In addition, the trend towards ‘working from home’ has the potential to increase delays for paper-based processes, such as where specific staff members with delegated responsibilities for signing and witness documents are not present in the office together on some days (see chapter 2 above).
- Impose unnecessary costs on signatories — the costs associated with wet-signing and witnessing documents in the traditional way could include:
 - the cost of securely transporting original documents between signatories
 - time costs associated with travelling to attend a practitioner’s office or elsewhere to wet sign (and witness) documents (these costs of meeting face to face to sign documents can be particularly significant in rural and regional areas)
 - travel costs associated with attending meetings to sign and witness documents
 - costs associated with arranging for all parties to be in the same place at the same time (where all parties meet to sign and witness relevant documents)
 - the costs associated with replacing documents damaged or lost in transit.

As noted in the NSW Government’s Digital Strategy:

- digital processes are generally faster, more convenient and more efficient than traditional paper-based and face to face ones.³³
- customers who access online services are consistently more satisfied than those who have used other channels.³⁴

³³ NSW Government, digital nsw, Designing our Digital Future, p. 7.

³⁴ NSW Government, digital nsw, Designing our Digital Future, p. 5.

As eConveyancing is a national system and there are significant differences in the way that relevant regulatory regimes operate across states and territories, the Office of the Registrar-General indicated there are no immediate plans to expand the scope of eConveyancing systems to include plans, dealings, deeds and other relevant instruments. As such, there is a case for a permanent change to the regulatory arrangements to allow electronic signing and witnessing of relevant documents.

Number of Plans

Over the past four years, there have been more than 11 800 plans deposited per year on average (table 5.2), including an average of around:

- 10 100 deposited plans, and
- 1 800 strata plans.

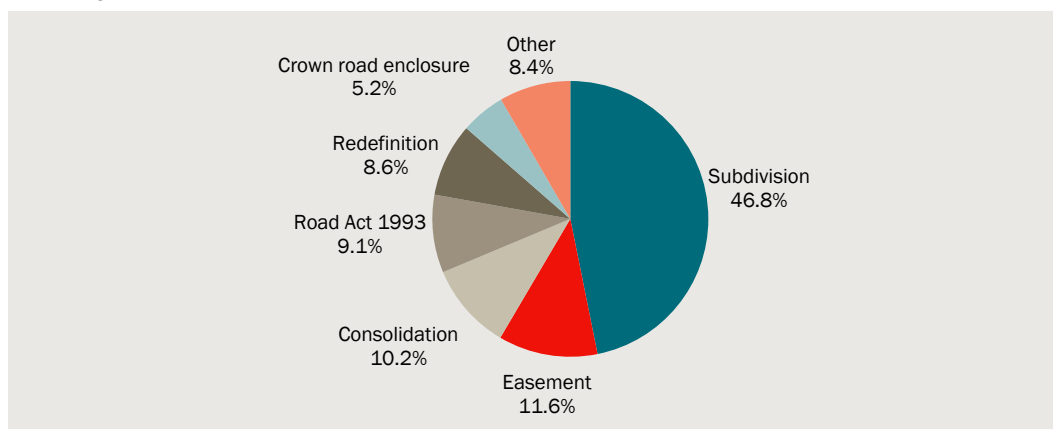
5.2 Number of plans per year

	Deposited plans	Strata plans	Total
	No.	No.	No.
2017-18	10 082	1 829	11 911
2018-19	9 998	1 762	11 760
2019-20	10 368	1 764	12 132
2020-21	9 862	1 668	11 530
Average	10 078	1 756	11 833

Source: Data provided by Department of Customer Service.

There are various types of deposited plans. Based on 2020 data, the most common types of plans were: subdivision plans (47 per cent); easements (12 per cent); and consolidation plans (10 per cent) (see chart 2.2).

5.3 Types of deposited plans – 2020



Data source: LRS data provided by Office of the Registrar-General.

Number of dealings affecting Water Access Licences

Although this BRS focuses mainly on plans, the temporary arrangements also affect land dealings affecting WALs. Over the past 3 years, there were on average around 4000 dealings affecting WALs lodged per year and slightly fewer registered (table 5.4). More than half of these dealings relate to mortgages (including transfers and discharges).

5.4 Number of land dealings affecting a WAL

	Dealings lodged	Dealings registered
	No.	No.
2018	4 298	4 106
2019	3 856	3 721
2020	3 959	3 898
Average	4 038	3 908

Source: LRS data provided by the Office of the Registrar-General.

Options

The NSW Government is now considering whether the temporary arrangements for electronic signing and witnessing of plans and related documents should be made permanent.

Objectives

The original objective of the temporary changes to the Conveyancing Rules was to allow regulatory processes to proceed under COVID-19-related restrictions that prevented face-to-face meetings; and/or reduce exposure to COVID-19 through avoiding face-to-face meetings to execute some conveyancing documents.

When considering the objectives of a permanent change to allow electronic signing and witnessing of conveyancing documents that are outside of the eConveyancing system, it is important to consider both the overarching objectives of the regulatory framework as well as the NSW Government's broader objectives.

Objectives are not specified in the *Real Property Act 1900*. Regulation of the land titles system is of critical importance, given its role in our economy. The Office of the Registrar General's website identifies: ensuring the integrity, security, performance and availability of the NSW land titles system through a range of oversights, rules and directions, quality assurance and strong engagement with stakeholders.³⁵ However, maintaining the integrity of the land titles system should occur with minimum cost and embrace technological change where appropriate. This has occurred with the introduction of the eConveyancing system, but other paper-based land dealings have not kept up.

³⁵ NSW Office of the Registrar General website, <https://www.registrargeneral.nsw.gov.au/land-boundaries/digital-survey-plans>, accessed 26 July 2021.

Digitising regulatory processes is consistent with broader NSW Government objectives. The NSW Government's Digital Strategy notes:

“Digital transformation needs to be supported by legislation and regulation that enables innovation to flourish, while ensuring that the appropriate legal and regulatory safeguards are in place to manage the potential risks of digital technology, and protect privacy. Effective legislative and regulatory frameworks are critical to enabling digital identity management; simplifying transactions; improving data collection and custodianship; and enabling the sharing of data to improve decision-making, policy development and service delivery.”³⁶

Similarly, the Guide to Better Regulation encourages consideration of digital solutions to make existing or new regulatory requirements, easier to meet.³⁷

In addition, Australian Governments via the Council on Federal Financial Relations have agreed to prioritise modernising post-COVID-19 document execution arrangements. Permanently allowing electronic execution of some conveyancing documents is consistent with this priority.

Options under consideration

There are several options that could be considered that are broadly within the scope of this BRS.

- **Option 1** — the NSW Government Cost Benefit Analysis Guidelines require that one of the options considered should be the ‘do nothing’ option.³⁸ With no further action from the government, the temporary arrangements would expire and revert to pre-COVID-19 arrangements. This option is used as the base case against which the benefits and costs of the other options are assessed.
- **Option 2** — the main reform option under consideration is to make the temporary arrangements permanent.
- **Option 3** — the final option formally under consideration, is to continue to require that relevant documents are wet signed, but to allow signatures to be witnessed via AVL.

Another potential option would be to restrict electronic signatures to digital signatures only (see box 5.1 above for an explanation of the distinction). Digital signatures are generally more secure than other types of electronic signatures, but as a commercial product there are associated costs.

However, stakeholders stressed the importance of accessibility for a wide range of signatories, ranging from major banks to small property owners. Restricting the electronic signature options to a digital signature would reduce uptake for individuals or organisations that do not sign documents regularly. In general, stakeholders agreed with the proposition that security requirements should be commensurate with security risks

³⁶ NSW Government, digital nsw, Designing our Digital Future, p. 10.

³⁷ NSW Treasury, NSW Government Guide to Better Regulation, Policy and Guidelines Paper TPP 19-01, January 2019, p. 4.

³⁸ NSW Treasury, NSW Government Guide to Better Regulation, Policy and Guidelines Paper TPP 19-01, January 2019, p. 11.

(i.e. it would be reasonable to require a digital signature for documents where security risks are high). However, there is no evidence of an increase in fraud during the COVID-19 period during which period stakeholders generally considered the fraud risks associated with lodging plans to be low. As such, this option has not formally been considered.

Implementation options

In addition, there are various options on how this change could be implemented, including:

- permanently including them in the Conveyancing Rules; or
- amending the Primary legislation to specifically deal with signing and witnessing requirements.

The approach to implementation may be important from a legal perspective, but is unlikely to significantly affect the impacts (assuming the intent of the proposed changes can be achieved through any of the implementation options).

Impacts

Compared with the base case of reverting to pre-COVID-19 arrangements (Option 1 above), the main impacts are as follows.

- The impact of permanently allowing electronic signing and witnessing via AVL of relevant documents (Option 2 above) include the following.
 - The benefits associated with electronic execution of plans could include:
 - ... reduced delays where electronic signing and witnessing via AVL speeds up the process
 - ... time savings for the various parties who would no longer need to travel to sign/witness documents
 - ... other related costs, including costs associated with printing, handling and posting hard copies.
 - The costs would include:
 - ... subscription costs for digital signature services — although digital signatures are not mandatory under this option, some signatories would choose this option (partly because it allows processes to be fully digitised)
 - ... costs associated with developing new digital processes (where relevant).
 - Although in principle, there are potentially some risks associated with relaxing the signing standards, including: the risk a plan is deliberately altered or inadvertent errors. However, these risks are likely to be small, particularly as NSW will shortly transition from paper to digital survey plans.³⁹

³⁹ See Office of the Registrar-General, Transitioning from paper to digital survey plans, Discussion Paper, August 2021.

- The impact of allowing documents to be witnessed via AVL (Option 3 above) would be as follows.
 - There may be time and cost savings associated with avoiding the need to travel to have documents witnessed.
 - There would be limited scope for this option to reduce regulatory delays.
 - There would be limited impact on security risks.

The estimated impact of each of these options in present value terms over 10 years, using NSW Treasury's preferred discount rate of 7 per cent is shown in table 2.6.

- Permanently allowing the relevant documents to be signed electronically and witnessed via AVL is estimated to deliver a net benefit of around \$195 million in net present value terms over 10 years.
 - Most benefits are associated with reducing delays associated with registering plans.
 - The costs that have been quantified are estimated to be modest.
- Although the costs associated with allowing documents to be witness via AVL only (Option 3) are likely to be negligible, the benefits are also likely to be relatively limited. As such, the net benefits are significantly smaller than Option 2.

5.5 Estimated net impact of options

	Option 2: electronic signing and witnessing via AVL	Option 3: wet signing with witnessing via AVL
	\$ million	\$ million
Benefits		
Reduced delays		
Deposited plans	76.22	0.00
Strata plans	41.78	0.00
Total - reduced delays	118.00	0.00
Cost savings		
Deposited plans	51.18	3.58
Strata plans	8.92	0.62
Water access licences	20.51	1.43
Total - cost savings	80.60	5.64
Total benefits	198.60	5.64
Costs		
Digital signature plan	- 2.53	0.00
Process changes	1.51	0.00
Total costs	-4.04	0.00
Net benefit	194.56	5.64

Note: Estimated over 10 years, using a discount rate of 7 per cent.

Source: CIE estimates.

The key assumptions underpinning these estimates are set out below.

Uptake of electronic execution

A key factor driving the benefits (and any potential costs) of the proposed changes is uptake.

Evidence of uptake during COVID-19 period

Stakeholders provided qualitative evidence of uptake during the COVID-19 period. One stakeholder noted that the temporary measures were very effective and made business more convenient, efficient and smooth during the COVID-19 period. The temporary arrangements have reportedly mostly been used as a result of the increased convenience offered, rather than in response to COVID-19-related restrictions.⁴⁰

Factors identified by stakeholders as barriers to uptake during the COVID-19 period include the following.

- Inertia and force of habit — in particular, large consumer-facing businesses (such as banks etc) can take considerable time to get their systems and policies in place. Some may have considered the investment in developing new processes and policies not worth it given that the measures were temporary and COVID-19-related issues may have been less severe than may have been expected in NSW (until recently).
- A cautious attitude when facing the new — risks that are familiar in the wet ink paper world are re-assessed and focussed on when they arise in the electronic world even though they are no greater or diminished;
- A perceived lack of clarity or coverage in some relevant legislation or administrative requirements or practice.

Stakeholder views on future uptake

Stakeholders had generally positive views on the prospects for widespread uptake. In particular, the Law Council indicated they would expect that, over time, most land dealings would be signed electronically or witnessed via AVL. However, it was acknowledged there will always be cases where parties would prefer to sign and witness by more traditional means, due to factors such as personal preference or difficulties in accessing technology.

Some stakeholders noted that some of the barriers to uptake are likely to decline over time as experience with electronic transactions grows.

Uptake of similar digital processes

Uptake of similar digital processes may provide some insights into the potential uptake of digital execution of conveyancing documents that are currently outside of the eConveyancing system.

⁴⁰ Note that consultations occurred prior to the recent lockdowns.

Plans deposited via ePlan

One potential (albeit imperfect) indicator of the appetite for digital processes in relation to plans is the number of plans lodged to LRS via ePlan (see box 5.6 for a summary of ePlan).

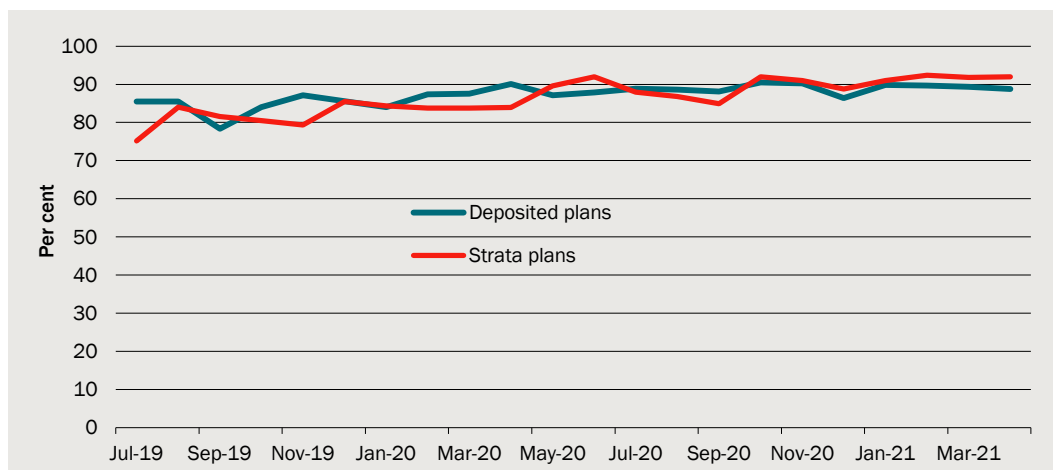
5.6 ePlan⁴¹

ePlan is an electronic plan lodgment and validation system developed by NSW Land Registry Services (NSW LRS) for registered surveyors. Although ePlan is based on paper documents (i.e. wet signatures are scanned and uploaded in pdf format), it provides some convenience benefits compared with traditional paper plan lodgment services, including:

- plans can be lodged from anywhere, anytime.
- requisitions can be satisfied online
- a plan's progress can be tracked following lodgment.
- ability to search a plan's lodgment history.

Around 90 per cent of both deposited plans and strata plans have been lodged via ePlan over the past year (chart 5.6).

5.7 Plans lodged via ePlan



Data source: Data provided by the Office of the Registrar General.

Uptake of eConveyancing

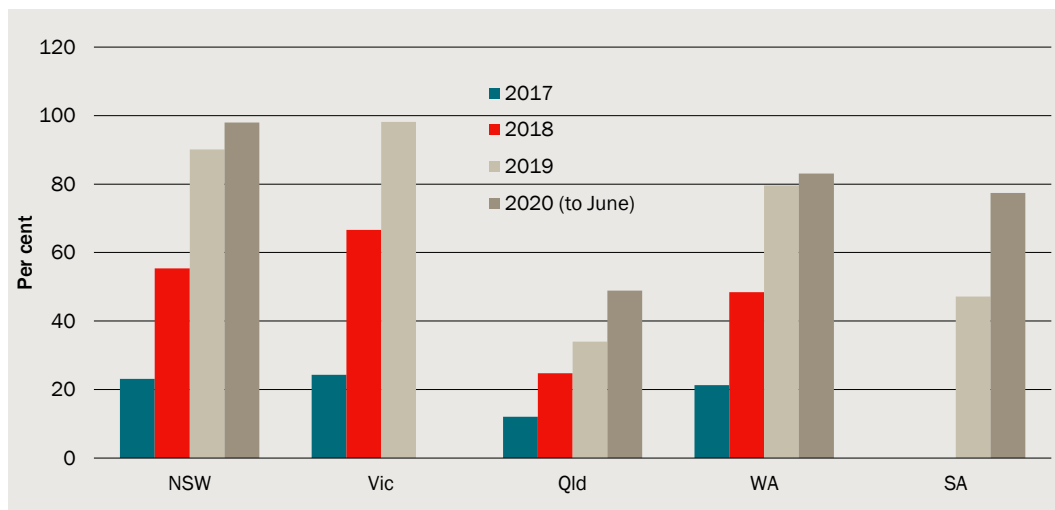
Although eConveyancing was a larger reform that required more significant changes to pre-existing practices, stakeholders generally agreed with the proposition that the uptake

⁴¹ NSW Land Registry Services website, <https://www.nswlrs.com.au/About-ePlan>, accessed 23 July 2021.

of eConveyancing may be a reasonable indicator of the uptake of electronic execution of conveyancing documents that fall outside of the eConveyancing system.

New mortgages are a major category of transaction covered by the eConveyancing system. Chart 5.8 shows the proportion of new mortgages transacted through eConveyancing over time.

5.8 Uptake of eConveyancing for new mortgages



Note: Lodgment of mortgages via eConveyancing became mandatory: in NSW from 1 July 2018; in Victoria from 1 October 2018; in Western Australia from 1 December 2018; and in South Australia from 3 August 2020 (after the period covered by the data).

Data source: State-based Registrars-General.

In interpreting the relevance of this data on the likely uptake of digital execution of conveyancing documents outside of the eConveyancing system, it is important to note that:

- Lodgment of mortgages via eConveyancing became mandatory in NSW from 1 July 2018.⁴²
- Lodgment of mortgages via eConveyancing became mandatory in Victoria from 1 October 2018.⁴³
- Lodgment of mortgages via eConveyancing became mandatory in Western Australia from 1 December 2018
- Lodgment of mortgages became mandatory in South Australia on 3 August 2020 (after the period covered by the available data).⁴⁴

⁴² NSW Office of the Registrar-General website, [https://www.registrargeneral.nsw.gov.au/property-and-conveyancing/eConveyancing#:~:text=Operator%20\(ELNO\).- ,Since%201%20July%202018%2C%20lawyers%20and%20conveyancers%20are%20required%20to,combination%20must%20be%20lodged%20electronically](https://www.registrargeneral.nsw.gov.au/property-and-conveyancing/eConveyancing#:~:text=Operator%20(ELNO).- ,Since%201%20July%202018%2C%20lawyers%20and%20conveyancers%20are%20required%20to,combination%20must%20be%20lodged%20electronically), accessed 23 July 2021.

⁴³ Victorian State Revenue Office website, <https://www.sro.vic.gov.au/news/october-deadline-electronic-conveyancing-approaches>, accessed 23 July 2021.

⁴⁴ SA Land Services, Notice to Lodging Parties No. 228, Mandating of eConveyancing in South Australia, 17 April 2020.

Future uptake profile

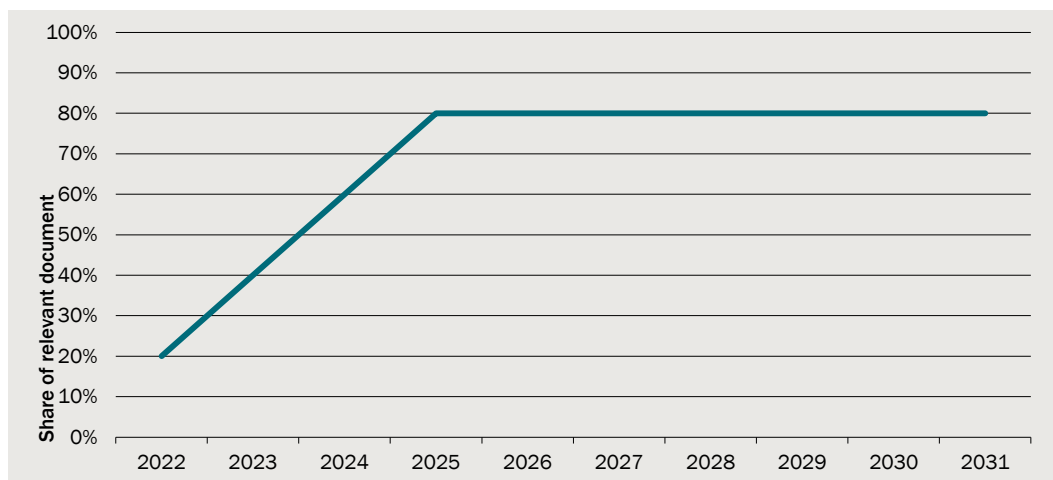
To the extent that uptake of broadly similar electronic services (i.e. ePlan and eConveyancing) is relevant to the uptake of electronic signing (and witnessing via AVL) of plans and related documents, insights from adoption profiles above are as follows.

- Uptake of electronic execution of relevant documents is likely to be high, although achieving full (100 per cent) uptake may be unlikely in the medium term given that uptake is voluntary (unlike eConveyancing in several states).
- Achieving maximum uptake may take several years.

Reflecting these insights, for the purposes of the CBA we assume (see chart 5.9):

- a maximum adoption rate of 80 per cent — high, but not full uptake is broadly consistent with:
 - the qualitative views of stakeholders
 - evidence of uptake of digital processes in a similar context.
- maximum adoption would be achieved in the fourth year after commencement — a ramp-up period of several years is also consistent with the observed uptake of eConveyancing across several states.

5.9 Assumed adoption profile



Data source: CIE.

Reduced delays

Reduced delays associated with registering relevant documents were identified by stakeholders as the main benefit of allowing digital execution of conveyancing documents.

- The benefits of reducing delays are likely to be achieved if the temporary arrangements were adopted permanently (i.e. Option 2 above).

https://www.landservices.com.au/__data/assets/pdf_file/0017/5822/NTLP-228-Mandating-of-eConveyancing-in-South-Australia.pdf, accessed 23 July 2020.

- Any reduction in delays through allowing documents to be witnessed via AVL only (i.e. wet signing would continue to be required — Option 3 above) are likely to be minimal.

Although there are likely to be benefits associated with speeding up regulatory processes for all affected land dealings, there are some cases where regulatory delays can have significant tangible costs. This is particularly the case where a regulatory process delays development. In principle, reducing delays associated with regulatory processes brings forward both the benefits and costs of development.

- A regulatory process could potentially delay works developing a site or constructing a building.
 - Reducing these delays would therefore bring forward construction activity and the associated costs.
 - Bringing forward the construction activity would also bring forward the benefits associated with new development. These benefits could be viewed from different perspectives.
 - ... From a developer's perspective, bringing forward plan approval could bring forward receiving money from the sale of a lot in a subdivision or a strata development.
 - ... From a buyers' perspective, reducing regulatory delays bring forward the benefits from a new development (i.e. a buyer would be able to move into a new dwelling sooner).
- An alternative approach that is commonly used to value time delays in a CBA context is based on the 'holding costs'. Where funds have been committed, delays can be quantified based on the additional cost of 'holding' these assets.

Delays in registering plans will not delay construction activity in all cases.

- Not all plans are associated with new development. Delays in the registration process are most likely to delay construction or occupation of new dwellings for:
 - subdivision plans (based on 2020 data, subdivision plans comprised around 47 per cent of all deposited plans)
 - new strata plans (based on 2020 data, new strata plans comprised 85 per cent of all strata plans).
- Furthermore, it is not necessarily clear that speeding up some regulatory processes will necessarily bring forward new development.
 - New developments typically go through multiple regulatory processes and in some cases the regulatory processes can occur concurrently. Where regulatory processes can occur concurrently, speeding up one process does not necessarily bring forward development where there is no change in approval times for other processes.
 - Similarly, delays in some regulatory processes do not necessarily delay subsequent phases of the project.

Evidence of reduced delays

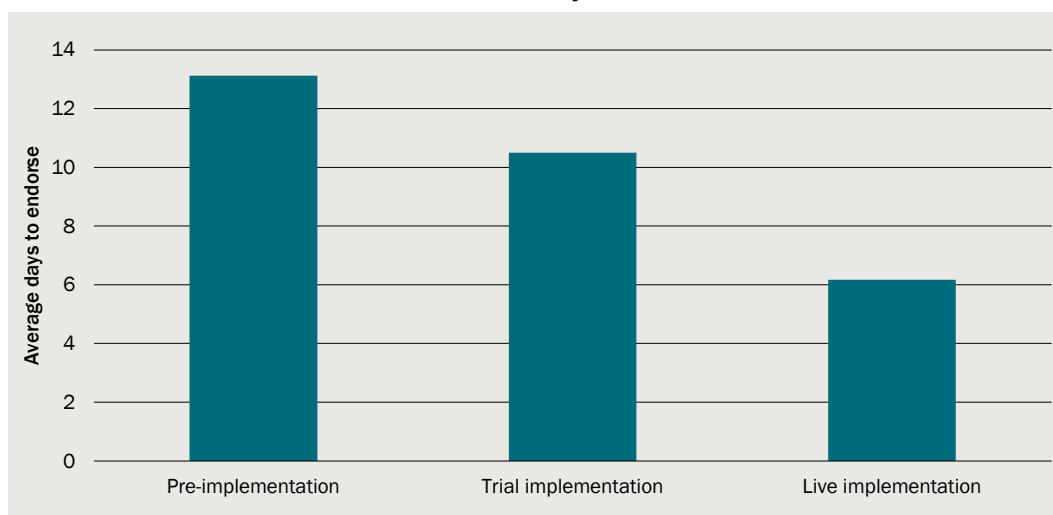
There is both qualitative and quantitative evidence of time delays that could potentially be avoided through electronic signing and witnessing of documents.

- Qualitative evidence of current requirements causing delays was discussed above. These delays could potentially be avoided through electronic execution of the relevant documents.
- The submission from the Institution of Surveyors NSW suggested:
 - minor delays would generally extend to one week
 - around 2-5 per cent of major delays can extend to more than one month.

Prior to the temporary regulatory changes, Penrith City Council reported that the endorsement of subdivision certificates which are required to accompany a plan for registration, and associated land title dealings, are the only aspects of the approvals process that still require some element of hard copy processing and do not have an ongoing digital solution. The temporary change in regulatory arrangements allowed them to incorporate land dealings and subdivision certificates into existing digital processes. For land dealings, this resulted in a significant reduction in the time for council endorsement (chart 5.10).

- The average time for council endorsement prior to implementing the new process (over the period from September 2019 to April 2020) was around 13.1 days.
- A new process was implemented on a trial basis in May 2020 and went live in September 2020. Over the period from September 2020 to February 2021, the average time for endorsement fell to 6.2 days, a reduction of **6.9 days**.

5.10 Council endorsement time – Penrith City Council



Note: The Pre-implementation period includes data from September 2019 to April 2020. The Trial implementation period was from May 2020 to August 2020. The Live implementation period includes monthly data from September 2020 to February 2021.

Data source: Penrith City Council.

Reduced delay assumptions used in CBA

The qualitative and quantitative evidence points to the potential for a relatively significant reduction in delays associated with registering relevant documents.

- To the extent that documents are couriered around all of the relevant signatories for wet signing (and witnessing), reducing delays across all signatories are potentially cumulative.
- On the other hand, where signatories currently meet to sign and witness the relevant documents, electronic signing, the delays that could be avoided through digitising the process are those related to:
 - arranging a time convenient for all parties
 - one signatory not being conveniently located (such as where one party is located in regional NSW or is temporarily overseas).

The reduction in endorsement times reported by Penrith City Council is significant, but required some investment in new digital processes involving some additional costs (see below). It is therefore not clear that these time savings could be achieved by all councils (and other parties) that move away from paper-based systems. That said, qualitative evidence from other stakeholders suggests that:

- minor delays are relatively common
- major delays of one month or more are relatively infrequent, but would still significantly increase the average avoidable delay.

On that basis, the time savings achieved by Penrith City Council (**6.9 days**) may be a reasonable indicator of the average reduction in delays.

Valuing reduced time delays

For the purposes of the CBA, reduced delay costs are treated as follows.

Reduced delays for registering subdivision plans

Not all deposited plans are associated with new development. The type of deposited plan where regulatory delays are most likely to delay new construction activity are subdivision plans.

Delays in registering subdivision plans are based on the holding costs for undeveloped lots.

- We estimate that reducing delays associated with registering deposited plans by 6.9 days would increase holding costs by around \$607 per lot based on the following assumptions.
 - The Urban Development Institute reported the median price of a greenfield lot in Sydney was \$458 900 (at the end of 2019).⁴⁵ Note that this estimate is conservative as land prices have increased significantly since the end of 2019.

⁴⁵ Urban Development Institute of Australia, UDIA State of the Land 2020, National Residential Greenfield and Apartment Market Study, p. 8.

- The cost of holding land is effectively the additional interest repayment on borrowed funds. We assume an annual interest rate of 7 per cent, consistent with the recommended discount rate in the NSW Guide to Cost-Benefit Analysis.
- These cost savings apply to each lot, where the plan is executed electronically. The estimated number of lots is based on the following assumptions.
 - There are 10 078 deposited plans registered per year (based on the average from 2017-18 to 2020-21 — see table 5.2)
 - Subdivision plans make up 47 per cent of all deposited plans (based on 2020 data — see chart 5.3)
 - On average, there are 5.47 lots per subdivision plan (based on 2020 data).
 - The uptake profile above is applied to the estimated number of lots.

Reduced delays for registering strata plans

Delays in registering strata plans do not delay construction, but could ultimately delay people from moving into dwellings within a strata scheme.

- We estimate that bringing forward the housing services provided by a strata scheme by 6.9 days provides a benefit of around \$453 per strata unit based on the following assumptions.
 - Rents are a measure of the housing services provided by strata units. Based on data from the Rent and Sales Report from the Department of Communities and Justice, the median rent for an apartment in NSW is \$460 per week.⁴⁶
 - Delaying moving in by 6.9 days on average effectively reduces the housing services provided by a new strata unit by nearly 1 week.
- As above, these cost savings apply to each strata lot in a plan executed electronically. The estimated number of lots is based on the following assumptions.
 - There are 1756 strata plans registered per year (based on the average from 2017-18 to 2020-21 — see table 5.2)
 - New strata plans make up 84 per cent of total strata plans (based on 2020 data)
 - On average, there are 12.79 lots per new strata plan (based on 2020 data).
 - The uptake profile above is applied to the estimated number of lots.

Cost savings

As noted in the NSW Government Digital Strategy, moving away from paper-based and face to face processes provides the opportunity to increase productivity and efficiency.⁴⁷

⁴⁶ Department of Communities and Justice website, <https://www.facs.nsw.gov.au/resources/statistics/rent-and-sales/dashboard>, accessed 26 July 2021.

⁴⁷ NSW Government, digital nsw, Designing our Digital Future, p. 7.

Evidence on cost savings

The costs associated with wet-signing and witnessing documents in the traditional way include:

- the cost of securely transporting original documents between signatories
- time costs associated with travelling to attend a practitioner's office or elsewhere to wet sign documents (these costs of meeting face to face to sign documents can be particularly significant in rural and regional areas)
- travel costs
- costs associated with arranging for all parties to be in the same place at the same time (where relevant).

There are also costs associated with replacing documents that are lost or damaged in transit. However, it is unclear how frequently this occurs. These costs have not therefore been quantified.

Previous studies have quantified the cost savings associated with digital execution of documents. In particular, the Commonwealth Treasury considered an option that involved allowing electronic execution of documents by proprietary companies with a sole director and no company secretary, as part of a broader Regulation Impact Statement (RIS) on modernising business communications. The key benefits identified were the reduced costs associated with:

- the need to travel to sign and witness documents physically
- transporting document to recipients.

The relevant assumptions used to quantify these benefits are summarised in box 5.11

5.11 Relevant assumptions from Commonwealth Treasury RIS⁴⁸

- The costs associated with executing a document in-person include:
 - The avoided travel time to execute a document in-person is one hour.
 - Work-related labour cost of \$73.05 per hour (based on OBPR advice).
 - The time cost of printing and other mailroom activities involved in sending a letter is approximately \$6.62.
 - Printing and postal costs per actual letter are respectively \$1.50 and \$2.20.
- It takes 3 minutes to send an electronic document.
- The cost of sophisticated web-based signing services were excluded (as the use of these services is optional).

These assumptions imply that the cost savings associated with digital execution could be in the order of around \$80 per document (table 5.12). These costs — particularly travel time savings — could be relatively conservative in the context of electronic signing and

⁴⁸ Commonwealth Treasury, Modernising Business Communications — Improving the Technology Neutrality of Treasury Portfolio Laws, Regulation Impact Statement, p. 21.

witnessing of plans; as noted by several stakeholders, owners located in rural or regional NSW would have much higher travel times to execute a document in Sydney.

5.12 Estimated cost savings per document

	Estimated cost
	\$ per document
Time costs associated with travel	73.05
Printing and other mailroom activities	6.62
Printing costs	1.50
Postal costs	2.20
Total	83.37
Less: Time to send electronic document	3.65
Net cost saving	79.72

Source: CIE based on Commonwealth Treasury, *Modernising Business Communications – Improving the Technology Neutrality of Treasury Portfolio Laws*, Regulation Impact Statement, p. 21.

Alternatively, where the regulatory change would allow the whole regulatory process to be digitised, costs could potentially be reduced even further. Penrith City Council reported significant time and cost savings for the council associated with new digital processes facilitated by the temporary regulatory change to allow digital execution of conveyancing documents relating to land dealings.

- Penrith City Council estimated that aggregate time savings associated with the new process could be around 426 administration office hours and 326 coordinator hours per annum (this included digitisation of processes relating to both land dealings and subdivision certificates).
- Based on current wage rates (including on-costs), this equates to approximately \$57 508 per annum. This excludes travel time which would have been necessary during COVID-19 restrictions, as well as printing or travel costs for the applicants.
- Based on approximately 130 applications per year (including 90 land dealings and 40 subdivision certificates, as reported by Penrith City Council), this equates to around \$440 per application.

If the reforms extended to allowing documents to be witnessed via AVL only (i.e. wet signing would continue to be required — Option 3 above), the main benefits would be avoided travel costs of around \$73 per document (see table 5.12 above).

Cost saving assumptions used in the CBA

Based on the evidence presented above, cost savings associated with avoided travel, printing etc. may be relatively modest. However, where the regulatory change allows paper-based processes to be fully digitised, cost savings may be more significant.

- Parties that are required to sign relevant documents to register multiple land dealings per year may be more inclined to invest in digitising these processes. This could potentially include some: councils, surveyors, banks and possibly some larger developers.

- On the other hand, many owners may register plans infrequently and therefore there may be little benefit from investing in digitising processes.

It is also important to note that cost savings across the various parties that are required to sign (at least 4 for each plan) before a plan is registered are additive (i.e. there are potentially cost savings for all parties).

Cost saving estimates used in the CBA are based on the following assumptions.

- Under the option where the temporary arrangements were extended permanently (Option 2 above), we assume:
 - each party saves \$261 per plan, based on the average of the estimates above.
 - there are four signatories for each plan (some plans may have less signatories, while others may have more).
- Under the option where witnessing documents via AVL were allowed (Option 3 above), we assume owners only could save \$73 per document in avoided travel time (see table 3.3).

Additional costs

Digital signature subscription

If the temporary arrangements were to be implemented permanently, signatories would have a choice of electronic signing technologies and the costs would depend on the choice they make. The cost of some basic (and less secure) electronic signature technologies would be minimal. On the other hand, digital signatures are commercial product with improved security and associated costs.

As an indicator of the cost of digital signature products, the pricing for a popular digital signing service, DocuSign, is shown in table 5.13. Note that more expensive plans offer more features, so it is likely that most businesses would choose the standard or Business Pro plan. This suggests could range between around \$400 and \$650 per user per year. This is broadly consistent with previous studies have estimated that the annual cost of subscribing to a digital signature provider is around \$500 per year.⁴⁹

5.13 DocuSign pricing

	Monthly cost per user	Annual cost per user
	\$	\$
Personal	14	168
Standard	34	408
Business Pro	55	660

Source: DocuSign website, <https://www.docusign.com.au/products-and-pricing>, accessed 3 September 2021.

⁴⁹ AECOM, 2019, Estimating costs of electronic conveyancing services in NSW, Prepared for IPART, p. 16.

The choice made by individuals would depend on factors such as the number of documents the person is required to sign. Signatories required to sign a relatively large volume of land dealings (such as banks and councils with a large number of plans) may be more likely to subscribe to a digital signing service. On the other hand, individuals and organisations that are required to execute documents infrequently may choose an alternative approach to electronic signing. As such process development costs could be relatively modest on a per dealing basis.

For many organisations, other important considerations would include:

- the relative security of the various options
- the scope for time and cost savings — the evidence gathered above suggests that through greater digitisation of regulatory processes (including the use of digital signatures) can reduce costs and delays.

The cost of digital signing services was excluded from the Commonwealth RIS (see box 5.11) on the basis that the use of these services is optional.⁵⁰ Although optional, these are nevertheless additional costs that would be incurred as a result of the proposed changes. Indicative estimates of the potential costs are based on the following assumptions.

- The cost of subscribing to a digital signing service is \$500 per year (see above).
- Surveyors are likely to sign multiple plans and therefore may be more likely to subscribe to a digital signing service.
 - The Board of Surveying and Spatial Information (BOSSI) reports that in 2020-21, there were 925 registered land surveyors (including 17 registered land and mining surveyors).⁵¹
 - The proportion of surveyors that subscribe to a digital signing service is assumed to reflect the adoption rate (see chart 5.9 above).
- The additional costs incurred by councils depends on how many councils choose to use digital signatures. The number of plans varies significantly across councils, with councils that sign the most plans most likely to adopt digital signatures.
 - Based on 2020 data on the number of plans per council, the number of councils that would need to adopt digital signatures to achieve the assumed adoption profile is shown in table 5.14.
 - The pricing for DocuSign (see table 5.13) is on a per user basis. We assume 2 users per council.

⁵⁰ Commonwealth Treasury, *Modernising Business Communications — Improving the Technology Neutrality of Treasury Portfolio Laws*, Regulation Impact Statement, p. 21.

⁵¹ NSW Board of Surveying and Spatial Information, *BOSSI Statistical Review 2021-21*, July 2021, p. 3.

5.14 Assumed number of councils that adopt digital signatures

Share of plans registered	Number of councils	Number of users	Additional cost ^b
	No.	No.	\$
20%	6	12	6 000
40%	14	28	14 000
60%	28	56	28 000
80%	51	102	51 000

^a Assumes 2 users per council. ^b Based on \$500 per user.

Source: CIE estimates.

- Although banks are likely to already use digital signing services, digital signing of plans may require banks to pay for additional users. However, the costs for banks have not been included.
- Owners are less likely to use digital signing services, particularly those that are required to execute relatively few documents. Additional costs for owners have not therefore been included.

Cost of process changes

In addition to the additional costs associated with subscribing to digital signing services, organisation that digitise regulatory processes would initially incur some costs associated with changing these processes. As noted above, it is likely that greater time and cost savings can be achieved where the whole process can be digitised.

Penrith City Council reported that the cost associated with changing the relevant processes was around \$34 000 (table 5.15) (note that this is a one-off cost and based on the estimated cost savings associated with digitising these processes estimated above, Penrith City Council would have recouped these costs in less than a year). Staff time was the only significant cost (no additional software or hardware was required and no consultants were engaged). The reported staff time covered a review of the existing subdivision application process and implementation of the new land title dealing application process. As such, the project was broader than just the digitisation of document execution. However, the benefits of digitising these processes would have been significantly lower without the regulatory change (i.e. if hard-copy execution was required to finalise the process).

5.15 Estimated cost of process change

	Estimated hours	Hourly rate	Total
	No.	\$ per hour	\$
Systems Administrator	52	57.71	3 001
Development Assessment Co-ordinator	21	98.37	2 066
Planning Administrator	245	68.09	16 682
Administration Supervisor	210	57.71	12 119
Total			33 868

Source: Estimates provided by Penrith City Council.

Based on the estimated uptake rate of councils (see table 5.14 above), the total cost of process changes would be around \$1.5 million in net present value terms over 10 years, using a discount rate of 7 per cent.

It is less likely that significant process changes would be required for surveyors to move to digital execution. These costs have not therefore been included in the CBA.

Nevertheless, even if the cost of process changes for surveyors did turn out to be similar to councils (i.e. around \$34 000), the total cost would still be modest relative to the total benefits from the reform. As an indicator of the potential scale of the costs associated with surveyors changing their processes, we assume:

- a cost of \$34 000 per registered land surveyor (based on the estimates in table 5.15 above)
- 925 registered land surveyors with the assumed uptake rate shown in table 5.9 applied (note that these costs would be incurred by each firm rather than each individual surveyor, so would overstate the number of businesses that would incur the costs associated with changing the process).

Under these assumptions the cost of process changes would be around \$22.7 million higher in present value terms over 10 years (using a discount rate of 7 per cent). If these costs were included, the reform would still deliver a significant net benefit (an estimated \$172 million in net present value terms).

Potential risks

On the other hand, there are potentially some risks associated with relaxing the signing standards. However, most stakeholders considered that any increase in risk is small.

The risks identified by various stakeholders include the following.

- The main risk of relaxing these requirements is the risk of fraud or error, such as where plans are altered from what has been approved by the Council. Once a plan has been registered, it becomes a current plan.
 - We did not find any evidence of an increase in fraud over the COVID-19 period. That said, fraud can take some time to be identified. Given the relatively short timeframes involved, stakeholder generally agreed that any increase in fraud may not have been identified as yet.
 - Furthermore, these risks will to a significant extent, be addressed by further digitisation of the regulatory process relating to plans through the ePlanning platform. In particular, any approved plan would be kept digitally in the ePlanning system, so there would be limited opportunity to fraudulently register a plan that is different to the one that has been approved.
- Stakeholders noted there are potentially risks associated with verification of identity (VOI). Remote witnessing may also make it more difficult for a witness to identify if a document is being signed under duress. However, practitioners reported that the enhanced VOI regime introduced immediately prior to COVID-19 tightened discipline and they did not witness lesser discipline in signing relying on the

temporary measures. The temporary measures did not undermine the new VOI regime.

- Some stakeholders identified that there may be concerns where an agent or assistant is authorised to affix a principal's signature. However, it was noted that this could be addressed if the principal informs the counterparty that authorisation is given to affix a digital signature.

Quantifying these potential risks has not been possible. However, any costs are likely to be relatively small. We understand that there is minimal fraud and/or misconduct in relation to the registration of plans and stakeholders generally agreed that any increase in risk (relative to pre-COVID-19 arrangements) would also be small.

Stakeholder consultation

The stakeholder consultation process and a summary of the feedback received is provided below.

Targeted consultation process

The stakeholder consultation process included the following activities.

- Online forums for targeted stakeholders (see below) were held at the following times:
 - 10-11 am on 2 June 2021
 - 2-3 pm on 3 June 2021.
- Stakeholders were also invited to provide written submissions.
- CIE also held a separate meeting with Penrith City Council on Thursday 2 July 2021.

The invitation list was compiled by the lead agency and included the following organisations:

- Law Society of NSW
- Australian Institute of Conveyancers (NSW Division)
- Institution of Surveyors NSW
- Association of Consulting Surveyors NSW
- Australian Banking Association
- NSW Land Registry Services
- Urban Development Institute of Australia
- Australian College of Strata Lawyers
- Local Government NSW
- Strata Community Association (NSW Division)
- PICA Group
- Property Council of Australia
- Crown Land (Department of Planning, Industry and Environment)
- WaterNSW

- Department of Communities and Justice.

Summary of feedback received

All stakeholders that participated in consultations supported retaining the option of electronic signing and witnessing of relevant documents permanently. Experiences during the COVID-19 period have been positive. Increased flexibility enabled by these changes was particularly beneficial to regional areas. Risks were assessed and were found to be mitigated by the current controls and procedures. Stakeholders saw this as a step-change in further digitalising broader processes. The summary of feedback topics is outlined below.

Impact in the period since changes were introduced

Representatives from industry advised that the temporary COVID-19 measures were perceived as effective and made business more convenient, efficient and smooth during the COVID-19 period, as well as during the post-COVID-19 period when the operation of business in NSW was essentially unaffected by COVID-19. The continued practice and deployment of the measures, beyond the scope of initial COVID-19-induced restrictions, signals their need in a post-lockdown world going forward.

Penrith City Council reiterated these sentiments that the industry response to the change has been highly positive since its implementation.

Slowness of adoption

Industry noted that adoption was slow moving, which may be attributable to the following reasons:

- Inertia and force of habit for large consumer-facing businesses such as banks is strong and consequently, they require longer to adjust their systems and policies
- A cautious attitude when facing the changes to processes is to be expected. For example, risks that are familiar in the wet ink paper world are re-assessed and focussed on when they arise in the electronic world even though they are no greater or diminished
- Where some procedural steps in a transaction require lodgment of a paper document(s), then there is less reason for the remainder of the transaction or any linked transaction to be electronic. Parties may then fall back to the familiar process which is using paper. Ideally it would be appropriate to ensure that all requirements can be satisfied without paper, not just the actual lodgment of dealings.
- Some stakeholders noted that there are some difficulties in the process and execution of the current audio-visual witnessing requirements, which has prevented wider adoption.

Benefits to regional NSW

Regional locations have strongly benefited from the changes that allow for digital and electronic execution and lodgment of plans, dealings, and instruments. As opposed to practitioners in Sydney who have physical Land Registry Services and Office of State Revenue offices in proximity, practitioners in regional locations do not have these options and consequently have an added burden when lodging documents with authorities. The ability to lodge electronically signed documents online is considered an important step in equality between the metropolitan and regional areas.

Benefits to local government

Penrith City Council advised that enabling digital lodgment translated to significant savings for Council customers through:

- Removing travel to and from Council for lodgment and collection by couriers
- Extreme ease of correction when errors on documents are discovered
- Instant distribution to other stakeholders such as the applicant, surveyor and bank
- Removal of printing costs.

In response to the post-COVID-19 world which has resulted in many businesses and government agencies incorporating a higher element of work from home across the workforce; the ability to meet, witness and endorse documents digitally allows councils to have generally faster processing due to greater staff availability.

Risks

Stakeholders did not observe any signs of increased fraud or lesser discipline in signing relying on the temporary measures. The enhanced verification of identity regime introduced immediately prior to COVID-19 resulted in a strong level of base discipline, of which the introduced temporary measures did not undermine.

Council has mitigated some risk by employing system restrictions to lock down access to digital stamps and signatures associated with endorsement. Concise tracking of applications and strong document management practices supported easy validation if challenges arose. They advised that consideration should be given to balancing the risk of managing endorsement processes with only one set of hard copy original documents and the issues that arise through the potential loss or damage of those documents.

Further assurance could be provided through an option for direct lodgment or information sharing between Councils and Land Registry Services, to reduce the opportunity for documents to be tampered with prior to registration.

Preferred option

There is a clear case to permanently allow electronic signing and witnessing of plans and related documents (Option 2).

- The benefits are estimated to be significant, particularly those relating to reduced delays.
- Although there are some additional risks associated with relaxing signing/witnessing requirements, these risks can be managed and are therefore likely to be relatively small.

The benefits of allowing documents to be witnessed via AVL (Option 3) are likely to be small and significantly lower than permanently allowing electronic signing of plans and related documents.

The impacts are likely to be broadly similar, regardless of the approach to implementation. However, most stakeholders indicated a preference for an amendment to the primary legislation to specifically deal with witnessing requirements.

Future reform opportunities

This BRS has shown that reforms relating to executing documents can potentially deliver significant net benefits through improved convenience and reducing delays associated with traditional authentication requirements.

Based on feedback provided by some stakeholders, there may be further opportunities for reform in relation to signing and witnessing requirements for documents that were outside the scope of this BRS. For example, some stakeholders noted that the requirement for witnessing is an impediment to electronic signing of documents (particularly for deeds) and questioned whether witnessing was necessary.

There may be an opportunity for the NSW Government to further examine these and other related reform opportunities.

6 *Questioning conducted through audio or audio-visual link*

Background

The NSW Government has in place a suite of legislation broadly aimed at protecting the environment and managing natural resources. This includes:

- the *Crown Land Management Act 2016*
- the *Biodiversity Conservation Act 2016*
- the *Protection of the Environment Operations Act 1997*
- the *Water Management Act 2000*
- the *Mining Act 1992*
- the *Fisheries Management Act 1994*.

These Acts set out how suspected breaches can be investigated. Although there are minor differences, the legislation generally permits an authorised officer⁵² to require a person to answer questions about certain matters, where the authorised officer has reasonable grounds to suspect that the person has knowledge of those matters. However, the legislation has generally not allowed interviews to be conducted via audio link (e.g. telephone) or audio-visual link (AVL).

Face-to-face interviews have the potential to expose participants (including authorised officers, interviewees and any legal representatives) to COVID-19. Some interviews may not have been possible under some of the COVID-19-related restrictions that have been in place at various times during the pandemic.

To allow authorised officers to continue investigating suspected breaches of the various Acts under COVID-19-related restrictions without exposing participants to the virus, the NSW Government temporarily amended the legislation to allow interviews to be conducted via audio link or AVL. The specific temporary amendments are summarised in table 6.1.

⁵² The term ‘authorised officer’ is used to refer to officers authorised under the relevant Act, including inspectors under the Mining Act 1992 and fisheries officers under the Fisheries Management Act 1994.

6.1 Summary of temporary amendments

Legislation	Summary of temporary amendments
Crown Land Management Act 2016	<p>Section 10.23 of the <i>Crown Land Management Act 2016</i> permits an authorised officer under that Act to require a person to answer questions about certain matters if the authorised officer suspects on reasonable grounds that the person has knowledge of those matters.</p> <p>The temporary amendment enables the authorised officer to authorise the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).</p>
Biodiversity Conservation Act 2016	<p>Section 12.19 of the <i>Biodiversity Conservation Act 2016</i> permits an authorised officer under that Act to require a person to answer questions about certain matters if the authorised officer suspects on reasonable grounds that the person has knowledge of those matters.</p> <p>The temporary amendment enables the authorised officer to authorise the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).</p>
Protection of the Environment Operations Act 1997	<p>Section 203 of the <i>Protection of the Environment Operations Act 1997</i> permits an authorised officer under that Act to require a person to answer questions about certain matters if the authorised officer suspects on reasonable grounds that the person has knowledge of those matters.</p> <p>The temporary amendment enables the authorised officer to authorise the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).</p>
Water Management Act 2000	<p>Section 338B of the <i>Water Management Act 2000</i> permits an authorised officer under that Act to require a person to answer questions about certain matters if the authorised officer suspects on reasonable grounds that the person has knowledge of those matters.</p> <p>The temporary amendment enables the authorised officer to authorise the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).</p>
Mining Act 1992	<p>Section 248L of the <i>Mining Act 1992</i> permits an inspector under that Act to require a person to answer questions about certain matters if the inspector suspects on reasonable grounds that the person has knowledge of those matters.</p> <p>The temporary amendment enables the inspector to authorise the questions to be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).</p>
Fisheries Management Act 1994	<p>Section 256 of the <i>Fisheries Management Act 1994</i> permits a fisheries officer under that Act to require a person to answer questions about certain matters.</p> <p>The temporary amendments enable the fisheries officer to specify that the questions be answered using an audio link (for example a telephone) or an audio visual link (for example a video conferencing application).</p>

Source: COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020.

These temporary amendments were initially introduced for 12 months, commencing in March 2020. They were subsequently extended by a further 12 months and are due to expire on 31 March 2022.

The main regulators affected by these changes include:

- Crown Lands
- the Environment Protection Authority (EPA)
- Environment Energy and Science (EES)
- the Natural Resources Access Regulator (NRAR)

- the Resources Regulator
- Department of Primary Industries Fisheries (DPI Fisheries).

Local councils also have a compliance and enforcement role in relation to the *Protection of the Environment Operations Act*.

Need for government action

As the pre-COVID-19 arrangements did not allow interviews to be conducted via audio-link or AVL, all interviews were conducted face-to-face. In addition to reducing COVID-19-related risks, there are various costs associated with face-to-face interviews that could potentially be avoided through greater use of digital technology. In particular, face-to-face interviews require participants to travel to an interview location; the associated costs include the following.

- Costs incurred by regulators in conducting face-to-face interviews, could include:
 - Time costs associated with one or more authorised officers travelling to and from the interview location
 - Transport costs, which could include:
 - ... Airfares, airport parking and car hire, or
 - ... Agency vehicle-related costs
 - Other travel expenses (such as accommodation and meals)
 - Venue hire (in cases where the regulator needs to hire a venue).
- Costs incurred by interviewees could include travel-related costs (as above) for the interviewee and any legal representative. In cases where a legal representative needs to travel from Sydney to a regional location, these costs could be significant.

In addition, organising and co-ordinating a suitable time for all participants can also take significant time. This potentially means investigations take longer to resolve.

Options

The NSW Government is now considering permanently allowing interviews to be conducted via AVL. To some extent, allowing interviews to be conducted via audio link or AVL is a binary choice (i.e. allow it or not). In general, this BRS focuses on this broader question on whether the legislation should be changed permanently allow AVL interviews.

However, some regulators and stakeholders suggested that there is a need for further clarification over some aspects of AVL interviews. In this regard, there are various options that could be considered. However, it is beyond the scope of this BRS to consider these implementation details.

Nevertheless, implementation options that could be considered include the following.

- A key issue where there was disagreement between some industry stakeholders and regulators is whether agreement from the interviewee should be required before an interview can be conducted via AVL.
 - Industry stakeholders generally argued that agreement from the interviewee should be required.
 - Regulators tended to argue it was not reasonable for regulators to require agreement in the context of directed interviews.
- There are also various options that could be considered in relation to the arrangements for the conduct of the interview via AVL.
 - Can interview recordings be played in court?
 - Who is permitted to be in the room with an interviewee?
 - Is the interviewee required to keep the camera on?

In summary, the options considered as part of the BRS are as follows.

- 1 Allowing the temporary arrangements to expire and revert to pre-COVID-19 arrangements, where AVL interviews are not permitted (this option is used as the base case).
- 2 Permanently allowing interviews under the various Acts to be conducted via audio link or AVL.

Impact of proposed changes

The impacts of permanently allowing interviews under the various Acts to be conducted via audio link or AVL are assessed against a base case scenario where the temporary amendments are allowed to expire and the legislation reverts to pre-COVID-19 arrangements (i.e. interviews via audio link and AVL were not permitted under pre-COVID-19 arrangements).

The primary impact of the proposed changes to the legislation is therefore to allow interviews via audio link or AVL.

- Based on estimates provided from regulatory agencies and other information, the benefits associated with providing this option are estimated to be around \$880 000 per year or around \$6.5 million in net present value terms over 10 year, using a discount rate of 7 per cent (table 6.2).
 - This estimate includes reduce travel costs and time savings for both regulatory agencies and interviewees.
 - Other unquantified benefits include:
 - ... Avoided time and travel costs for lawyers (where relevant)
 - ... Finalising investigations sooner.
- As the proposed regulatory change gives regulators an option (i.e. AVL interviews are not mandatory), the proposal is unlikely to have any significant costs.
 - Conducting interviews via AVL is unlikely to compromise the effectiveness of investigations. Both regulators and industry stakeholders suggested that AVL interviews are not necessarily effective in all circumstances. Regulators can

therefore choose to conduct a face-to-face interview when those circumstances arise.

- Industry stakeholders generally did not perceive that interviews conducted via AVL compromised fairness.

6.2 Estimated annual cost savings

	Annual	Net present value ^a
	\$'000	\$ million
Cost savings regulatory agencies	840.9	6.32
Cost savings for interviewees ^b	39.4	0.30
Total	880.3	6.62

^a Calculated over 10 years, using a discount rate of 7 per cent. ^b Potentially significant cost savings for interviewees on any legal representation (costs of travel and time for) are not included

Source: CIE estimates (see table 6.4 and table 6.6 below).

Estimated uptake of AVL interviews

All regulators consulted reported having successfully used AVL interviews during the COVID-19 period. Regulators generally supported retaining the option of conducting interviews via AVL. However, some regulators noted there are some circumstances where AVL interviews are unlikely to be appropriate or may be less effective than in-person interviews.

- AVL interviews can be inappropriate where large documents are involved, such as where an interviewee is presented with a large document or where the interview involves working through a large document with the interviewee.
- AVL interviews can be less effective in gathering relevant information in some circumstances, including the following.
 - It can be difficult to assess the body language of an interviewee via AVL, which may make an interview less effective in gathering information.
 - As noted above, AVL interviews can be less effective than in-person interviews where the interviewees are unco-operative.

For these reasons, most regulators indicated that if the option of conducting interviews via AVL were to be made permanent, they would be likely to continue to conduct most interviews in-person (assuming COVID-19-related concerns decline over time).

Nevertheless, all regulators indicated they would be likely to use the option of conducting interviews via AVL, particularly in cases where a face-to-face interview would require significant travel. Those regulatory agencies that provided an estimate as a share of all interviews, generally suggested that no more than around 25 per cent of interviews would be conducted via AVL.

Estimates provided by regulatory agencies suggest that close to 500 interviews could be conducted by AVL each year (see table 6.3). This estimate is likely to be conservative as it excludes any interviews that could potentially be conducted by Crown Lands or local government (which has a compliance and enforcement role under the Protection of the

Environment Operations Act) via AVL. This could potentially increase further over time as authorised officers become increasingly familiar with this approach to interviews and develop strategies to mitigate any of the disadvantages identified.

Note that EPA has 276 staff working in regulatory operations divisions (including 118 in metropolitan areas and 158 in regional areas).⁵³ There are 16 EPA offices throughout NSW.⁵⁴ We gathered information from 2 separate teams within EPA and extrapolated across all regulatory operations staff. In particular, the information gathered suggested that each regulatory operations officer would conduct around 1 interview via AVL per year (around 25 per cent of all interviews). This is also likely to be a conservative estimate. The other regulatory agencies provided estimates for the whole agency.

6.3 Estimated number of interviews conducted via AVL per year

Regulator	Interviews
	No. per year
EPA ^a	276
DPI Fisheries	50
Resources Regulator	5
NRAR	131
EES	25
Total	487

^a Based on an assumed 1 interview per person across 276 people working in regulatory operations.

Note: No information was provided by Crown Lands.

Source: Estimates provided by regulatory agencies.

Under the temporary arrangements, the choice of whether the interview is conducted via AVL is made by the regulator and the estimates provided by regulatory agencies were made on that basis. If agreement from interviewees were to be required to conduct an interview via AVL, this could potentially reduce the number of interviews via AVL.

However, the types of circumstances that might not be appropriate for AVL interviews identified by stakeholders generally aligned with those identified by regulatory agencies. So requiring agreement from the interviewee may not reduce the number of interviewees conducted via AVL significantly. Furthermore, obtaining agreement from interviewees could potentially reduce the number of AVL interviews that would need to be repeated in-person and also address any fairness concerns.

Cost savings for regulatory agencies

Based on the information provided by regulatory agencies, cost savings from permanently allowing interviews to be conducted via AVL could be around \$850 000 per year (table 6.4). As above, this estimate does not include any cost saving for Crown Lands and local councils.

⁵³ EPA Annual Report 2019/20, p. 37.

⁵⁴ EPA Annual Report 2019/20, p. 20.

6.4 Estimated annual cost savings for regulatory agencies

Regulator	Estimated interviews held via AVL	Estimated cost savings per interview ^a	Estimated annual cost savings ^b
	No. per year	\$	\$
EPA	276	1 440	397 440
Fisheries	50	1 800	90 000
Resources Regulator	5	4 200	21 000
NRAR	131	2 280	298 680
EES	25	1 350	33 750
Total	487		840 870

^a See table 6.3 above. ^b See table 6.5 below.

Note: Estimates do not include any cost savings for Crown Lands or local councils.

Source: Estimates provided by regulatory agencies.

Most regulators affected by the legislative changes provided estimates of the average cost savings for each interview conducted via AVL, compared with a face-to-face interview (table 6.5).

- The cost saving per interview varies based on a range of factors including:
 - whether one or more authorised officers typically attend an interview (this affects both time costs and travel-related expenses)
 - travel costs varied depending on the types of locations authorised officers typically travelled to under pre-COVID-19 arrangements (that could be avoided through AVL interviews), including factors such as distance travelled by car, whether airfares are required etc.
 - whether the regulator needs to provide a venue.
- Regulatory agencies provided cost estimates based on the average of the types of interviews that would be conducted via AVL if that were to be allowed permanently, which varies across agencies.

6.5 Estimated cost savings per AVL interview

	EPA	Fisheries	Resources Regulator	NRAR	EES
	\$	\$	\$	\$	\$
Staff time	280	800		1090	770
Airfares	500	0	1 000		0
Other travel	200	400	750	530	120
Other expenses	360	600	1 200	660	460
Venue hire	100	0	0	0	0
Total	1 440	1 800	2 950	2 280	1 350

Source: Estimates provided by regulatory agencies.

Cost savings for interviewees

One of the main benefits for interviewees would be avoiding the need to travel to the interview location. In most cases, the regulator appears to travel to the general area where the interviewee is located. As a result avoided travel costs for interviewees are in most cases, significantly lower than for authorised officers. This is especially the case as authorised officers may also be required to travel in pairs for work health and safety reasons.

- Stakeholders suggested it is difficult to estimate the average time and travel cost savings per AVL interview as this is likely to vary depending on the specific circumstances. As an indicative estimate, interviewees could save around \$81 per interview conducted via AVL (table 6.6) based on the following assumptions:
 - interviewees save 1 hour in travel per AVL interview (this is likely to be a conservative assumption)
 - given that interviewees are likely to have a range of professions, we value interviewees time at \$45 per hour, based on median hourly earnings of \$36.00 per hour (as reported by the ABS in the August 2020 release of employee earnings⁵⁵), with a 25 per cent loading for on-costs and overheads
 - conducting an interview via AVL could avoid the need to travel 50 Km by car valued at 72 cents per Km (based on ATO rates).⁵⁶
- Across all interviews that are likely to be held via AVL, the total cost saving for interviewees would be around \$40 000 per year (table 6.6).

6.6 Indicative cost savings for interviewees

	Avoided cost per AVL interview	Total cost saving for interviewees ^a
	\$	\$
Time saving ^a	45	21 915
Travel cost savings ^b	36	17 532
Total	81	39 447

^a Assumes AVL interviews save the interviewee around 1 hours travel per interview valued at \$45 per hour, based on median hourly earnings of \$36 per hour (see: <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>) plus 25 per cent for on-costs and overheads. ^b Assumes conducting an interview via AVL avoids the need to travel 50 Km by car, valued at 72 cents per Km based on ATO rates.

Source: ABS, Employee Earnings, August 2020, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>. ATO website, <https://www.ato.gov.au/Business/Income-and-deductions-for-business/Deductions/Deductions-for-motor-vehicle-expenses/Cents-per-kilometre-method/>, accessed 25 June 2021, CIE estimates.

To the extent that interviewees could choose to have a lawyer present at an interview, conducting interviews via AVL could also avoid travel costs for the lawyer (which would be passed onto the interviewee). However, one stakeholder noted that some interviewees

⁵⁵ ABS website, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings/aug-2020>, accessed 25 June 2021.

⁵⁶ ATO website, <https://www.ato.gov.au/Business/Income-and-deductions-for-business/Deductions/Deductions-for-motor-vehicle-expenses/Cents-per-kilometre-method/>, accessed 25 June 2021.

may want to have the lawyer present in the room with them, even for interviews conducted via AVL. As it is not clear how many of the interviews conducted via AVL would involve a lawyer, these costs have not been estimated.

Regulatory agencies also noted that arranging the logistics around face-to-face interviews can be a challenge and delay interviews. To the extent that these challenges delay investigations, stakeholder generally saw earlier resolution of investigations as a significant benefit. Benefits included avoiding prolonging the stress of an investigation. These benefits are potentially significant but difficult to quantify and have therefore not been included.

Other potential impacts

Some stakeholders noted that some interviewees may feel more comfortable in their own surrounds (i.e. at home or in their own office) when participating in an AVL interview, compared with a government office or interview room. AVL interviews could therefore have an additional benefit from reducing stress for interviewees. However, this potential benefit is difficult to quantify.

In general, allowing interviews to be conducted via AVL does not have any particular cost. Any permanent change to the legislation would provide for AVL as an option, rather than being a mandatory requirement.

Where authorised officers consider an AVL interview to be inappropriate (or less effective than an in-person interview) in a particular circumstance, they could opt for an in-person interview.

Stakeholders generally did not perceive AVL interviews as unfair to interviewees under most circumstances. Some suggested that any fairness issues could be mitigated through requiring interviewees to agree to conducting an interview via AVL and clarifying the arrangements for AVL interview (as outlined above).

There is a risk additional costs could arise if there is a high incidence of being required to repeat an interview in-person, where an AVL interview is not successful. However, these risks could be mitigated through:

- requiring the agreement of the interviewee for an AVL interview to proceed; and
- clarifying the arrangements for AVL interviews (see above).

Stakeholder consultation

The stakeholder consultation process and a summary of the feedback received is provided below.

Targeted consultation process

The stakeholder consultation process included the following activities.

- Targeted stakeholders (see below) were invited to attend online forums at the following times:
 - 2-3 pm on 21 June 2021
 - 10-11 am on 22 June 2021.
- Stakeholders were also invited to provide written submissions.

The invitation list was compiled by the lead agency and included the following organisations:

- Environmental Defenders Office
- Namoi Water
- NSW Irrigators Council
- NSW Farmers,
- Border River Food and Fibre
- Regional Development Australia
- NSW Minerals Council
- Association of Mining and Exploration Companies (AMEC)
- Lightning Ridge Miners Association (LRMA)
- Recreational Fishing NSW Advisory Council (RecFish)
- Commercial Fishing Advisory Council (CommFish)
- Aboriginal Fishing Advisory Council (AFAC).

Summary of feedback received

Both regulators and stakeholder groups were broadly supportive of a permanent change to the legislation to allow interviews to be conducted via audio link or AVL. However, some regulators and stakeholders suggested that more clarity needs to be provided in relation to several issues as follows.

- Agreement of interviewee to conduct interview via AVL — under the temporary arrangements, the authorised officer can specify that questions be answered via audio or AVL.
 - Some stakeholders argued that agreement from the interviewee should be required.
 - On the other hand, some regulators argued that it is not reasonable for the regulator to seek agreement to conduct an interview via AVL in the context of directed interviews.
- Arrangements for the conduct of the interview via AVL — both regulators and other stakeholders suggested that some aspects of the conduct of an interview via AVL need to be clarified, including the following.
 - Arrangements for audio or visual recording of interviews may need to be specified. While a transcript would be produced from an interview recording, as per current arrangements, it also needed to be clarified whether an audio or visual recording of the interview would be admissible in court.

- ... Industry stakeholders expressed concern that it would allow the interviewees body language to be examined, which is previously not available with transcripts. They suggested that to ensure fairness when collecting video, both parties should be filmed.
- ... Some regulators suggested that the recording would be used only to produce a transcript (as per existing practice). Furthermore, directed interviews may be inadmissible in court without the interviewee also coming to the trial to give evidence.
- Some regulators noted it could be difficult to determine if other people are in the room during an AVL interview. In this regard, it may be helpful to specify who is permitted to be in the room, during an AVL interview and also to require that an interviewee must declare who is in the room with them.
- It may also need to clarify if there is a requirement for the interviewee to keep the camera on.
- Industry stakeholders were concerned about whether the welfare of the interviewee would be monitored, with respect to provisions such as providing adequate breaks from questioning. This would not necessarily be reflected in the Act, however both parties should be aware of these considerations.
- Arrangements when an AVL interview is not successful — regulators and other stakeholders noted some additional challenges that may arise in conducting an interview via AVL, over and above general challenges that also apply to in-person interviews. AVL interviews are not always successful, due to technical or other issues; for example, some regulators suggested that it can be more difficult to gather evidence from an AVL interview when the interviewee is not co-operative (relative to a face-to-face interview). Some regulators also noted it is essential that an interview is transcribable. In this regard, it is important to clarify that an interview can be repeated in-person, if not of an acceptable quality via AVL.

Preferred option

Allowing interviews to be conducted via AVL should be retained permanently.

- Both regulatory agencies and stakeholders were broadly supportive of permanently allowing interviews to be conducted via AVL.
- Our estimates suggest that providing the option of conducting an interview via AVL offers modest benefits and there are unlikely to be any significant costs. In circumstances where an AVL interview is inappropriate, the interview could still be conducted in-person, as per pre-COVID-19 arrangements.
- Although considered an implementation issue and therefore beyond the scope of the BRS, some regulators and industry stakeholders suggested that some arrangements relating to the conduct of AVL interviews should be clarified. This includes:
 - whether agreement from the interviewee should be required before an interview can be conducted via AVL
 - whether interview recordings be played in court proceedings
 - who is permitted to be in the room with an interviewee

- whether the interviewee required to keep the camera on
- arrangements where an AVL is unsuccessful due to technical or other issues.
- In general, it is not clear that formally requiring interviewees to agree to an AVL interview is a workable requirement in context of compelled interviews. That said, some regulators suggested that managing unco-operative interviewees is generally more difficult via AVL, compared with in-person interviews. As such, there may be little point in conducting AVL interviews with an unco-operative interviewee, as the interview may need to be repeated in person. Nevertheless, this issue could potentially be resolved through the authorised officer exercising their discretion or through informal guidelines, rather than formally requiring agreement from the interviewee.

7 Assessments under the Mental Health Act via audio-visual link

Background

The *COVID-19 Legislation Amendment (Emergency Measures — Miscellaneous) Act 2020* temporarily amended the *Mental Health Act 2007* (MHA) to allow all of the examinations required for ongoing detention (under section 27 of the MHA) — including those carried out by an accredited person — to take place using AVL, so long as the medical practitioner or accredited person is satisfied that:

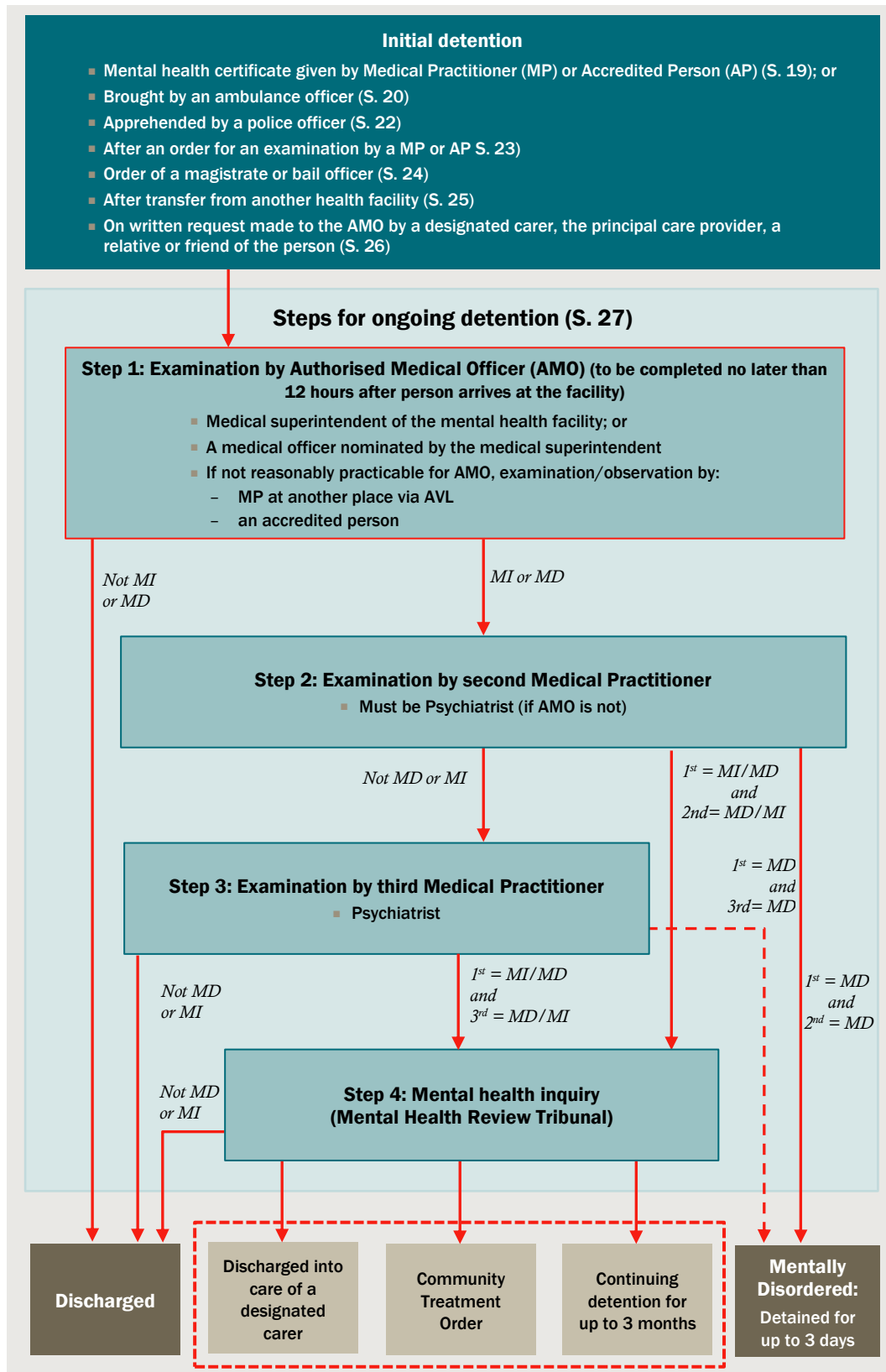
- carrying out the examination or observation by audio visual link is necessary because of the COVID-19 pandemic, and
- the examination or observation can be carried out with sufficient skill or care using an audio visual link so as to form the required opinion about the person.

These amendments will be automatically repealed on 31 March 2022.

Context

Under the MHA, people can be involuntarily detained in a declared mental health facility. The process for involuntary detention set out in the MHA is summarised in chart 7.1.

7.1 Process for detention in a declared mental health facility



Note: AMO = authorised medical officer; MP = medical practitioner, MI = mentally ill, MD = mentally disordered.
 Data source: CIE based on the Mental Health Act 2007.

Although the MHA applies across NSW, operational arrangements appear to apply differently across different Local Health Districts (LHDs) and in some cases across different hospitals.

- Regional and rural LHDs are more likely to use AVL for the provision of mental health services due to the lack of local availability of psychiatrists and other mental health practitioners in regional and remote locations.
- Some LHDs reported extensive use of AVL for the provision of mental health services (although not necessarily for formal assessments under the MHA). For example, AVL is used extensively for the provision of mental health services in the Murrumbidgee Local Health District through the Mental Health Emergency Consultation Service (MHECS).⁵⁷ Similar programs run in some other Local Health Districts.
- Some LHDs reported pilot programs to reduce presentations at EDs and therefore avoid the need for a Form 1 assessment. For example, the Police Ambulance Clinical Early Response (PACER) program has been piloted in some Local Health Districts (e.g. South Eastern Sydney). PACER involves a mental health clinician providing assessments in the community at the time of crisis.⁵⁸ In many cases, this avoids ED presentation and therefore the need for a formal assessment under the MHA.

Requirements for ongoing detention

For ongoing detention, a person must be certified as either mentally ill or mentally disordered (see box 7.2 for relevant definitions).

7.2 Definitions of a mentally ill and mentally disordered person

Definitions of mentally ill and mentally disordered persons under the MHA are as follows.

- **Mentally ill person** — a person is a mentally ill person if they are suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary: for the person's own protection from serious harm; or for the protection of others from serious harm.
- **Mentally disordered person** — a person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary: for the person's own protection from serious physical harm; or for the protection of others from serious physical harm.

The temporary amendment relates specifically to examinations under section 27 of the MHA (shown in the light blue box in chart 7.1 above). Key points to note are as follows.

- The MHA sets out who may make the various assessments for the purposes of ongoing detention.
 - In practice, the initial assessment (referred to as a ‘Form 1’ assessment) can be completed by either a medical practitioner (MP) or an accredited person (AP). However, a medical practitioner who is not a psychiatrist, or an accredited person, who examines or observes a person must, if it is reasonably practicable to do so, seek the advice of a psychiatrist before making a determination as to whether the person is a mentally ill person or a mentally disordered person. The psychiatrist is not required to examine or observe the person.
 - Subsequent examinations must be completed by a MP.
 - ... The second examination must be completed by a psychiatrist if the first examination has not been completed by a psychiatrist
 - ... The third examination (if necessary) must be completed by a psychiatrist.
- Prior to the temporary COVID-19-related amendment, the MHA permitted examinations for the purposes of ongoing detention to be conducted by a medical practitioner at another place via audio-visual link (AVL), although there are some safeguards as follows.
 - A medical practitioner must not carry out an examination or observation using an audio-visual link unless the medical practitioner is satisfied that the examination or observation can be carried out in those circumstances with sufficient skill and care so as to form the required opinion about the person.
 - The regulations also specify that the medical superintendent of the facility must take reasonable steps to ensure that:
 - ... any interference with the dignity and privacy of the person being examined or observed is kept to the minimum necessary in the circumstances, and
 - ... the examination or observation is conducted when the person being examined or observed, and the medical practitioner or accredited person, are in a private area.

Impact of the temporary amendments

Given that some AVL assessments were already permitted under the MHA, the impact of the temporary amendments were to:

- allow AVL assessments by a medical practitioner within the same facility (pre-COVID-19 arrangements allowed AVL assessments by a medical practitioner at another place)
- allow accredited persons to conduct the initial assessment via AVL.

Declared mental health facilities

Declared mental health facilities are generally either specialist Mental Health Inpatient Units or Emergency Departments (ED) (see table 7.3). The EDs highlighted in bold are

those that do not have a declared inpatient mental health unit within the same hospital (we refer to these as ‘ED-only’ declared mental health facilities).

7.3 Declared mental health facilities

Local Health District	Declared Inpatient Mental Health Units	Declared Emergency Departments
Metropolitan		
Central Coast	<ul style="list-style-type: none"> ▪ Gosford ▪ Wyong 	<ul style="list-style-type: none"> ▪ Gosford ▪ Wyong
Illawarra Shoalhaven	<ul style="list-style-type: none"> ▪ Wollongong ▪ Shellharbour 	<ul style="list-style-type: none"> ▪ Shellharbour ▪ Shoalhaven ▪ Wollongong
Nepean Blue Mountains	<ul style="list-style-type: none"> ▪ Blue Mountains ▪ Nepean 	<ul style="list-style-type: none"> ▪ Blue Mountains ▪ Nepean ▪ Lithgow
Northern Beaches	<ul style="list-style-type: none"> ▪ Northern Beaches Hospital 	<ul style="list-style-type: none"> ▪ Northern Beaches Hospital
Northern Sydney	<ul style="list-style-type: none"> ▪ Greenwich ▪ Hornsby ▪ Macquarie ▪ Royal North Shore 	<ul style="list-style-type: none"> ▪ Hornsby ▪ Royal North Shore
South Eastern Sydney	<ul style="list-style-type: none"> ▪ Prince of Wales ▪ St George ▪ Sutherland 	<ul style="list-style-type: none"> ▪ Prince of Wales ▪ St George ▪ Sutherland
South Western Sydney	<ul style="list-style-type: none"> ▪ Bankstown-Lidcombe ▪ Braeside ▪ Campbelltown ▪ Liverpool 	<ul style="list-style-type: none"> ▪ Bankstown-Lidcombe ▪ Bowral ▪ Campbelltown ▪ Liverpool
Sydney	<ul style="list-style-type: none"> ▪ Concord ▪ Royal Prince Alfred 	<ul style="list-style-type: none"> ▪ Royal Prince Alfred
Western Sydney	<ul style="list-style-type: none"> ▪ Blacktown ▪ Cumberland ▪ Westmead 	<ul style="list-style-type: none"> ▪ Blacktown ▪ Westmead
Rural and regional		
Albury Wodonga Health	<ul style="list-style-type: none"> ▪ Albury Base 	<ul style="list-style-type: none"> ▪ Albury Base
Far West	<ul style="list-style-type: none"> ▪ Broken Hill 	<ul style="list-style-type: none"> ▪ Broken Hill
Hunter New England	<ul style="list-style-type: none"> ▪ Armidale ▪ James Fletcher ▪ John Hunter ▪ Maitland 	<ul style="list-style-type: none"> ▪ Armidale ▪ John Hunter ▪ Maitland ▪ Manning Rural Referral

Local Health District	Declared Inpatient Mental Health Units	Declared Emergency Departments
	<ul style="list-style-type: none"> ▪ Manning Base Taree ▪ Mater ▪ Morisset ▪ Tamworth 	<ul style="list-style-type: none"> ▪ Calvary Mater ▪ Moree ▪ Tamworth
Mid North Coast	<ul style="list-style-type: none"> ▪ Coffs Harbour ▪ Port Macquarie 	<ul style="list-style-type: none"> ▪ Coffs Harbour ▪ Port Macquarie ▪ Kempsey District Hospital
Murrumbidgee	<ul style="list-style-type: none"> ▪ Wagga Wagga 	<ul style="list-style-type: none"> ▪ Wagga Wagga ▪ Corowa Health Service ▪ Deniliquin Health Service ▪ Griffith Regional Hospital Health Service ▪ Leeton Health Service ▪ Narrandera Health Service ▪ Young Health Service
Northern NSW	<ul style="list-style-type: none"> ▪ Lismore ▪ Tweed ▪ Byron Central 	<ul style="list-style-type: none"> ▪ Lismore ▪ The Tweed
Southern NSW	<ul style="list-style-type: none"> ▪ Goulburn Base ▪ Kenmore ▪ South East Regional Hospital Bega 	<ul style="list-style-type: none"> ▪ Batemans Bay ▪ Goulburn Base Hospital ▪ Queanbeyan ▪ Cooma ▪ South East Regional Hospital Bega
Western NSW	<ul style="list-style-type: none"> ▪ Bloomfield (Orange) ▪ Dubbo 	<ul style="list-style-type: none"> ▪ Dubbo ▪ Orange base ▪ Bathurst ▪ Mudgee

Source: Ministry of Health, CIE.

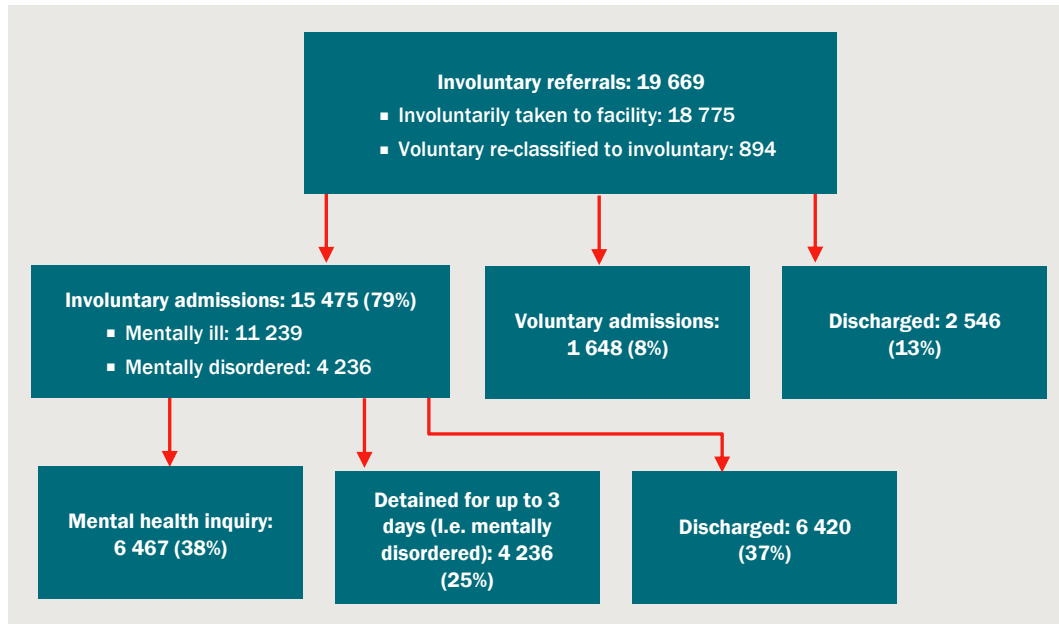
Number of assessments

Data reported by the Mental Health Review Tribunal suggest there were close to 20 000 involuntary referrals in 2019-20, with around 15 500 (around 80 per cent) involuntarily admitted (chart 7.4). Of these:

- around 6500 (38 per cent) progressed onto a mental health inquiry
- around 4 236 (25 per cent) were declared to be mentally disordered (and therefore detained for up to 3 days)
- this implies that around 6 400 (37 per cent) were at some point assessed as not meeting the criteria for ongoing detention. Stakeholders noted that this is not necessarily an indication that the initial assessment was unreliable. Rather, the

person's mental state may have changed and ongoing involuntary detention was assessed as no longer being required.

7.4 Number of assessments



Data source: Mental Health Review Tribunal Annual Report.

The need for government action

In the context of the COVID-19 pandemic, the original rationale for the temporary changes were:

- to avoid exposure to COVID-19 (for the examiners, the patient, other staff and patients) through face-to-face examinations
- to avoid the need to transport a person for a face-to-face examination and thereby expose the person to be examined and the people transporting them to COVID-19.

There remains much uncertainty as to how the COVID-19 pandemic will evolve and whether there will be an ongoing need for the additional flexibility offered by the temporary amendments specifically for COVID-19-related purposes beyond the current expiry date (31 March 2022).

In addition, there may be benefits from the additional flexibility, over and above reducing COVID-19-related risks. In particular, stakeholders have reported that in regional and rural areas, some patients need to be transported — in some cases for several hours — for an in-person assessment.

- The NSW Ambulance Service reports that transfers of patients under the MHA in regional and rural areas — including secondary transfers between declared mental health facilities — is a significant impact on resources. In smaller communities, secondary transfers of patients under the MHA can leave the area unserved for several hours.

- Removing people with mental health issues from their communities for an in-person assessment under the MHA can be a traumatic experience.
 - This can involve separating people from their carers and other support networks.
 - Several stakeholders particularly noted issues associated with removing Aboriginal people from country for an assessment under the MHA.
- When people are transported long distances from their home for an assessment and are subsequently discharged, they then need to get home. The assistance provided to get home appears to vary, but in many cases this could involve getting home via public transport.

Number of secondary transfers between declared mental health facilities

NSW Ambulances provided data on all transfers (via ambulance) of psychiatric patients between hospitals over the period July 2017 to June 2021. The data include transfers of patients under the MHA and patients voluntarily transported.

Table 7.7 shows the total number of transfers between declared facilities by ambulance by LHD. Annual transfers have increased by around 11 per cent per year on average throughout the period to around 3000 transfers in 2020-21.

7.5 Total secondary transfers between declared facilities by ambulances from 2017-18 to 2020-21

Local Health District	2017/18	2018/19	2019/20	2020/21	4 year average
	No.	No.	No.	No.	No.
Metro LHDs					
Sydney	196	278	230	315	255
South Western Sydney	148	227	268	322	241
Northern Sydney	200	182	145	186	178
Western Sydney	44	53	175	354	157
Nepean Blue Mountains	101	116	139	153	127
Illawarra Shoalhaven	92	92	98	136	105
South Eastern Sydney	103	105	106	86	100
Central Coast	27	46	48	61	46
Metro total	911	1099	1209	1613	1 208
Regional LHDs					
Hunter New England	363	408	456	466	423
Western NSW	290	274	233	237	259
Northern NSW	248	216	242	252	240
Southern NSW	155	145	187	179	167
Murrumbidgee	149	155	152	139	149
Mid north coast	81	102	153	134	118
Far west	6	1	1	1	2
Regional total	1292	1301	1424	1408	1 356
NSW total	2203	2400	2633	3021	2 564

Note: Ranked by highest average

Source: The CIE, NSW Ambulance data.

This data provides some context into the potential scale of the problem. However, it is important to note some caveats as follows.

- This data has some limitations.
 - There may be some cases where the operator has not registered a trip as a mental health transfer (although NSW Ambulance advise that there are likely to be relatively few of these).
 - The data only shows ambulance transfers, where in some instances other forms of transport could be used to transfer patients between facilities for assessments, such as police or hospital transport.
- There are a range of reasons why mental health patients are transferred between mental health facilities, many unrelated to the availability of a suitably qualified person to assess the patient at the first declared mental health facility at which the patient is initially detained (and therefore unlikely to be affected by the restriction on accredited persons conducting a Form 1 assessment via AVL as they are unavoidable and required).

Transfers from ED-only declared mental health facilities

As noted above, the ED of some hospitals are declared mental health facilities, but there is no declared mental health inpatient unit within the hospital. Declared mental health facilities without a specialist mental health inpatient unit may at times have limited access to mental health practitioners to complete a form 1 assessment at all times.

If a declared mental health facility does not have the resources to conduct an assessment in-person, an assessment may be able to be conducted via AVL without needing to transfer the patient. This may be more prevalent in declared mental health facilities that do not have an attached inpatient unit to have relatively fewer on-site resources for mental health assessments. Therefore it is reasonable to expect that transfers between these EDs and inpatient units would represent the largest share of transfers which could be avoided with greater use of AVL.

Table 7.6 shows the total number of secondary transfers between ED-only declared mental health facilities to mental health facilities with a specialist inpatient unit over the period from July 2017 to June 2021. The LHDs with the highest number of transfers are characterised by having a higher share of EDs without an inpatient unit attached and larger regional geographic areas.

To illustrate for the Southern NSW LHD, all transfers are between regional town EDs to the declared inpatient facility in Goulburn, as follows:

- 332 transfers from Queanbeyan
- 74 transfers from Batemans Bay
- 66 transfers from Cooma.

South Western Sydney and Nepean Blue Mountains are both metropolitan LHDs however they also include these transfers as their borders include neighbouring regional areas, as follows:

- In the South Western Sydney LHD, all 343 transfers are from Bowral to the Campbelltown inpatient unit.
- In the Nepean Blue Mountains LHD, all 98 transfers are from Lithgow to either the Nepean or Blue Mountains inpatient units.

7.6 Total secondary transfers between EDs without an inpatient unit to hospitals with an inpatient unit by ambulances from 2017-21

Local Health District	2017/18	2018/19	2019/20	2020/21	4 year average
	#	#	#	#	#
Metro LHDs					
South Western Sydney	43	89	93	93	80
Illawarra Shoalhaven	28	28	27	39	31
Nepean Blue Mountains	14	21	33	30	25
Western Sydney	0	0	0	0	0
Sydney	0	0	0	0	0
South Eastern Sydney	0	0	0	0	0
Northern Sydney	0	0	0	0	0
Central Coast	0	0	0	0	0
Metro total	85	138	153	162	135
Regional LHDs					
Southern NSW	110	109	127	126	118
Murrumbidgee	69	83	80	68	75
Western NSW	71	72	77	79	75
Mid north coast	57	68	91	63	70
Hunter New England	13	16	17	17	16
Northern NSW	0	0	0	0	0
Far west	0	0	0	0	0
Regional total	320	348	392	353	353
Total	405	486	545	515	488

Note: Ranked by highest average

Source: The CIE based on NSW Ambulance data.

Not all of these transfers could necessarily be avoided. It is likely that patients assessed as requiring admission for involuntary care and treatment would need to be transferred to a declared mental health facility with an inpatient unit anyway, even if the assessment can be conducted in an ED-only mental health facility (either via AVL or in-person).

Permanent changes under consideration

The NSW Government is now considering whether the temporary changes to the MHA should be made permanent. As discussed above, the nature of this review limits the consideration of a broader range of options.

However, it is within scope to consider options that either:

- remove any additional regulatory barriers to greater uptake of AVL assessments by accredited persons; or
- provide additional safeguards for patients.

Options to remove barriers to uptake

The temporary amendment places some safeguards around the use of AVL for assessments for the purposes of ongoing detention. In particular, the medical practitioner or accredited person must be satisfied that:

- the examination or observation can be carried out with sufficient skill or care using an audio visual link so as to form the required opinion about the person, and
- carrying out the examination or observation by audio visual link is necessary because of the COVID-19 pandemic.

It is a reasonable requirement that the examiner is satisfied that they are able to form the required opinion through an AVL assessment and no stakeholder made any comments to the contrary.

On the other hand, as COVID-19-related concerns dissipate over time (as vaccination levels increase), the requirement that the medical practitioner or accredited person is satisfied that the examination or observation by AVL is necessary because of the COVID-19 pandemic would need to be removed.

Options to provide additional safeguards

There was concern among some stakeholders over the increasing use of AVL for assessments under the MHA. Under current arrangements, the choice on whether an assessment via AVL is appropriate (relative to other options available) is made by the clinician. Some stakeholders questioned whether there was more scope for the preferences of the consumer and/or their carers to be taken into account in various decisions.

However, difficulties associated with taking into account the preferences of consumers in the context of assessments relating to involuntary detention were acknowledged and there were no specific suggestions on how that could be taken into account in the MHA.

That said, the importance of taking into account the needs of patients and their carers is acknowledged. Although it is currently unclear how this could be incorporated in the legislation, this issue could be considered further if/when a new legislative amendment is drafted.

Summary of options under consideration

The options under consideration are as follows.

- 1 Allow the temporary changes to expire and revert to pre-COVID-19 arrangements, where accredited persons were not permitted to conduct examinations via AVL for the purposes of assessing whether ongoing involuntary detention in a declared mental health facility is warranted. This option is used as the base case.
- 2 Permanently allow accredited persons to conduct examinations via AVL for the purposes of assessing whether ongoing involuntary detention in a declared mental health facility is warranted.
 - This would be subject to existing safeguards in the Act.
 - However, the requirement that the accredited person needs to be satisfied that the examination or observation by AVL is necessary because of the COVID-19 pandemic (as reflected in the temporary amendment) would need to be removed.

Impact of changes

The MHA already makes provision for medical practitioners to carry out examinations via audio-visual link, if not reasonably practicable for the person to be examined personally. The first examination is to occur as soon as practicable but not later than 12 hours after the person arrives at the facility. The main impact of the amendments are therefore:

- to allow an AMO or medical practitioner **in the same facility** to examine a person via AVL
- to allow an accredited person (an appointed, suitably qualified and experienced clinician such as a social worker or a mental health nurse) to carry out an examination via AVL.

However, the amendment to the legislation affords this additional flexibility only where the medical practitioner or accredited person is satisfied that:

- carrying out the examination or observation by audio visual link is necessary because of the COVID-19 pandemic, and
- the examination or observation can be carried out with sufficient skill or care using an audio visual link so as to form the required opinion about the person.

In a post-COVID-19 environment, allowing an AMO or medical practitioner to examine a person in the same facility via AVL is likely to be less important. However, continuing to provide the flexibility to allow accredited persons to carry out the initial examination via AVL could have more significant impacts.

It is important to note that section 27 of the MHA only permits accredited persons to undertake the initial assessment (i.e. a 'Form 1' assessment — see Step 1 highlighted with a red border in chart 7.1). The arrangements for subsequent steps would therefore remain unchanged. In particular:

- the second and third assessment must be conducted by a medical practitioner, including a psychiatrist at some stage in the process

- under pre-COVID-19 arrangements, medical practitioners could conduct these assessments via AVL.

Uptake of AVL assessments by accredited persons

The benefits (and potential costs) of permanently allowing accredited persons to conduct Form 1 assessments under the MHA depend on the take-up of the option to conduct the initial assessment by an accredited person via AVL.

Stakeholders suggested that the main circumstance when this option would be used is where an authorised medical officer is not available to complete the assessment and in regional areas to avoid the need to transport a patient, in some cases significant distances, for an in-person assessment.

Secondary transfers between declared mental health facilities are likely where a person has been assessed as requiring admission to an inpatient facility, or there is limited access to an authorised medical officer or medical practitioner at the first declared mental health facility. This is most likely in declared EDs where there is no declared mental health inpatient unit within the same hospital (see hospitals highlighted in bold in table 7.3 above).

Evidence of uptake during COVID-19 period

Qualitative evidence gathered through stakeholder consultations suggest that there has been limited uptake of accredited persons conducting Form 1 assessments via AVL during the COVID-19 period.

- Most LHDs that participated in the stakeholder forums reported minimal uptake of AVL assessments by accredited persons, if at all.
- Murrumbidgee LHD reported that over period from May 2020 to May 2021, there were 240 assessments made by accredited persons (based in Wagga) of people in outlying EDs under the MHA. Of these:
 - 76 were transferred for further assessment and admission
 - 164 were discharged from the ED and treated locally.
- We also understand there has been some uptake in Western NSW LHD; however, no data was provided.

Barriers to uptake

As discussed above, there is limited evidence of uptake. During consultations, stakeholders identified the following barriers.

- The temporary amendments required the medical practitioner or accredited person to be satisfied that the assessment via AVL was necessary due to COVID-19.
 - At the time of stakeholder forums (late May to early June 2021), COVID-19 had mostly been under control in NSW — particularly regional NSW — meaning there may have been less need for assessments via AVL.

- Assessors may have used other options to limit exposure to COVID-19, such as assessing the patient in a room behind glass windows or use of personal protective equipment (PPE).
- Lack of IT and associated infrastructure and processes appears to have been a barrier to uptake in some LHDs.
 - During stakeholder consultations, some LHDs/hospitals explicitly identified a lack of IT and associated infrastructure in EDs as a barrier to uptake.
 - Uptake of accredited persons undertaking assessments under the MHA via AVL appears to have been greatest in those LHDs where this is conducive with the existing approaches to the delivery of mental health services. For example, in Murrumbidgee LHD, MHECS (which involves providing specialist mental health support by accredited persons from Wagga to all emergency departments across the LHD) is a key feature of mental health service delivery. Assessments under the MHA is a natural extension of the services already provided through MHECS.

Future uptake

Although uptake over the past year appears to have been limited, there may be scope for additional future uptake if assessments by an accredited person via AVL were to be allowed on a permanent basis. As discussed above, the PACER program has been implemented in a number of Local Health Districts in the greater Sydney metropolitan area (e.g. South Eastern Sydney). Adapted virtual PACER models are being trialled or in planning in a number of rural Local Health Districts. Although successful implementation of this program would avoid the need for ED presentation (and therefore the need for a Form 1 assessment), it nevertheless indicates an appetite for innovation to administer the MHA more efficiently and limit unnecessary impacts on consumers where possible.

- As discussed above, appropriate systems (including both IT infrastructure and procedural systems) need to be in place to facilitate greater uptake of assessments by accredited persons via AVL. A permanent change to the legislation to allow assessment by accredited persons via AVL could over time, encourage some LHDs and/or hospitals to change these systems.
- The additional flexibility provided could potentially allow more EDs to be declared as a mental health facility under the Act. However, it is difficult to foresee such future changes.
- Additional training for APs in conducting assessments via AVL may be required, and ensuring they have access to an on-call psychiatrist if necessary.
- Structured quality monitoring of all AVL assessments (by medical practitioners and APs) may be required.

Potential benefits

The benefits associated with retaining the option of conducting examinations via AVL (with the removal of COVID-19 related requirements) could include the following.

- Benefits for the consumer, including:

- more timely Form 1 assessment,
 - reduced length of stay in the ED,
 - avoiding transportation to another declared mental health facility (including the time and financial costs associated with getting home).
- Avoiding the costs associating with transporting a person for a face-to-face examination.

We estimate that where transporting a patient for an in-person assessment could be avoided through an assessment by an accredited person via AVL, the avoided cost could be around \$1748 per incident (table 7.7). The costs are made up of an ambulance cost for transferring the consumer as well as costs directly borne by the consumer.

7.7 Estimated avoided costs of accredited persons undertaking assessments using AVL

Variable	Outcome
	\$
Ambulance cost per incident	1 231
Consumer cost per incident	517
Total cost per incident	1 748

Source: The CIE.

Avoided ambulance cost

On average ambulance costs are estimated at around \$1231 per incident, based on the charging rate used by the NSW Ambulance Service (table 7.8).

- NSW Ambulance advised that a secondary transfer between declared mental health facilities would be charged at the non-emergency rate (rather than the emergency rate).
- Ambulance charges consist of a callout charge and a variable rate charge based on the distance travelled⁵⁹ (see table 7.8). Our estimates assume an average 160 Km trip, based on the average distance from outlying EDs in the Murrumbidgee LHD to the Wagga Wagga Base Hospital (WWBH) (see table 7.10 below). We have not included the return distance as we assume the return journey is factored into the variable charge.
- The charging rates used by NSW Ambulance include a 49 per cent subsidy. As such, scale up the costs by a factor of around 2 to obtain We applied the full charge for both cost categories to reflect the costs borne by NSW Ambulance for the transfers.

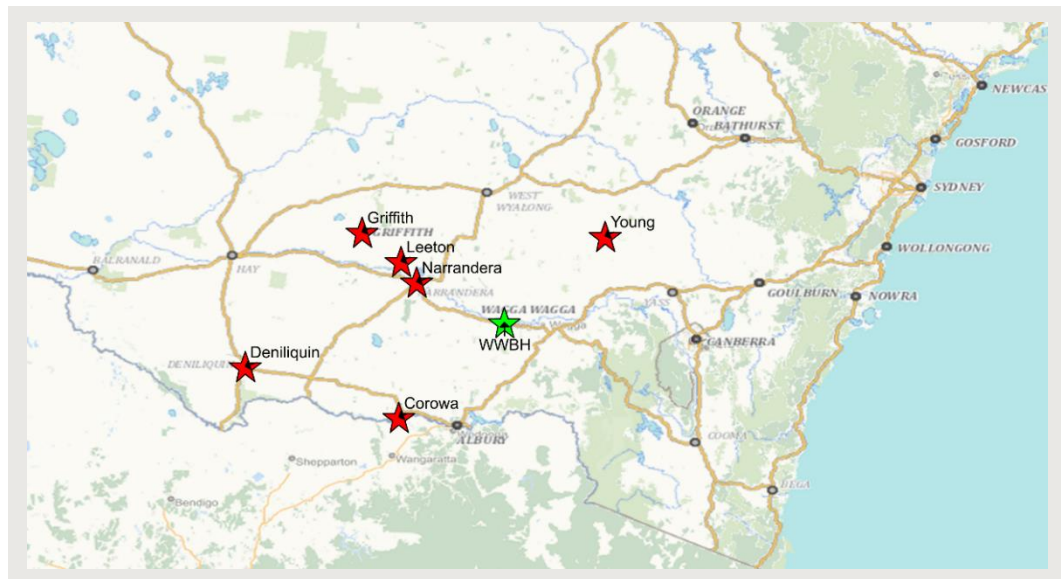
7.8 Estimated ambulance cost for a secondary transfer

Description	Subsidised charge (51%)	Full charge
	\$	\$
Call out fee	316	620
Rate per km	1.95	3.82
Total charge^a	628	1 231

Note: NSW Ambulances provide a subsidy of 49 per cent, we assume an average trip distance of 160 km
 Source: The CIE, NSW Ambulance

Figure 7.9 shows the location of the gazetted emergency departments and the mental health inpatient unit in the Murrumbidgee LHD. The emergency departments are dispersed through out the LHD, as a result there is a significant benefit in allowing assessments to be undertaken by accredited persons using AVL at each location as opposed to transferring them to the WWBH.

7.9 Location of Murrumbidgee LHD EDs and Inpatient Unit



Note: Red stars indicate gazetted emergency departments, The green star indicates the WWBH Mental Health inpatient unit
 Data source: The CIE.

The distance between each declared ED and WWBH are shown in table 7.10. Across the outlying EDs, the average distance is around 160 Km.

7.10 Distances between Murrumbidgee declared EDs and WWBH

Emergency department	Distance	Time
	Km	Hours
Corowa	157	1.75
Deniliquin	253	2.75
Griffith	182	2
Leeton	124	1.5

Emergency department	Distance	Time
	Km	Hours
Narrandera	100	1
Young	144	1.75
Average	160	1.79

Source: The CIE, Google Maps.

Additionally, there is an opportunity cost of the ambulance being out of its general service area while it is transferring the consumer. For example, if a consumer is transferred from Young to WWBH, the Young region may be without an ambulance for a period of hours. However, these costs have not been included. We understand that the NSW Ambulance Service is currently working on a methodology to estimate these costs, but this work has not been finalised.

Avoided cost to consumer

In some cases, where a consumer is transferred to a second declared mental health facility, this could potentially mean they are detained for a longer period.

- The consumer is under detention during the trip to the second declared mental health facility. In some cases, the trip itself could take several hours.
- The consumer could potentially need to wait for some time at the initial mental health facility (such as an ED) and then wait again for an assessment at the second declared mental health facility.

Furthermore, where a consumer is transferred to a distant mental health inpatient unit in place of a local gazetted emergency department, there are additional costs associated with the return journey home.

- The section of the journey from the mental health unit to the emergency department would be avoided if the patient was discharged from the initial declared mental health facility.
- The journey from the first declared emergency department to home would be undertaken even if the assessment was completed via AVL.

Valuing additional time spent under involuntary detention

One approach to valuing additional time spent under involuntary detention would be to value the 'opportunity cost' of the additional time. The opportunity cost of time is the value of alternative uses of the time (such as paid employment or leisure time) and would normally be measured through a notional wage rate, such as:

- A median wage rate of around \$36 per hour (this is consistent with how time costs are valued in other chapters).
- The minimum wage (currently \$20.33 per hour)⁶⁰

⁶⁰ Fair Work Ombudsman website, <https://www.fairwork.gov.au/pay/minimum-wages>, accessed 11 August 2021.

However, this approach seems to understate the cost associated with involuntary detention. Time costs associated with involuntary detention would seem to be higher than the costs associated with other regulatory processes. This is reflected in the qualitative evidence provided by stakeholders that involuntary detention can be a traumatic experience for many. That said, the proposed changes are unlikely to have any impact on instances of involuntary detention, but may have an impact on the duration of involuntary detention.

As we did not identify any studies in the literature that values time costs associated with detention in sufficiently similar circumstances, we use the higher over the two approaches above (i.e. \$36 per hour).

Estimating costs to consumers

Our estimates assume that the consumer will use public transport for this return journey, which results in a higher bound cost estimate as travel time would be significantly less with private transport (although where a carer or other friend or relative picks the person up, there would be significant time costs for the carer, including the return journey).

Regional public transport has relatively infrequent services and intertown bus routes often occur once per day. Furthermore, direct routes between towns are not always available, which will add to the total travel time.

The assumptions underpinning our estimate are shown in table 7.11

7.11 Estimated cost to consumers per incident

	Time	Cost ^a
	Hours	\$
Ambulance transport	1.8	65
Additional waiting time	2.0	72
Return trip (including waiting for public transport)	10.0	360
Ticket cost		20
Total		517

^a Valued at \$36 per hour.

Source: The CIE, Transport for NSW

We estimated the return trip from the WWBH to the regional pick-up location to be undertaken using public transport. The average journey duration using a public bus service ranges from 2 to 4½ hours. As the frequency of some buses is limited to one trip per day, we have assumed a total trip time of 10 hours, including waiting time.

Where a consumer is transferred to a second declared mental health facility for assessment, it is possible that they are required to wait at both facilities. The wait at the second declared mental health facility could potentially be avoided through an assessment by an accredited person via AVL. We estimate an average waiting time at the emergency department of 2 hours. Emergency department presentations data from the Murrumbidgee LHD suggests waiting times are more than half the time less than 4 hours. Our estimate of 2 hours represents a conservative assumption.

Aggregate cost saving

As discussed above, there is direct evidence of accredited persons providing Form 1 assessment in Murrumbidgee LHD. The extent of take-up in other LHDs is unclear, but appears to have been relatively limited. As such, we aggregate up the benefits based on the Murrumbidgee LHD, which provides a lower bound estimate of the statewide impacts.

Of the AVL assessments by accredited persons in Murrumbidgee LHD, some were transferred to WWBH for further assessments and admission. As such, the AVL assessment did not avoid the need for a transfer and the associated costs.

Murrumbidgee LHD reported 164 assessments by an accredited person using AVL for the 12 months leading up to 13 May 2021, where the assessment was undertaken in a remote emergency department and where the consumer was subsequently discharged after the assessment and treated locally. Without permitting the use of AVL for accredited persons, these consumers would be required to be transferred to the WWBH for the assessment. This suggests a potential cost saving of around \$286 700 per year and around \$2.2 million in net present value terms over 10 years, using a discount rate of 7 per cent (table 7.12).

7.12 Estimated avoided costs – Murrumbidgee LHD

Description	Annual benefit	NPV over 10 years
	\$'000	\$ million
Avoided ambulance costs	201.1	1.5
Avoided cost to consumers	84.7	0.6
Total avoided cost for the Murrumbidgee LHD	286.7	2.2

Note: Total incidents is for the period of 12 months leading up to 13 May 2021.

Source: The CIE, Murrumbidgee local health district.

Future uptake scenario

As discussed, uptake during the COVID-19 period has been limited for various reasons. In particular, it appears that systems need to be in place to enable accredited persons to conduct assessments via AVL.

There is limited incentive to put these systems in place under temporary legal arrangements. However, if the legal arrangements were to be made permanent, LHDs may over time start to put the systems in place to enable more assessments to be completed by accredited persons via AVL.

We estimate the potential benefits if similar outcomes were achieved in other regional LHDs as in Murrumbidgee LHD. Murrumbidgee LHD reported that between 14 May 2020 and 13 May 2021, the Mental Health Emergency Consultation Service based in Wagga assessed 270 people in outlying EDs who were under the Act at the time, with 164 were able to be discharged from the Emergency Department and treated locally. This represents a discharge rate of 61 per cent following an AVL assessment by an accredited person.

Table 7.13 shows the average number of transfers over a 4-year period and potential avoided transfers if similar outcomes were achieved as in Murrumbidgee LHD and the associated cost saving.

7.13 Estimated avoided costs for regional LHDs excluding Murrumbidgee LHD

Description	Average transfers per year	Estimated avoided transfers	Avoided cost
	No. per year	No. per year	\$'000 per year
Southern NSW	118	72	125.8
Western NSW	75	45	80.0
Mid north coast	70	42	74.6
Hunter New England	16	10	17.1
Northern NSW	0	0	0.0
Far west	0	0	0.0
Total for Regional LHDs ex Murrumbidgee LHD	278	170	295.0

Note: Assumed discharge rate from emergency department = 61 per cent

Source: The CIE, Murrumbidgee local health district.

Under this scenario, cost savings could be in the order of \$582 000 per year, or around \$4 million in present value terms over 10 years, using a discount rate of 7 per cent (table 7.14). This includes the estimated cost saving in Murrumbidgee LHD and the potential cost savings in other regional LHDs.

7.14 Estimated avoided costs in regional LHDs

Description	Cost per year	NPV over 10 years
	\$'000	\$'000
Murrumbidgee LHD	287	2 013
Regional LHDs excluding Murrumbidgee LHD	295	2 075
Total avoided cost NSW regional LHDs	582	4 088

Note: Discount rate of 7 per cent used

Source: The CIE

Potential costs

The potential costs of these changes largely relate to the reliability of the assessment provided by an accredited person via AVL. While there is no available evidence that an assessment provided by an accredited person via AVL is unreliable, if that were to be the case, it may lead to two types of undesirable outcomes. .

- One type of undesirable outcome arising from extending the use of AVL assessments to accredited persons would be where a person who is either mentally ill or mentally disordered (and therefore should be detained) is discharged. The potential consequence of discharging a mentally ill or mentally disordered person would relate to the potential for the person to harm themselves or others.

- The costs associated with this outcome would be the health-related costs associated with the harm that could have been avoided (including any deaths).
- However, we did not identify any evidence where a decision to discharge a patient after an AVL assessment by an accredited person resulted in either self-harm or harm to others. Stakeholders also noted that assessors are generally relatively risk-averse to avoid such worst-case outcomes, suggesting this type of outcomes is less likely.
- As an accredited person may tend to be risk-averse, a more likely undesirable outcome arising from an unreliable assessment from an accredited person via AVL would be where a person should be discharged (i.e. is not mentally ill or mentally disordered) and is assessed as being mentally ill or mentally disordered. This would involve involuntary detention for further assessments, in line with the process set out in the MHA (see chart 7.1 above). The associated costs would include:
 - the financial cost of subsequent assessments (that may not have been needed had the person been discharged after the first assessment)
 - the financial cost of detaining the person for a longer period
 - the cost to the person (including any inconvenience or trauma) associated with being involuntarily detained for a longer period than they otherwise would have been.

Evidence on the reliability of assessments

As discussed above, extending the temporary legislative change would permanently allow AVL assessments by an accredited person that were not permitted under pre-COVID-19 arrangements (see table 7.15).

7.15 Summary of assessments permitted under the Mental Health Act

Assessor	In-person assessment	AVL assessment
Medical practitioner	Allowed under pre-COVID-19 arrangements	Allowed under pre-COVID-19 arrangements
Accredited person	Allowed under pre-COVID-19 arrangements	<ul style="list-style-type: none"> ■ Not allowed under pre-COVID-19 arrangements ■ Allowed under temporary COVID-19 changes ■ Allowing permanently under consideration

Source: The CIE.

Although there is limited direct evidence, the available indirect evidence gives no strong reason to suspect that the assessments by accredited persons via AVL are likely to be significantly less reliable than assessments that were permitted under pre-COVID-19 arrangements (i.e. in-person assessments by a medical practitioner, in-person assessments by an accredited person or assessments by a medical practitioner via AVL).

Reliability of assessments by accredited persons relative to medical practitioners

Although this BRS is not specifically assessing whether assessments provided by accredited persons are reliable, this issue is broadly relevant because under pre-COVID-19 arrangements, medical practitioners are permitted to conduct assessments via AVL, while accredited persons are not. If the assessments provided by accredited persons are no less reliable than those provided by a medical practitioner, there would be no clear case to prevent accredited persons from conducting an assessment via AVL.

The available evidence (including qualitative evidence gathered through consultations and a published study) suggests that in general, the assessments provided by accredited persons are likely to be no less reliable than assessments made by medical practitioners.

Qualitative evidence provided through the consultation process suggested there is full confidence in the capacity of accredited persons to provide reliable assessments.

Stakeholders made the following points.

- Assessments under section 27 of the Act have a specific purpose (i.e. to determine whether the person should continue to be detained). Accredited persons have sufficient expertise to make the relevant assessment.
- Accredited persons are suitably qualified and experienced mental health clinicians. They must have at least 5 years specific mental health experience and have undergone specific training to become accredited.
- Under the Act, accredited persons (and medical practitioners who are not psychiatrists) are required to consult with a psychiatrist where practicable. Stakeholder consultations suggest that this consultation generally occurs.

There is also some evidence in the literature that the assessments provided by accredited persons do not systematically differ from those provided by medical practitioners to any significant extent. A recently published study compared discharge decisions for hospital-treated deliberate self-poisoning patients made by accredited persons and Medical Officers at the Calvary Mater Newcastle over the 10-year period from 2003-2012.⁶¹

- Across the whole sample (unadjusted for patient characteristics), accredited persons were significantly more likely to refer patients for further assessment under the MHA at the psychiatric hospital.
- However, accredited persons assessed more clinically complex patients than Medical Officers. After adjusting for clinical complexity and propensity score, the likelihood of referral for involuntary psychiatric hospital care was similar for accredited person and Medical Officers.

One stakeholder also suggested that where an individual accredited person does not provide reliable assessments, this can be addressed through performance management.

⁶¹ McGill, K. Spittal, M.J. Bryant, J. Lewin, T.J. Whyte, I.M. Madden, C. and Carter, G. 2021, Comparison of accredited person and medical officer discharge decisions under the Mental Health Act of NSW: A cohort study of deliberate self-poisoning patients, Australian & New Zealand Journal of Psychiatry, Royal Australian and New Zealand College of Psychiatrists.

Reliability of assessments via AVL relative to in-person assessments

As above, this BRS is not specifically assessing whether assessments via AVL are reliable. However, this issue is relevant from the perspective that a permanent change to the MHA to allow accredited persons to conduct assessments via AVL could increase the total number of assessments completed via AVL.

There was general agreement among stakeholders that in-person assessments are preferred over AVL assessments where possible. However, there was also qualitative evidence from some stakeholders during consultations that AVL assessments are a satisfactory alternative, where an in-person assessment is not practicable.

We are not aware of any studies specifically on the reliability of assessments via AVL for the purposes of involuntary detention. However, broadly relevant evidence includes the following.

- According to the Royal Australian and New Zealand College of Psychiatrists, a number of studies have demonstrated that telehealth can be as effective as face-to-face consultations in achieving improved health outcomes in psychiatry.⁶²
- There is some evidence that remote interviews can provide clinical information similar to that observed by in-person interviews. For example, Lexcen et. al. (2006) compared interrater reliability for two video conference interview conditions (including: in-person interviewer administered the instrument, with remote observation; and remote administration and in-person observer) with in-person administration and observation. Reliabilities were rated good to excellent, with intraclass correlations of 0.69 and 0.82.⁶³ That said, the relevance of this study to the specific context under consideration was questioned during stakeholder consultations. In particular, the study refers to the forensic context.

Potential costs associated with an unreliable assessment

Although there is no evidence to suggest that assessments made by accredited persons via AVL would be significantly less reliable than assessments permitted under pre-COVID-19 arrangements (including assessments made by medical practitioners in-person or via AVL or in-person assessments by an accredited person), it is useful to understand what the potential costs could be.

Under the process set out in the MHA there are several checks and balances prior to any long-term involuntary detention as follows.

- An accredited person undertaking an assessment is required to consult with a psychiatrist if practicable.
- The patient would undergo a second and possibly third examination by a psychiatrist.

⁶² Royal Australian and New Zealand College of Psychiatrists website, <https://www.ranzcp.org/practice-education/telehealth-in-psychiatry>, accessed 12 August 2021.

⁶³ Lexcen, F.J. Hawk, G.J. Herrick, S. and Blank, M.B. 2006, Use of Video Conferencing for Psychiatric and Forensic Evaluations, *Psychiatric Services*, Vol. 57, p. 713.

- Before being detained on a continuing basis (up to 3 months), there would also be an inquiry by the Mental Health Review Tribunal.

Given these checks and balances, it is unlikely that any instances of unwarranted long-term detention could be attributed to an unreliable initial assessment (undertaken by an accredited person via AVL). Furthermore, as any person involuntarily detained in a declared mental health facility would subsequently be examined by a psychiatrist, it is also unlikely that an unreliable initial assessment provided by an accredited person via AVL would result in additional mental health inquiries by the Mental Health Review Tribunal.

Nevertheless, an unreliable initial assessment could require additional assessments and lengthen the time spent under involuntary detention.

Potential cost of an unreliable assessment

Indicative estimates suggest that the cost associated with an unreliable assessment could be in a range between around \$3650 and \$6400 (table 7.7).

7.16 Estimated potential costs of incorrectly detaining under the Mental Health Act

Variable	Low	High
	\$	\$
Cost to consumer of being detained	1 234	2 345
Cost to ED of detaining	1 791	3 404
Cost of additional psychiatrist test	312	623
Total cost per incident	3 649	6 372

Note: Based on an additional 48 hours detained and two 1-hour assessments with a psychiatrist

Source: The CIE.

While not evidenced in the literature or through the stakeholder consultation, there may be a risk that an accredited person may lean towards detaining a consumer as a risk averse response due to the using AVL.

The consequences of being detained under the MHA are that they will need a second and potentially third assessment undertaken by a psychiatrist. Although the process set out under section 27 of the MHA could require a third assessment if the second assessor does not agree with the first assessment, our discussions with stakeholders suggest that the third assessment does not necessarily occur in practice.

Section 12 places general restriction around detention. In particular, if an authorised medical officer is not of the opinion that a person is mentally ill or mentally disordered, they must not continue to detain them.

As it appears that the third assessment may not occur, we have estimated costs assuming that:

- the third assessment does not occur (low scenario)
- the third assessment does occur (high scenario).

Cost of additional assessments

We assume an average length of assessment of 1 hour, based on discussions with stakeholders during consultation. We assume the cost per hour of a psychiatrist to be \$312, based on the Medicare Benefits Schedule code for 45-minute professional attendance by a consultant psychiatrist in a hospital for a new patient⁶⁴.

Time spent waiting for further assessments

We assume the waiting time to see a psychiatrist is 24 hours. According to feedback during consultations, in most circumstances a psychiatrist is only available for an assessment from Monday to Friday in regional hospitals. Therefore, we increased the average waiting time to include the extended waiting period for consumers due to the unavailability of psychiatrists on weekends, resulting in average waiting times of 34 and 65 hours for the low and high scenarios, see table 7.17.

7.17 Estimated average waiting times for an assessment by a psychiatrist

Scenario	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Average
Low (hrs)	24	24	24	24	72	48	24	34
High (hrs)	48	48	48	96	96	72	48	65

Source: The CIE, Stakeholder consultations

Break-even analysis

The available, albeit indirect, evidence suggests there is no reason to suspect that assessments made by accredited persons via AVL would be significantly less reliable than other types of assessments permitted under the MHA. Nevertheless, identifying the proportion of assessments that would need to be unreliable for the costs to equal the benefits (i.e. the break-even point) can provide some useful insights.

As discussed above, there were 76 assessments by an accredited person via AVL in Murrumbidgee LHD that were transferred to WWBH for further assessment and admission.

- Using the low cost estimate (\$3649 per incident), the benefits would outweigh the costs even if all of those assessments were excessively risk averse (i.e. the patient could have been discharged from the original ED).
- Using the high cost estimate (\$6372 per incident), around 59 per cent of the assessments would need to be excessively risk averse for the costs to outweigh the benefits. Based on the evidence available, this is implausibly high.

This analysis suggests we can be reasonably confident that the benefits of allowing accredited persons to conduct Form 1 assessments via AVL will outweigh the costs.

⁶⁴ Medicare Benefits Schedule: item number 297

Stakeholder consultations

Targeted stakeholders were identified by the Ministry of Health as follow.

- All Local Health Districts (15 total)
- Justice Health and Forensic Mental Health Network and the Sydney Children’s Hospitals) Network
- St Vincent’s Hospital Sydney Limited
- NSW Mental Health Commission
- LegalAid (Mental Health Advocacy Service)
- Mental Health Review Tribunal
- BEING – Mental Health Consumers Inc
- Mental Health Carers NSW
- Official Visitors (these are Official Visitors are people with experience in mental health treatment and care. They are appointed by the Minister for Mental Health and are independent from NSW Health).
- Centre for Aboriginal Health
- NSW Police and NSW Ambulance.

Approach to stakeholder consultation

Most stakeholders were invited to attend online forums (see table 4.4). Stakeholders were also invited to provide written submissions.

We also had separate discussions with NSW Police and NSW Ambulance as well as a series of follow discussions followed the forums directly with certain stakeholders.

7.18 Schedule of consultations for Mental Health

Date of consultation	Organisations participating
28 May 2021	Western NSW LHD, Murrumbidgee LHD
31 May 2021	Mental Health Commission, Legal Aid, Ministry of Health (Official Visitor Program), Mental Health Carers NSW
31 May 2021	Albury Wodonga Health, Mid North Coast LHD, Far West LHD, Hunter New England LHD, Murrumbidgee LHD,
1 June 2021	South West Sydney LHD, South East Sydney LHD, Health Service Inverell, Central Coast Health, Hunter New England LHD
2 June 2021	Mental Health Review Tribunal
4 June 2021	Official Visitors
4 June 2021	Murrumbidgee LHD
17 June 2021	Ambulance NSW

Source: The CIE.

Key themes from stakeholder consultations

A summary of stakeholder discussion topics follows below.

Impact since changes took effect

Murrumbidgee LHD noted that in its experience since the changes were enacted, accredited persons were reliable for assessments via AVL. They advised that there is no reason to preclude them from this option. Furthermore, other LHD stakeholders advised that accredited persons can perform more detailed assessments than non-specialist medical practitioners, as they trained specifically to look for certain criteria in a mental health assessment.

Most LHDs generally suggested that they were not prepared in the period post-COVID-19 to adopt AVL for Form 1 assessments. This was generally due to inadequate notice of the changes and that staff were not sufficiently trained at recently gazetted facilities. As they did not have a strong history of using AVL for other purposes, they were slow to adapt to the new processes. LHDs noted that they felt under-resourced in the post-COVID-19 scenario regarding using AVL for mental health assessments.

Some stakeholders noted that similar processes may be useful for patients returning to or needing care in the Forensic Hospital; and would also be supportive of any consideration about the potential utility of AVL assessments for involuntary treatment under the *Mental Health and Cognitive Impairment (Forensic Provisions) Act*.

Benefits

All stakeholders shared the view that the key benefit of AVL was reduced transport costs and travel time for consumers as a result of allowing AVL assessments by accredited persons. This benefit is particularly pertinent for regional and rural LHDs. Limiting the amount of transport for mental health incidents reduces following costs:

- Cost of the ambulance transfers between facilities
- Costs associated with removing an ambulance from a local area for an extended period of time
- Costs of removing a consumer from their local area. This issue is particularly pertinent in regional areas where consumers are taken away from their local support systems and when Aboriginal people are taken off country. Stakeholders highlighted that distance from family and support is an emotional rather than a financial cost of travel.
- Costs for consumers for the trip back home. This can be significantly time intensive if they need to rely on public transport as some communities are infrequently serviced

The benefits of reduced travel were generally seen as understood by medical practitioners, as stakeholders noted that doctors were seen as being pragmatic in trying to use AVL to reduce transport costs.

Stakeholders advised that currently LHDs rely heavily on psychiatrists, who generally operate as fly-in fly-out for regional areas and are not available throughout the weekend.

Integrating other staff for assessments would reduce the time burden for psychiatrists as well as provide a cost saving due to the wage cost of accredited persons being significantly lower than psychiatrists. Furthermore, assessments via AVL will in some cases have other hospital support staff such as a nurses present, which could provide a training opportunity to develop their skills and broaden the base of accredited persons.

Consumer advocacy stakeholders highlighted that a reduced length of stay in the emergency department as a result of using AVL for assessments is beneficial. Emergency departments are known to have a particularly negative impact on people experiencing psychological distress, therefore reducing time spent in emergency departments is optimal for consumers.

Costs

There were mixed views regarding whether mental health facilities had adequate technological infrastructure and detention facilities available for supporting the use of AVL for assessments. The Murrumbidgee LHD is seen as relatively advanced in its applications of AVL and therefore would not need a significant increase in infrastructure to further use AVL. In contrast, the other regional and rural LHDs remarked that some smaller emergency departments do not have the required technology for AVL and do not have adequate facilities for consumers to wait for an assessment. As such they would require significant upgrades to support AVL assessments.

Ambulance NSW noted that a consequence of these changes could be an increase in secondary transfers. While in some cases the changes could prevent a lengthy first trip to an inpatient facility, they noted that there are also situations where the use of AVL for assessments resulted in double the number of trips, as instead of being taken directly to an inpatient facility, they would need to make an additional trip to the emergency department before the inpatient facility. The additional call out for the second trip is time consuming and may outweigh the benefits from avoiding one lengthy trip. They commented that a significant burden of rural mental health services rests on ambulances due to the large distances travelled.

Risks

Stakeholders representing consumers voiced concern over the application of AVL technology, saying that it could create a sub-par experience for consumers. This could be due to:

- Carers not being included in the AVL assessment due to technology limitations
- Difficulty understanding the assessor. This issue is further compounded when the consumer is experiencing mild psychotic episodes where they may experience difficulties in discerning voices through a phone line.

Stakeholders commented that they understood there was limited data available on the efficacy of AVL, however they had heard of some instances where the technology failed so the assessor reverted to using a phone for the assessment. While this should not preclude the use of AVL, the stakeholders insisted that situations such as this are monitored going forward to protect consumer rights.

Stakeholders were generally in agreeance that there were adequate safeguards in place for form 1 assessments conducted by accredited persons, such as allowing the accredited person to consult a psychiatrist before making a determination and allowing a psychiatrist to review and override a form 1 assessment if they are not comfortable with the assessment.

Preferred option

Based on the evidence available, the option of accredited persons conducting Form 1 assessments under the MHA via AVL should be retained permanently (with the current safeguards set out in the MHA).

The additional flexibility is likely to be beneficial where transporting a patient to another facility can be avoided. This is likely to reduce costs and improve the experience of patients.

- There was broad support among stakeholders for retaining this option permanently, where additional transportation can be avoided.
- However, some consumer advocates would not support this approach becoming 'standard practice'. Where possible the preferences of consumers and their carers should be taken into account. However, determining how this should occur is a broader question beyond the scope of this BRS.

Nevertheless, the available evidence suggests uptake has been limited. As such, the benefits are likely to be modest.

Although there is no direct evidence, the indirect evidence available suggests there is little reason to suspect that assessments conducted by accredited persons via AVL are likely to be significantly less reliable than assessments that were permitted under pre-COVID-19 arrangements. As such, the benefits are likely to outweigh the costs.

A Analysis of strata survey

Survey details

To gather relevant information to prepare a cost-benefit analysis of the proposed reforms, the CIE prepared an online survey open to:

- Strata managing agents
- Owners of lots in strata and community land schemes

The survey link was distributed in July 2021:

- via a NSW Fair Trading strata e-newsletter
- to members of the Strata Community Association (NSW)
- via an update provided to members of the Owners Corporation Network.

We received 254 responses, although not all respondents answered all questions (partly because there were separate sections of the survey for strata managing agents and owners).

Analysis of survey responses

Where survey results are used as inputs into the CBA, these inputs are generally based on a simple average (mean) across responses. However, in some cases, the simple average did not appear representative of the responses. In cases where more analysis of the responses was necessary or additional information is informative, this is provided below.

Estimating the time to prepare a special resolution

The time to prepare a resolution is an important input into the CBA. This estimate is multiplied across all relevant schemes.

To estimate the time required to prepare a resolution, the survey asked:

Across the whole strata/executive committee, how much time (in hours) do you estimate would be spent preparing a resolution (including all the time spent preparing the resolution, arranging a meeting, notifying owners corporation members, attending the meeting etc.)?

There were 52 responses to this question. The mean of these responses (10.2 hours) is significant higher than other measures of central tendency (table A.1).

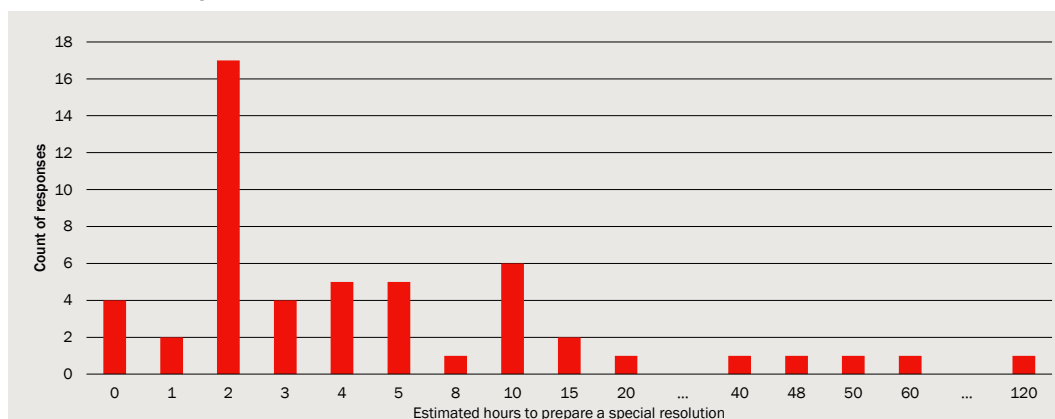
A.1 Summary statistics

Measurement	Result
Mean	10.2
Median	3.0
Mode	2.0
Total responses	52

Source: CIE survey

Several responses at the high end of the range (i.e >20 hours), which appear to be skewing the mean (chart A.2). The two largest responses, 60 and 120, may suggest that the responder has misinterpreted the question and responded in terms of minutes, not hours.

A.2 Frequency distribution of responses



Data source: CIE survey.

Using the mean response that is potentially skewed would over-estimate of the time to prepare a resolution avoided through adopting the temporary arrangements permanently and inflate the CBA estimate.

- **To account for this potentially skewed mean, we have used the median of 3.0 for the CBA.**

Impact of AVL on likelihood of attending (annual) general meetings

To understand the potential impact of holding more meetings via AVL, respondents were asked the following questions.

A.3 How likely are you to attend:

	Very unlikely to attend	Unlikely to attend	Likely to attend	Very likely to attend
An Annual General Meeting in-person?				
An Annual General Meeting held via AVL?				
A general meeting (other than an Annual General Meeting) held in-person?				
A general meeting (other than an Annual General Meeting) held via AVL?				

Source: CIE Survey.

Table A.4 shows a summary of the responses. Significantly more owner occupiers responded to this question than investors. The magnitude of change in preferences from in person to AVL was most pronounced for the investor group, as shown in chart A.5.

A.4 Summary of responses on impact of AVL on likelihood of attending (annual) general meetings

Category		Annual General Meeting held in-person	Annual General Meeting held via AVL	General meeting held in-person	General meeting held via AVL
Owner occupier	Very unlikely to attend	8	11	7	9
	Unlikely to attend	7	6	9	8
	Likely to attend	7	9	8	13
	Very likely to attend	61	54	55	52
Investor	Very unlikely to attend	3	2	2	2
	Unlikely to attend	5	1	6	1
	Likely to attend	5	5	5	5
	Very likely to attend	6	11	6	11

Source: CIE survey.

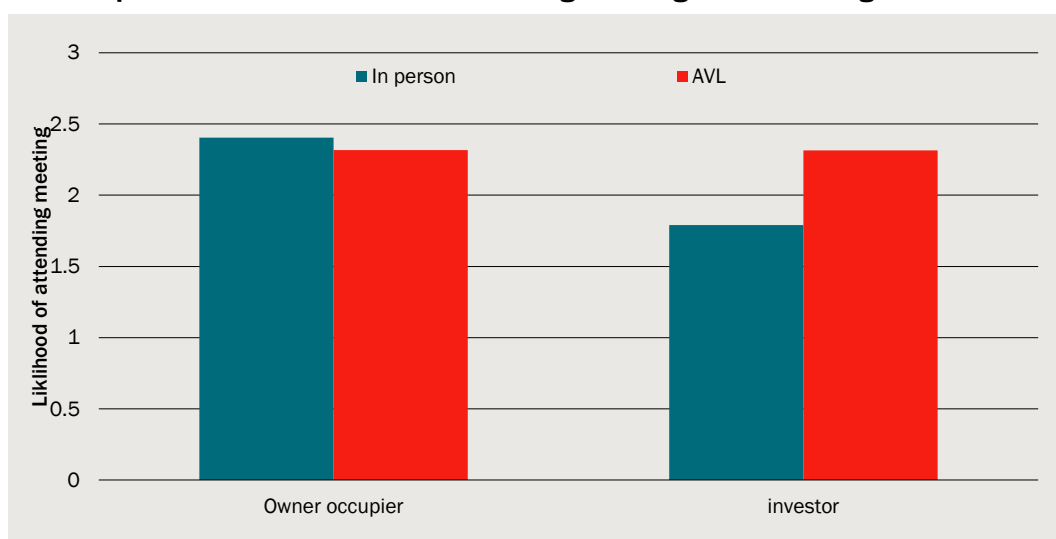
To present this information in chart form, responses were scored as follows:

- Very unlikely to attend = 0
- Unlikely to attend = 1
- Likely to attend = 2
- Very likely to attend = 3.

This scoring system produces an average result ranging between 0 (all respondents are very unlikely to attend) and 3 (all respondents are very likely to attend).

The results were broadly similar across meeting types (i.e. Annual General Meetings and other general meetings). The average responses for Annual General Meetings is shown in chart A.5. The average responses for other general meetings is shown in the body of the report.

A.5 Impact of AVL on likelihood of attending annual general meetings



Note: Responses to the survey are scored as follows: Very unlikely to attend = 0; Unlikely to attend = 1; Likely to attend = 2; Very likely to attend = 3.

Data source: CIE survey.

Time savings for notifying meetings via email

To estimate the potential time savings associated with notifying meetings via email, the survey asked the following questions.

Strata managers were asked:

What do you estimate would be the time savings (if any) associated with notifying meetings via email compared to post (in minutes per member)?

Committee members were also asked:

What do you estimate are the time savings (per member for each meeting) when notifying members of the owners corporation of strata committee or general meetings by email?

The summary statistics for these questions are shown in table A.6. For both groups, there are significant differences between the various measures of central tendency (particularly responses from committee members), with the mean generally significantly higher than other measures.

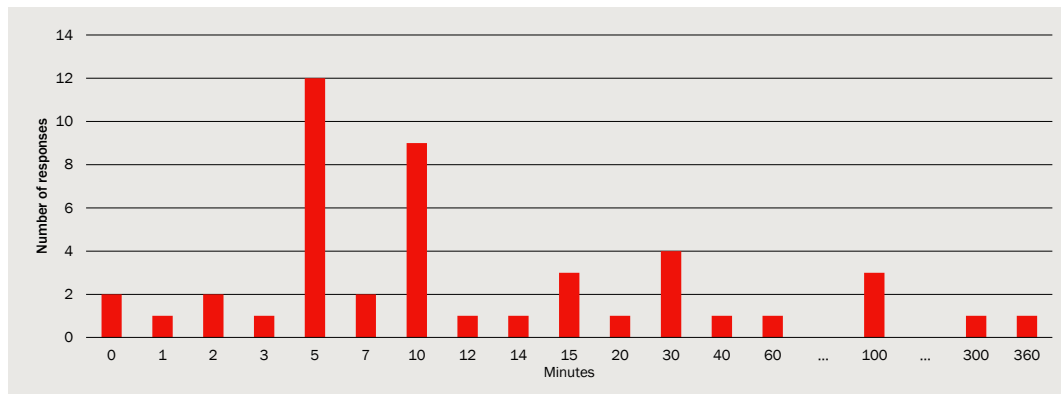
A.6 Summary statistics

Measure	Value
Strata managers	
Mean	31.4
Median	10.0
Mode	5.0
Total responses	46
Committee members	
Mean	357.1
Median	15.0
Mode	30.0
Total responses	35

Source: CIE survey

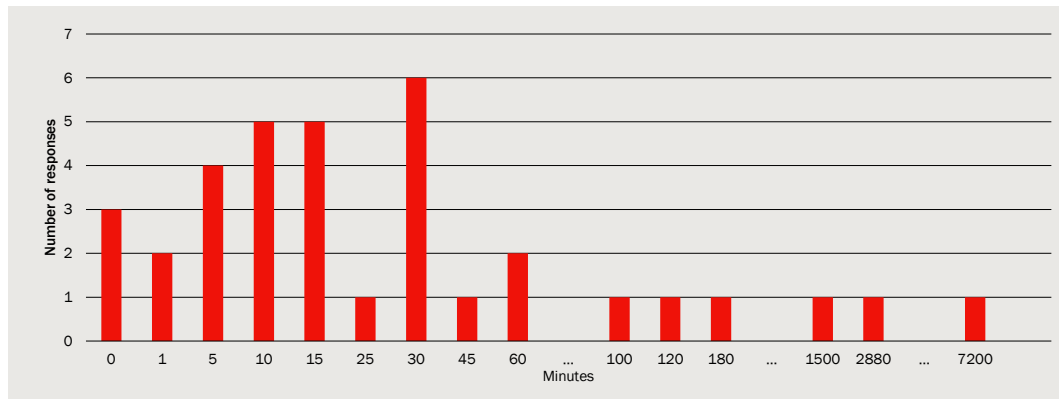
The mean response across both questions appears to be significantly affected by implausibly large outliers, particularly responses from committee members (see charts A.7 and A.8). Some respondents may have interpreted the question in relation to all scheme members (rather than per member) or total time across a whole year (rather than for each meeting).

A.7 Time savings using email vs post for strata managers



Data source: CIE survey

A.8 Time savings using email vs post for committee members



Data source: CIE survey

- To avoid over-inflating the potential benefits of allowing meetings to be notified via email, we use the median response for strata managers to use as an input for the CBA.



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