



NSW Reconstruction Authority Regulation - Regulatory Impact Statement

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Executive Summary

The *NSW Reconstruction Authority Act 2022 (RA Act)* received assent on 28 November 2022.

The primary object of the RA Act is to promote community resilience to the impacts of disasters in NSW through disaster prevention, preparedness and adaptation, and recovery and reconstruction following disasters. This is to be achieved under the legislation through the establishment of the NSW Reconstruction Authority (the **Authority**) to facilitate community resilience to the impact of disasters in NSW through prevention, preparedness and adaptation, and by providing the Authority with the requisite roles, functions and powers to take action in this regard.

The Authority was established in December 2022 and has since commenced its operations.

The *NSW Reconstruction Authority Regulation 2023 (RA Regulation)* commenced on 3 February 2023 and is the primary subordinate legislation to the RA Act.

The purpose of the RA Regulation is to provide legislative support to the RA Act around strategic disaster planning, Authority's direction powers, Ministerial authorisation powers and fees. It is intended to optimise the role, functions and powers of the Minister/s administering the RA Act and the Authority to ensure that, in the event of a disaster, the legislation can provide full support to the plans and actions of government.

The primary objective of the RA Regulation is to provide standing arrangements that can be relied upon to boost the State's responsiveness to disaster events and increase government's ability to act quickly, decisively and effectively in relation to disaster preparedness and recovery. This includes provisions to:

- enable and facilitate coordinated and timely action to prepare for and respond to disasters and likely disasters - by empowering the Authority to act as a central point that can instruct and direct action to be taken by planning authorities, government agencies and State-owned corporations (SOCs).
- support implementation of the State disaster mitigation plan and disaster adaptation plans - by requiring consideration of the plans by the Authority, councils, government agencies and SOCs when undertaking certain functions that may be relevant to the plans.
- facilitate and expedite urgent and essential development in circumstances involving significant and widespread harm to life, or damage to property or the environment - by allowing for the use of Ministerial authorisation powers to undertake development without the need for assessment, approvals or consent in these exceptional circumstances.
- allow for the Minister or Authority to recover costs incurred when providing various services - by prescribing a method for calculating costs and determining fees payable.

A regulatory impact statement (RIS) would generally be publicly exhibited before commencing a new regulation. In the case of the RA Regulation however, the NSW Premier provided certification that, given the special circumstances of the case, the public interest required that the regulation be made prior to the exhibition of a RIS. Of note, the Authority was established shortly following the passing of the legislation to support communities still recovering from recent flooding and to prepare for the up-coming disaster season. The early commencement of the RA Regulation provided access to the powers and full functionality of the legislation to support the Authority in its operations from the outset.

In accordance with the requirements of the *Subordinate Legislation Act 1989*, a RIS has now been prepared for exhibition.

The RIS (this document) sets out the rationale and objectives of the RA Regulation. It outlines alternative options to the proposed provisions and an assessment of the costs and benefits of

these options. This assessment supports the finding that the RA Regulation is the preferred option as it is considered to provide the greatest net public benefit.

The RIS also provides a discussion of the provisions in the RA Regulation and seeks feedback from stakeholders and the community. Submissions are invited on any of the matters raised in this document or anything else contained in the RA Regulation during the four-week consultation period.

The exhibition period ends and submissions close on **15 May 2023**.

This RIS should be read in conjunction with the RA Regulation, which is available on the NSW legislation website at <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2023-0032>.

Acknowledgment of Country

The NSW Reconstruction Authority acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1. Introduction

The *NSW Reconstruction Authority Act 2022 (RA Act)* received assent on 28 November 2022.

The primary object of the RA Act is to promote community resilience to the impacts of disasters in NSW through disaster prevention, preparedness and adaptation, and recovery and reconstruction following disasters. This is to be achieved under the legislation through the establishment of the NSW Reconstruction Authority (the **Authority**) to facilitate community resilience to the impact of disasters in NSW through prevention, preparedness and adaptation, and by providing the Authority with the requisite roles, functions and powers to take action in this regard.

The Authority was established in December 2022 and has since commenced its operations.

The *NSW Reconstruction Authority Regulation 2023 (RA Regulation)* commenced on 3 February 2023. The main purpose of the RA Regulation is to provide legislative support to the RA Act around strategic disaster planning, Authority's direction powers, Ministerial authorisation powers and fee provisions for cost recovery.

The RA Regulation is intended to optimise the role, functions and powers of the Minister/s administering the RA Act and the Authority to ensure that, in the event of a disaster, the legislation can provide full support to the plans and actions of government.

This RIS has been prepared by the Authority on behalf of The Hon. Paul Scully, Minister for Planning and Public Spaces and The Hon. Jihad Dib, Minister for Emergency Services who jointly administer the RA Act.

The RIS outlines the assessment of the potential regulatory impacts of the RA Regulation. This includes assessing the expected costs and benefits of the RA Regulation, evaluating the potential costs and benefits of alternative options, and determining which options have the greatest net benefit or the least net cost to the community.

Title of the regulation

The regulation the subject of this assessment is the *NSW Reconstruction Authority Regulation 2023*.

Name of proponent and responsible Ministers

The Hon. Paul Scully, Minister for Planning and Public Spaces and The Hon. Jihad Dib, Minister for Emergency Services jointly administer the RA Act and are the responsible Ministers in terms of complying with the requirements of the *Subordinate Legislation Act 1989 (SL Act)* for the making of the RA Regulation.

Relevant Act and regulation making power

Section 94 of the RA Act provides regulation making powers.

Requirements of a Regulatory Impact Statement

A RIS must be prepared before a principal statutory rule is made, except in certain cases outlined in section 6 of the SL Act.

The Premier provided certification under section 6(1)(b) of the SL Act that a RIS was not required to be exhibited in advance of the making of the RA Regulation. This was due to the special circumstances around the Authority being established quickly to ensure that a central coordinating body would be in place to undertake immediate critical work on disaster recovery and reconstruction.

The Authority was established shortly following the passing of the RA Act to support communities still recovering from recent flooding and to prepare for the up-coming disaster season. The early commencement of the RA Regulation provided access to the powers and full functionality of the legislation to support the Authority in its operations from the outset.

In accordance with the requirements of the SL Act, this RIS will be exhibited and submissions considered within 4 months of the Regulation having been made. The exhibition of the RIS provides an opportunity for stakeholders and the broader community to submit feedback on the RIS and the RA Regulation in its published form.

This RIS complies with Schedule 2 of the SL Act and includes the following requirements:

- A statement of the objectives sought to be achieved and the reasons for them.
- An identification of the alternative options by which those objectives can be achieved (whether wholly or substantially).
- An assessment of the costs and benefits of the statutory rule, including the costs and benefits relating to resource allocation, administration, and compliance.
- An assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance.
- An assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community.
- A statement of the consultation program to be undertaken.

As required under the SL Act, economic and social costs and benefits, both direct and indirect, have been taken into account and given due consideration in this assessment.

Costs and benefits have been quantified where possible. Where this has not been possible, the anticipated impacts of the regulatory provisions and of each alternative are stated and presented in a way that permits a comparison of the costs and benefits.

Better Regulation principles

The RA Regulation was prepared in accordance with the NSW Treasury's document *NSW Government Guide to Better Regulation* (TPP 19-001), including consideration of the following seven better regulation principles:

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.
2. The objective of government action should be clear.
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.
4. Government action should be effective and proportional.
5. Consultation with business and the community should inform regulatory development.
6. The simplification, repeal, reform, modernisation, or consolidation of existing regulation should be considered.
7. Regulation should be periodically reviewed, and if necessary, reformed, to ensure its continued efficiency and effectiveness.

A central focus of the RA Act is to reduce regulatory burden and avoid unnecessary red tape when planning, coordinating and delivering services related to disaster prevention, preparedness,

adaptation, recovery and reconstruction. The application of the Better Regulation principles in the development of the RA Act has assisted in carrying this focus over into the regulations so that these additional regulatory provisions are considered to be required, reasonable and responsive.

Consultation

In accordance with the requirements of the SL Act, the RIS will be notified in the NSW Government Gazette and at least one daily NSW-wide newspaper.

NSW councils, relevant Government agencies, and non-government bodies that are likely to be directly affected by the RA Regulation will be notified of the RIS exhibition where practical.

The RIS should be read in conjunction with the RA Regulation, which is available on the NSW legislation website at <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2023-0032>.

To make a submission:

- email legal@resilience.nsw.gov.au or
- mail your submission to

NSW Reconstruction Authority
GPO Box 5434
Sydney NSW 2001

The RIS exhibition period ends and submissions close on **15 May 2023**.

While the RA Regulation has already commenced, its provisions are considered to be 'proposed' to the extent that they may be reconsidered and revised following consideration of submissions on this RIS.

As with standard RIS procedures, all comments and submissions received will be carefully and appropriately considered by the Authority and the Minister. Written comments and submissions will be forwarded to the Legislation Review Committee, along with the published RIS.

Joint Select Committee

In addition to this regulatory assessment, section 93 of the RA Act requires that a Joint Select Committee of the NSW Parliament be established in relation to the Authority.

The Committee will review the RA Act within one year of its assent to determine whether the policy objectives remain valid and the terms of the legislation remain appropriate for securing those objectives. It is understood that the RA Regulation (its terms and provisions) would be within the remit of the Committee's review.

The Committee will also review the operations of the Authority following a disaster to which the Authority exercises functions.

2. Regulatory proposal — overview

The RA Regulation is the primary subordinate legislation to the RA Act.

The provisions within the RA Regulation are founded on specific regulation-making provisions in the RA Act related to disaster planning, Authority directions, Ministerial authorisations and fees.

The relevant RA Act provisions to which the regulations relate are outlined and explained in **Appendix B**.

Note. While the RA Regulation has already commenced, for the purposes of this assessment the RA Regulation may sometimes be referred to as a 'regulatory proposal' throughout the RIS. The provisions within the RA Regulation are considered to be 'proposed' to the extent that they may be reconsidered and revised following consideration of submissions on this RIS.

Note. Terms and acronyms relevant to the legislation are listed in **Appendix A**.

Objective of the regulatory proposal

The purpose of the RA Regulation is to provide legislative support to the RA Act around strategic disaster planning, Authority's directions, Ministerial authorisations and fee provisions. It is intended to optimise the role, functions and powers of the Minister/s administering the RA Act and the Authority to ensure that, in the event of a disaster, the legislation can provide full support to the plans and actions of government.

The primary objective of the RA Regulation is to provide standing arrangements that can be relied upon to boost the State's responsiveness to disaster events and increase government's ability to act quickly, decisively and effectively in relation to disaster preparedness and recovery. This includes provisions to:

- enable and facilitate coordinated and timely action to prepare for and respond to disasters and likely disasters - by empowering the Authority to act as a central point that can instruct and direct action to be taken by planning authorities, government agencies and SOCs.
- support implementation of the '**State disaster mitigation plan**' and '**disaster adaptation plans**' - by requiring consideration of the plans by the Authority, councils, government agencies and SOCs when undertaking certain functions that may be relevant to the plans.
- facilitate and expedite urgent and essential development in circumstances involving significant and widespread harm to life, or damage to property or the environment - by allowing for the use of Ministerial authorisation powers to undertake development without the need for assessment, approvals or consent in these exceptional circumstances.
- allow for the Minister or Authority to recover costs incurred when providing various services - by prescribing a method for calculating costs and determining fees payable.

While the RA Act includes general and specific regulation-making powers, the RA Regulation has been limited to specific provisions considered necessary to unlocking the utility and broad functionality of the legislation.

The provisions in the RA Regulation are also limited in application to **public authorities and SOCs only**. They do not apply to private individuals, private landowners, private businesses, or other members of the public.

Alternative options considered

Consistent with the SL Act and the Better Regulation principles, alternative options for achieving the objectives were considered in the development of the RA Regulation. The RIS outlines the key options considered for each regulation provision. In general, those options include:

1. **No Regulation¹ (status quo):** The RA Act could operate without any supporting regulations. This includes leaving the role, functions and powers of the Minister/s and Authority to be set within the bounds of what is already prescribed within the RA Act itself, and any other relevant legislation currently in place.
2. **Non-regulatory operational arrangements:** The legislation could be accompanied by plans, protocols or agreements with operational stakeholders (e.g. other government agencies and service providers) to support the Minister/s and Authority in achieving the RA Act objectives. Arrangements could be negotiated in advance or developed in response to disaster events on a case-by-case basis, such as:
 - agreements or Memoranda of Understanding (MoUs) outlining how various agencies and service providers will work together, including setting out how disaster prevention and recovery actions will be coordinated and delineating roles and responsibilities in relation to those actions (whether as standing arrangements or in response to specific events),
 - establishing agreed non-statutory action plans to support the implementation of SDMP and DAPs across government, stakeholders and broader community,
 - establishing cost recovery mechanisms or other fee arrangements (to calculate costs and negotiate payments) on a case-by-case basis (e.g. as costs to the Authority arise)
3. **Tailored regulatory responses developed on case-by-case basis:** Bespoke regulatory tools could be designed and developed to facilitate rapid disaster response action, such as:
 - site-specific or development-specific SEPPs, regulations, planning directions and other regulatory tools to simplify approval pathways and deliver on-ground works faster,
 - switching off certain planning instruments and regulations to further streamline approval processes, remove red tape and to encourage faster recovery on a case-by-case basis.
4. **The RA Regulation (preferred option):** Putting in place standing arrangements to support disaster prevention, rapid recovery and building community resilience, including:
 - reserve powers for the Authority to direct various entities to take action in relation to the provision of essential services, environmental services, infrastructure and utilities.
 - reserve powers for the Minister/s to authorise critical development to be undertaken immediately (outside of standard approval processes) where there is (or is likely to be) significant and widespread harm to life or damage to property or the environment.
 - requirements for various entities to have regard to disaster plans prepared under the RA Act when delivering essential services, infrastructure, utilities and environmental services, and when undertaking State emergency management planning.
 - standardised method of calculating fees for service or action taken under the RA Act, to assist in reasonable cost recovery.

¹ **Note.** For the purposes of this report the 'No Regulation' option is being treated as the **base case** or **status quo**. The RIS provides a *retrospective* analysis of the options that were available and considered prior to the making of the RA Regulation. See further below for details.

Structure of the report

The chapters below analyse these alternative options and identify the preferred option (the RA Regulation) for achieving the objectives of each regulatory provision. This analysis includes:

- an assessment of the costs and benefits relating to resource allocation, administration, and compliance of the RA Regulation as well as each alternative option.
- an identification of which options involve the greatest net benefit or least net cost to the community.

The RIS is split into four main Chapters covering each regulatory provision as it appears in order in the RA Regulation:

Chapter 3 Authority direction powers

- planning authorities (section 4 of the RA Regulation)
- relevant entities (section 5)

Chapter 4 Strategic disaster plans

- relevant entities (section 6)
- the Authority (section 7)

Chapter 5 Ministerial authorisation powers

- exceptional circumstances (section 8)

Chapter 6 Fees

- determining costs and fees (section 9)
- deposits and prepayments (section 9(5))

Each Chapter contains a cost-benefit analysis of the regulatory provisions and reports the differences in benefits and costs between each option.

Each Chapter also details the **base case** under the 'No Regulation' option and compares this with the RA Regulation (which is the preferred option). Other alternative options are also outlined for each regulatory provision to provide examples of other feasible options for achieving the objectives of the RA Regulation that were considered. The costs and benefits of those alternative options are also compared against the RA Regulation.

Note. While the RA Regulation was commenced prior to the exhibition of this RIS, for the purposes of this report the 'No Regulation' option is being treated as the **base case** or status quo. This is because the 'No Regulation' option would have represented the 'status quo' if the RA Regulation had not commenced early. The RIS provides a retrospective analysis of the options that were available and considered prior to the making of the RA Regulation. The assessment adopts the standard options analysis method that would have applied, if the exhibition of the RIS had not otherwise been deferred.

3. Authority direction powers

Background

The primary object of the RA Act is to promote community resilience to the impacts of disasters in NSW through disaster prevention, preparedness and adaptation, and recovery and reconstruction following disasters. This is to be achieved under the legislation through the establishment of the Authority to facilitate community resilience to the impact of disasters in NSW through prevention, preparedness and adaptation, and by providing the Authority with the requisite roles, functions and powers to take action in this regard.

Section 10 of the RA Act sets out various functions of the Authority, covering disaster prevention and preparedness, reconstruction and recovery, and working with councils, other government agencies, the private sector and communities to better prepare for and recover from disasters.

Section 13 of the RA Act gives the Authority specific powers to direct relevant entities² to take action if the Authority thinks:

- the action relates to a disaster or likely disaster and is necessary to give effect to the primary object of the RA Act, and
- directing the relevant entity to take the action immediately is appropriate in the circumstances.

If a relevant entity is issued a direction from the Authority, it must comply with the direction unless it has a reasonable excuse.

While the **s13 Authority directions** are considered to be "reserve powers" to be used infrequently, the provisions were included in the RA Act in order to adopt a new approach to disasters moving forward – a system that would allow the government to be able to act quickly, decisively and effectively, when extreme or unexpected events arise. The RA Regulation was drafted to support this new approach and includes broad enabling provisions.

The section 13 provisions include directing relevant entities to assist the Authority in exercising its functions under the RA Act, and for directing councils in relation to their planning functions under the EP&A Act. For example, the Authority may issue directions:

- to public authorities when coordinating and directing the recovery, planning and rebuilding of affected communities, including repairing and rebuilding land and infrastructure and other development; or
- to councils to undertake development assessment or land-use planning functions in disaster-affected areas.

The section 13 provisions also allow for specific regulations to be made that could prescribe other functions of planning authorities and relevant entities that the Authority could issue directions in relation to. The following section examines those specific regulation-making powers and how they have been used for the RA Regulation.

Refer to **Appendix B** for a summary of the RA Act and related RA Regulation provisions.

² The term 'relevant entity' is defined in Schedule 4 of the RA Act and includes a government agency, local council, State-owned corporation, or person prescribed by the regulations.

RA Regulation

The regulatory proposal (RA Regulation) gives effect to provisions in section 13 of the RA Act allowing the Authority to direct planning authorities and other relevant entities to undertake action in relation to a disaster or likely disaster.

The objective of the regulatory proposal is to enable and facilitate coordinated and timely action to prepare for and respond to disasters and likely disasters by empowering the Authority to act as a central point that can instruct and direct action to be taken by planning authorities, government agencies and SOCs.

The direction provisions in the RA Regulation are restricted to **public authorities and SOCs**. The Authority does not have power to issue directions to private individuals, private landowners, private businesses, or other members of the public.

The RA Regulation provisions related to s13 Authority directions are explained below.

Directing planning authorities

RA Regulation, section 4

Section 4 of the RA Regulation allows the Authority to direct a planning authority (other than the Minister for Planning) to exercise its *relevant planning functions*³ (for the purposes of section 13(1)(c) of the RA Act).

As mentioned further above, the RA Act already provides for the Authority to direct councils in relation to their planning functions under the EP&A Act. The RA Regulation extends this power to other planning authorities (such as planning panels, the Independent Planning Commission, the Greater Cities Commission and Part 5 determining authorities) in relation to certain functions they perform under the EP&A Act (such as land use planning and development assessment).

For example, the Authority may issue a direction to a planning authority to exercise its functions as a consent authority or a determining authority to undertake assessment of a project in a disaster-affected area.

Before issuing such a direction, the Authority must be satisfied that the action relates to a disaster or likely disaster and is necessary to give effect to the primary object of the RA Act. The Authority must also be satisfied that directing the planning authority to take the action immediately is appropriate in the circumstances.

Directing relevant entities

RA Regulation, section 5

Similar to section 4, section 5 of the RA Regulation allows the Authority to direct a relevant entity in respect to certain prescribed actions (for the purposes of section 13(1)(d) of the RA Act). Those prescribed actions include:

- providing an essential service (within the meaning of section 4(1) of the NSW *Essential Services Act 1988* (ES Act)), and
- carrying out development under *State Environmental Planning Policy (Transport and Infrastructure) 2021* (T&I SEPP)

³ **Relevant planning functions** has the same meaning as section 2.21(2) of the EP&A Act and includes (among other things) land use planning, development assessment, environmental impact assessment and contribution plans.

Under the provisions, government agencies and SOCs may be instructed by the Authority in relation to the provision of infrastructure and essential services (e.g. transport, utilities, waste, water, social infrastructure), and carrying out emergency and environmental management works.

Authority directions in general

The s13 Authority direction powers are considered to be "reserve powers" and are not intended to be relied upon in most disaster situations. The provisions however could be used by the Authority to assist with the coordination of disaster recovery and rebuilding efforts in emergencies where the use of direction powers is considered suitable and appropriate.

Of note, section 13(2) of the RA Act requires that the Authority may only issue a direction if it is satisfied that the action relates to a disaster or likely disaster and is necessary to give effect to the primary object of the RA Act. The Authority must also be satisfied that directing the planning authority or other relevant entity to take the action immediately is appropriate in the circumstances.

If the Authority has issued a direction, the Minister may direct the relevant entity to comply with that direction (section 90 of the RA Act).

In relation to the Authority or Minister directing a SOC, special provisions in section 91 of the RA Act also apply. These provisions link to section 20P of the *State Owned Corporations Act 1989* (SOC Act) and provide that:

- the SOC may be reimbursed the estimated costs of complying with the direction or the estimated net amount of revenue forgone through complying with the direction (as determined by the Treasurer), and
- the Authority or Minister (whomever gave the direction) must publish a notice in the Gazette setting out the reasons why they gave the direction and why it is in the public interest.

Cost–benefit analysis of options

This section provides both a quantitative and qualitative review of the benefits and costs of the RA Regulation compared with no Regulation, and the RA Regulation compared with a possible, viable alternative option.

The options are referred to as:

Option 1 - No Regulation

Option 2 - RA Regulation

Option 3 - Alternative Approach

The Alternative Approach (Option 3) outlined further below includes establishing non-statutory arrangements (e.g. inter-agency agreements, MoUs) between the Authority, other government agencies and SOCs to encourage coordinated recovery and reconstruction in response to disasters.

Appendix C provides a summary of the cost benefit analysis (CBA) undertaken for these provisions, and includes quantitative measures for comparing Options 1, 2 and 3 based on modelling of a theoretical disaster scenario where the s13 Authority direction provisions could be relevant. The method maps out some basic costs (e.g. administrative and labour costs) and benefits (e.g. time and cost savings, other success measures) that could reasonably be attributed to the three different options.

The key findings from the CBA work are outlined in the tables below.

RA Regulation compared with No Regulation

No Regulation

With Option 1 (No Regulation) s13 Authority direction powers would be limited in scope. The Authority would not have reserve powers to issue directions to public authorities and SOCs to provide essential services or undertake infrastructure works following a disaster event.

The Authority could still issue s13 directions to councils to undertake their planning functions and to all relevant entities in relation to supporting the Authority in exercising its functions under the RA Act.

Option 1 may avoid some potential costs associated with the RA Regulation (see table below) including administrative costs to the Authority (to prepare and issue directions) and compliance costs to public authorities and SOCs (to carry out directions). It does however limit opportunities for the Authority to exercise its key function of coordinating and directing recovery, planning and rebuilding of affected communities following disasters. This in turn may potentially reduce the speed of Government's response to disasters (compared to Option 2 - RA Regulation).

RA Regulation

Option 2 (RA Regulation) expands the scope of the s13 Authority direction powers to cover additional bodies and functions - the key benefit being to improve the coordination and sequencing of disaster recovery and reconstruction efforts. Directions can be aligned to work in conjunction with and timed to synchronise with other complementary actions to boost the speed and effectiveness of Government's efforts.

Where directions lead to faster reconstruction and re-instatement of infrastructure and services, flow-on benefits may include improved local productivity (e.g. faster return to work/home/studies/childcare and recovery of local economy) and reduced costs for temporary arrangements (e.g. costs of alternative accommodation and alternative utilities/infrastructure for extended periods) while awaiting completion of permanent reconstruction works post-disaster.

There are minor time and administrative costs associated with preparing and issuing directions, however the directions may lead to faster restoration and reconstruction of damaged buildings, infrastructure and services (i.e. recovery works being prioritised).

There would be additional costs to government and service providers to implement directions (such as assessment and construction costs), however these costs would generally be incurred at some point in the future as services are restored (regardless of whether a direction was issued).

In the case of a SOC being directed to take action, the SOC may be reimbursed the estimated cost of complying with the direction or the estimated net amount of revenue forgone through complying with the direction (see s91, RA Act and s20P, SOC Act).

Section 13 directions may require *betterment works* (e.g. construction of more resilient infrastructure and services to 'build back better') and this may increase planning and construction costs in the short term, but is expected to reduce the long term costs of having to restore or replace less-resilient infrastructure and services in subsequent disasters. Works to be undertaken via s13 Authority directions are still subject to standard assessment and approval processes, and the Authority must also have regard to the SDMP and DAPs when issuing directions so that on-ground actions align with strategic disaster planning (discussed in chapter 4 below).

The RA Regulation provisions have been limited to public authorities and SOCs only, thereby minimising the scope of the regulation (and related regulatory burden).

The Authority will be working closely with relevant entities to determine how disaster recovery and reconstruction efforts can best be coordinated across government and service providers. This may include discussions on when and how directions may be issued and how directed works will be funded.

■ **Table 3.1 Overview of benefits and costs of RA Regulation and No Regulation**

	Potential Benefits	Potential Costs
Option 1 - No Regulation	<ul style="list-style-type: none"> • Regulatory processes restricted to existing Act provisions. This in turn may: <ul style="list-style-type: none"> – avoid introducing more regulatory processes and associated administrative costs – avoid introducing costs to comply with directions (planning, assessment and construction costs) • avoid potential or perceived risks with central body instructing other relevant entities e.g. conflicting priorities and different unaligned asset plans. 	<ul style="list-style-type: none"> • Scope of s13 Authority directions limited to councils undertaking planning functions and relevant entities supporting Authority with its functions under the RA Act • Limits opportunity for Authority to exercise its key function of coordinating and directing recovery, planning and rebuilding of affected communities following disasters

■ **Table 3.1 Overview of benefits and costs of RA Regulation and No Regulation**

<p>Option 2 - RA Regulation</p>	<ul style="list-style-type: none"> • Decisive method of coordinating and sequencing actions to recover from emergencies - Directions can be aligned to work in conjunction with and timed to synchronise with other complementary responses and actions. • Directions can be issued quickly to respond to disasters and encourage faster re-instatement and reconstruction of damaged buildings and services (i.e. prioritising recovery works) • Authority must have regard to SDMP/DAPs when issuing directions, encouraging alignment between strategic disaster plans and on-ground works • Applies to public authorities and SOCs only - other stakeholders (business, industry, community) not captured, thereby minimising scope of regulation. • SOCs may be reimbursed costs of complying with a direction or the estimated net amount of revenue forgone through complying with a direction. • Directions requiring betterment works (e.g. construction of more resilient infrastructure and services - 'build back better') may reduce long term costs of having to restore infrastructure and services in subsequent disasters. • Potential benefits if directions result in faster reconstruction and reinstatement of infrastructure & services: <ul style="list-style-type: none"> – speeds up community recovery and reduces period of local economic productivity losses (e.g. return of local economic activity) – reduces costs for temporary arrangements post-disaster (e.g. costs of alternative utilities/ infrastructure for extended periods) 	<ul style="list-style-type: none"> • Minor time and administrative costs for preparing and issuing directions - new regulatory process requiring additional government resource allocation • Potential or perceived risks with central body instructing other relevant entities e.g. conflicting priorities and different asset plans • Assessment and construction costs to undertake actions outlined in directions (noting however that these costs would generally be incurred anyway - regardless of whether a direction was issued) • <i>Betterment</i> requirements in directions (such as improved or more resilient infrastructure) may increase short term planning, design and construction costs
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RA Regulation compared with Alternative Approach

An alternative approach (Option 3) that has been considered is establishing non-statutory arrangements (e.g. inter-agency agreements, MoUs) between the Authority and other government agencies and SOCs to encourage coordinated recovery and reconstruction efforts in response to disasters.

The agreements could outline how various agencies and service providers will work together, including setting out how disaster prevention, recovery and reconstruction actions will be coordinated, and delineating roles and responsibilities in relation to those actions (whether as standing arrangements or in response to specific events).

See **Appendix C** for a worked example of this Alternative Approach being applied in response to a theoretical disaster scenario.

The main benefit of agreements under Option 3 is that they can rely and build on existing cross-agency relationships, can be tailored to suit each government agency and SoC, and can be prepared as standing arrangements or in response to specific disasters.

Agreements or MoUs may take some time to prepare and negotiate across various entities but, once agreed to, represent less regulatory burden (and related compliance risks) than statutory requirements (such as having to comply with s13 directions).

The main disadvantage of non-statutory agreements (compared to Option 2 - RA Regulation) is their implementation may not be as fast or as reliable as a statutory direction. Agreements may not be able to provide the level of detail necessary to coordinate and direct entities during a specific disaster event in a timely manner. There may also be a reduced likelihood of agreed actions being implemented if non-binding.

■ **Table 3.2 Overview of benefits and costs of Alternative Approach (Option 3)**

	Potential Benefits	Potential Costs
Option 3 - Alternative Approach Inter-agency agreements or MoUs	<ul style="list-style-type: none"> Achieves coordination across government, service providers and sectors (compared to Option 1 - No Regulation) Can rely and build on existing cross-agency relationships and can be tailored to suit each entity Less regulatory burden (therefore lower compliance risk) as there would be no statutory requirements (compared to Option 2) Agreements or MoUs could include standing arrangements and/or be developed in response to specific events 	<ul style="list-style-type: none"> Implementation of agreements may not be as fast as Option 2 (s13 directions) Agreements unlikely to provide level of detail necessary to coordinate and direct entities in a timely manner in a specific disaster event (may require supplementary instructions) Greater government resources, time and administrative costs associated with developing and negotiating agreements for each agency/entity Potentially reduced likelihood of agreed actions being implemented if non-binding (compared to Option 2)

Conclusion and preferred option

The objective of the regulatory proposal is to enable and facilitate coordinated and timely action to prepare for and respond to disasters and likely disasters by empowering the Authority to act as a central point that can instruct and direct action to be taken by planning authorities, government agencies and SOCs.

Option 1 (No Regulation) avoids some potential administrative and compliance costs associated with the RA Regulation (Option 2), however it limits opportunities for the Authority to exercise its key

function of coordinating and directing recovery, planning and rebuilding of affected communities following disasters.

Option 2 (RA Regulation) and Option 3 (Alternative Approach) are both capable of achieving the objective of the regulatory proposal and both present a number of potential benefits (and costs) worth considering.

On balance, the RA Regulation is considered to provide greater net benefit because it broadens the scope and utility of the s13 Authority directions. Specific benefits of Authority directions include:

- providing a faster, more reliable mechanism for coordinating action, that can be tailored to synchronise with other complementary actions of government in response to a particular disaster event
- the Authority must have regard to SDMP and DAPs when issuing directions, encouraging alignment between strategic disaster planning and on-ground works
- where directions result in faster reconstruction and reinstatement of infrastructure and services, flow on benefits may accrue - such as shorter periods of local productivity losses and reduced costs for temporary arrangements post-disaster.

For these reasons, Option 2 - the RA Regulation - is considered to be the preferred option.

4. Strategic planning for disasters

Background

The RA Act was closely modelled on the *Queensland Reconstruction Authority Act 2011* to enable the establishment of an authority to work with emergency combat agencies, councils and other public authorities to plan and prepare for future disasters and lead a coordinated response to preparation and reconstruction across NSW.

The NSW RA Act does however include some key points of difference to the Queensland legislation. For example, the NSW legislation introduces **strategic planning for disasters** to promote community resilience to the impacts of disasters. The RA Act and the Authority's role represent a unique alignment between disaster recovery and strategic planning that has not previously existed in NSW.

Part 4 of the NSW RA Act requires the Authority to prepare a disaster mitigation plan (known as the 'State disaster mitigation plan' or SDMP) for the Minister's approval. The SDMP will provide guidance about mitigating disasters, including setting priorities for action to be taken under the SDMP, 'disaster adaptation plans' and strategic plans under the EP&A Act.

The RA Act sets out what matters must be covered by the SDMP including mitigation strategies, actions and priorities, an assessment and consideration of the impacts of climate change on disasters, and monitoring and reporting. The RA Act also sets out how the SDMP is to be approved, reviewed, updated and reported on.

Part 4 of the NSW RA Act also allows the Authority to prepare, or require a relevant entity (such as a public authority) to prepare, a disaster adaptation plan (DAP). A DAP sets out what specific projects, strategies or actions the Authority or relevant entity will undertake to prevent or minimise the impact of disasters. DAPs will align with the SDMP and provide further details on disaster mitigation strategies, actions and priorities.

The implementation of the SDMP and DAPs will support long-term resilience to the impacts of disasters by:

- embedding disaster planning into other strategic planning processes across related sectors, and
- requiring the plans be considered and implemented appropriately by government and other relevant entities.

Section 38 (Part 4) of the RA Act sets out how the plans are to be implemented, including:

- requiring councils to have regard to the SDMP and any relevant DAP in exercising their functions under the EP&A Act or *Local Government Act 1993* (LG Act), and
- requiring other planning authorities to have regard to the SDMP and any relevant DAP in exercising their functions under the EP&A Act.

Section 38 of the RA Act also allows for specific regulations to be made to require the Authority or other relevant entities to have regard to the SDMP and DAPs when exercising certain prescribed functions. The following section examines these specific regulation-making powers to support the implementation of the SDMP and DAPs.

Refer to **Appendix B** for a summary of the SDMP and DAP provisions in the RA Act and related RA Regulation provisions.

RA Regulation

The regulatory proposal (RA Regulation, ss 6 and 7) sets out when relevant entities and the Authority must have regard to the SDMP and DAPs, in accordance with section 38(1) and (2) of the RA Act.

The objective of the regulatory proposal is to support the implementation of the SDMP and DAPs by requiring consideration of the plans by the Authority, councils, government agencies and SOCs when undertaking certain functions that may be relevant to the plans.

The SDMP and DAP requirements in the RA Regulation are restricted to the **Authority, other public authorities and SOCs**. They do not apply to private individuals, private landowners, private businesses, or other members of the public.

The RA Regulation provisions for implementing disaster plans are explained below.

Implementing plans - relevant entities

RA Regulation, section 6

Section 6 of the RA Regulation sets out when relevant entities must have regard to the SDMP and any relevant DAPs (for the purposes of section 38(1) of the RA Act). This includes when the relevant entity is:

- applying for development consent or State significant infrastructure (SSI) approval under the EP&A Act
- carrying out development under the T&I SEPP
- providing an essential service (within the meaning of s4(1) of the ES Act)
- reviewing and recommending alterations to the State Emergency Management Plan (EMPLAN) under the *State Emergency and Rescue Management Act 1989* (SERM Act).

In effect, councils, other government agencies and SOCs will need to consider the disaster plans when undertaking projects such as infrastructure and essential services (e.g. transport, utilities, waste, water, social infrastructure), and emergency and environmental management works.

These provisions will assist in implementing strategies, actions and priorities in disaster plans at the site- and project-specific level. For example, if a DAP has been prepared for a specific location following a disaster, government and SOC proponents working in those areas should consider advice and recommendations within the DAP in relation to the best way to deliver their projects.

In turn, it is expected that the SDMP and DAPs will be prepared by the Authority (or in the case of DAPs - other relevant entities) having regard to the EMPLAN and other relevant strategic plans (e.g. NSW Climate Change Adaptation Strategy, NSW State Infrastructure Strategy, NSW Future Transport Strategy and strategic plans under the EP&A Act).

Of note, requiring consideration of the EMPLAN in the preparation of the SDMP and DAPs (and vice versa) will assist in aligning these plans and delineating key roles. This includes maintaining emergency services organisations as the lead on response to natural disasters, and highlighting the Authority's focus on disaster recovery, adaptation and risk mitigation.

Implementing plans - the Authority

RA Regulation, section 7

Section 7 of the RA Regulation sets out when the Authority must have regard to the SDMP and any relevant DAPs (for the purposes of section 38(2) of the RA Act). This include when the Authority is exercising any of its functions under the RA Act⁴.

Section 10 of the RA Act sets out various functions of the Authority, covering disaster prevention and preparedness, reconstruction and recovery, and working with councils, other government agencies, the private sector and communities to better prepare for and recover from disasters.

As an example, a key function of the Authority is to facilitate, coordinate and direct the recovery, planning and rebuilding of affected communities, including repairing and rebuilding land and infrastructure and other development. If the Authority were to coordinate reconstruction works in a given area, it would need to have regard to the SDMP and any relevant DAP that might apply in that location to ensure that future works align with strategies and actions outlined in the disaster plans. Similarly, the Authority would need to consider these plans before issuing section 13 directions for other relevant entities to undertake such works.

The regulation provides strategic 'checks and balances' to ensure that any research, studies, proposals, on-ground work or other actions of the Authority are consistent with agreed approaches in the disaster plans (where relevant).

Cost–benefit analysis of options

This section provides a qualitative review of the benefits and costs of the RA Regulation compared with no Regulation, and the RA Regulation compared with a possible, viable alternative option.

The options are referred to as:

- Option 1 - No Regulation
- Option 2 - RA Regulation
- Option 3 - Alternative Approach

The Alternative Approach (Option 3) outlined below includes establishing a type of non-statutory arrangement between agencies (such as an agreed action plan) to promote and encourage implementation of the SDMP and DAPs.

RA Regulation compared with No Regulation

The RA Regulation (Option 2) will support long-term resilience to the impacts of disasters by embedding strategic disaster planning across related sectors and ensuring the plans are considered and implemented appropriately by government and other relevant entities.

The key benefit of this approach is greater integration of disaster strategies and proposed actions across agencies and sectors, including awareness of resilience and adaptation options in infrastructure delivery. This in turn can lead to improved on-ground outcomes by addressing disaster risks and building resilience in the design, planning and delivery of public infrastructure and services.

The requirement for the Authority and relevant entities to have regard to the disaster plans may result in some increased administrative costs (to consider the plans in project assessment), and

⁴ Section 10 of the RA Act sets out various functions of the Authority, covering disaster prevention and preparedness, reconstruction and recovery, and working with councils, other government agencies, the private sector and communities to better prepare for and recover from disasters.

occasionally may result in additional compliance costs (if changes to projects are required to incorporate actions from the plans). For example, the SDMP and DAPs would become a new consideration in the planning and preparation of infrastructure projects - disaster plans would need to be examined to determine whether there are any strategies, actions or recommendations within the plans that would need to be factored into the project proposal.

In contrast, having no Regulation in place would mean that there is no statutory requirement for government and other relevant entities to consider the SDMP or DAPs when making decisions and undertaking works that may be directly relevant to strategies and actions within the disaster plans. While this means there would be no additional administrative or compliance costs, it also means there would be no formal line-of-sight between the strategic disaster work of government and on-ground decision making in relation to infrastructure and other developments in disaster-affected areas. This may present a risk that strategic decisions of government are not effectively implemented or followed through at the practical on-ground level.

■ **Table 4.1 Overview of benefits and costs of No Regulation and RA Regulation**

	Potential Benefits	Potential Costs

■ **Table 4.1 Overview of benefits and costs of No Regulation and RA Regulation**

<p>Option 1 - No Regulation</p>	<ul style="list-style-type: none"> • No increased administrative costs for public authorities and SOCs to factor in disaster plans when planning projects • No additional considerations/complexity when planning for infrastructure and other projects 	<ul style="list-style-type: none"> • Reduced visibility of strategic disaster plans and reduced line-of-sight between strategic disaster plans and on-ground actions of government • No statutory connection between strategic disaster plans and related work of government • No impetus for agencies to consider options to build back better or to implement priority strategic actions • No alignment between strategic functions (Part 4, RA Act) and other statutory functions of the Authority.
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■ **Table 4.1 Overview of benefits and costs of No Regulation and RA Regulation**

<p>Option 2 - RA Regulation</p>	<ul style="list-style-type: none"> • Greater integration of State and local-level disaster strategies and actions across agencies and sectors • Greater awareness of adaptation options and building resilience in delivery of public infrastructure and services • Improved on-ground outcomes by addressing disaster risks and building resilience through improved design, planning and delivery of public infrastructure and services • Provide strong impetus to implement strategic actions to better prepare for and mitigate impacts of disasters • Applies to public authorities and SOCs only - other stakeholders (business, industry, community) are not captured, thereby minimising scope of regulation (and subsequent regulatory burden) 	<ul style="list-style-type: none"> • Increased administrative costs for public authorities and SOCs to factor in disaster plans when planning projects. • Additional considerations/complexity when planning for infrastructure and other projects • Potential compliance costs if projects must accommodate any additional requirements/considerations from the plans
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RA Regulation compared with Alternative Approach

An alternative approach (Option 3) to implementing the SDMP and DAPs may be to establish a type of non-statutory operational arrangement or agreement across agencies. For example, the SDMP and DAPs could be supported by a whole-of-government action plan that identifies councils, agencies and other relevant entities that are responsible for implementing components of the plans relevant to their functions.

The main benefit of Option 3 (a non-statutory action plan or inter-agency agreement) is that the SDMP and DAPs could be integrated into government decision-making without introducing a new regulatory requirement (avoiding additional red tape and related compliance risks).

The downside of implementing the SDMP and DAPs through non-statutory mechanisms is the reduced likelihood of a non-binding action plan or agreement being negotiated and agreed in a timely manner and implemented consistently across agencies and sectors. This in turn reduces the chances of improved on-ground outcomes such as embedded disaster risk assessment and betterment works in infrastructure and service delivery.

■ **Table 4.2 Overview of benefits and costs of Alternative Approach - Implementing SDMP & DAPs**

	Potential Benefits	Potential Costs
Option 3 - Alternative Approach Non-statutory arrangement with agencies (e.g. whole-of-government action plan)	<ul style="list-style-type: none"> Less regulatory burden (therefore lower compliance risks) as there would be no statutory requirement to comply with action plan Still achieves integration of State and local-level disaster strategies and actions across agencies and across sectors Action plans could provide further details (and potentially identify funding for) disaster prevention and mitigation strategies, priorities and actions 	<ul style="list-style-type: none"> Potentially reduced likelihood of strategies and actions being implemented if non-binding Potentially less likely to improve on-ground outcomes if plans are not statutory (less impetus to implement actions to better prepare for and mitigate impacts of disasters) Agreements or action plans would need to be negotiated and agreed across government, councils and SOCs representing a potentially ad hoc approach, which may cause delays A committed action plan may be more restrictive than "having regard to the SDMP or a relevant DAP", especially if actions are allocated, and tied to funding and reporting requirements.

Conclusion and preferred option

The objective of the regulatory provisions (sections 6 and 7, RA Regulation) is to support the implementation of the SDMP and DAPs by requiring consideration of the plans by the Authority, public authorities and SOCs when undertaking certain functions that may be relevant to the plans.

Compared to the RA Regulation, Option 1 (No Regulation) and Option 3 (non-statutory agreement or action plan) do present some advantages (in terms of less red tape and related compliance risks). Both alternative options however are less likely to achieve the objective of the regulatory proposal, resulting in reduced uptake of the SDMP and DAP findings and recommendations across the work of government and across sectors.

The RA Regulation provides the best chance of achieving the objective of the regulatory proposal and will, on balance, provide net benefit. For these reasons, Option 2 - the RA Regulation - is considered to be the preferred option.

5. Ministerial authorisation powers

Background

Section 68 of the RA Act provides the Minister with the power to authorise development to be undertaken without planning approval or assessment or without consent from any person in certain circumstances. Those circumstances include:

1. during a State of Emergency declared under the SERM Act or in relation to a Part 5 declaration⁵, and where the CEO asks for the authorisation to be made due to those circumstances; or

⁵ **Part 5 declaration** means a declared project, declared reconstruction area or a declared disaster prevention area declared under Part 5 of the RA Act.

2. where **exceptional circumstances** exist, and where immediate action is required to protect public safety and welfare, and where no other mechanism available under the RA Act would be appropriate in the circumstances.

A **s68 Ministerial authorisation** has effect despite planning controls that would otherwise operate to prevent the development from being permitted and approved. The authorisation (including its conditions) serves as a planning approval. The authorisation can also specify other legislation that does not apply to the development.

As with s13 Authority direction powers, s68 Ministerial authorisations are considered to be "reserve powers" to be used infrequently. The provisions serve as a backup tool that would allow the Government to act quickly, decisively and effectively, when extreme or unexpected events arise.

The Ministerial authorisation powers related to a declared State of Emergency or Part 5 declaration do not require regulations. The Minister can issue such an authorisation in those circumstances if the requirements in s68(3) of the RA Act are met.

In contrast, the RA Act provisions for issuing Ministerial authorisations in *exceptional circumstances* require a regulation to be made to define what is meant by "*exceptional circumstances*". Refer to **Appendix B** for details.

The following section examines the specific regulation-making powers for prescribing what constitutes "*exceptional circumstances*".

RA Regulation

The regulatory proposal (RA Regulation, section 8) gives effect to the RA Act provisions related to issuing Ministerial authorisations under *exceptional circumstances* (section 68(2)(b) of the RA Act).

The objective of the regulatory proposal is to facilitate and expedite urgent and essential development in circumstances involving significant and widespread harm to life, or damage to property or the environment.

The RA Regulation provisions related to *exceptional circumstances* are explained below.

Exceptional circumstances

RA Regulation, section 8

Section 8 of the RA Regulation provides a definition of **exceptional circumstances** for the purposes of section 68(7) of the RA Act. Exceptional circumstances are prescribed as follows:

- a disaster that has resulted in significant and widespread harm to life or damage to property or the environment has occurred,
- a disaster may occur that is likely to result in significant and widespread harm to life or damage to property or the environment.

Expressed differently, *exceptional circumstances* may include where a disaster has occurred that has resulted in (or may occur and is likely to result in):

- significant and widespread harm to life, or
- significant and widespread damage to property or the environment.

The definition of *exceptional circumstances* in the RA Regulation has the effect of broadening the application of the s68 Ministerial authorisation powers to situations beyond a declared State of Emergency or a Part 5 declaration.

The provisions allow the Minister to authorise the undertaking of development without the need for approval or assessment under the EP&A Act or consent from any person, if the Minister is satisfied that those *exceptional circumstances* exist (among other things).

Cost–benefit analysis of options

This section provides both a quantitative and qualitative review of the benefits and costs of the RA Regulation compared with no Regulation, and the RA Regulation compared with a possible, viable alternative option.

The options are referred to as:

- Option 1 - No Regulation
- Option 2 - RA Regulation
- Option 3 - Alternative Approach

The Alternative Approach (Option 3) outlined further below includes developing tailored regulatory responses (on a case-by-case basis) to facilitate and expedite development.

Appendix C provides a summary of the cost benefit analysis (CBA) undertaken for these provisions, and includes quantitative measures for comparing Options 1, 2 and 3 based on modelling of a theoretical disaster scenario where the **s68 Ministerial authorisation exceptional circumstances** provisions could be relevant. The method maps out some basic costs (e.g. administrative, assessment, construction and operational costs) and benefits (e.g. time and cost savings, other success measures) that could reasonably be attributed to the three different options.

The key findings from the CBA work are outlined in the tables below.

RA Regulation compared with No Regulation

No Regulation

With Option 1 (No Regulation) Ministerial authorisation powers would be limited to use during a declared State of Emergency or in relation to a Part 5 declaration. State of Emergency declarations are made infrequently - the 2019 bushfire State of Emergency was the first since 2013. It is also not yet known how often Part 5 declarations under the RA Act will be made, however lead-in time will be needed for potential declarations to be considered, prepared and published by the Authority.

Option 1 may avoid some potential costs associated with the RA Regulation (see table below). However, it cannot achieve the objective of the regulatory proposal. Other mechanisms would need to be explored in order to facilitate and expedite development related to significant and widespread impacts from disasters.

RA Regulation

Option 2 (RA Regulation) unlocks the s68 Ministerial authorisation provisions of the RA Act by providing a definition for *exceptional circumstances* (section 8 of RA Regulation) and allowing the powers to be used in more situations.

The use of s68 Ministerial authorisations can offer a number of potential benefits (see table below). Key benefits include expediting urgent and essential development in relation to disasters. Flow-on benefits include significant time savings and compliance cost savings for proponents and reduced administrative and operational costs to government.

Potential costs of the RA Regulation include minor administrative costs around the Ministerial authorisation process (requiring government resources).

Given that the RA Regulation increases the scope of the s68 Ministerial authorisation powers, potentially more development may be undertaken without the need for formal assessment and approval processes. As a result, there may be potential or perceived risks around reduced formal assessment and consultation.

It should be noted however that the RA Regulation only increases the scope of the existing Ministerial authorisation powers to cover disasters resulting in (or likely to result in) **significant and widespread impacts** (including harm to life or damage to property or the environment). The Minister must also be satisfied that immediate action is required to protect the safety and welfare of members of the public, and that no other mechanisms would be appropriate (e.g. such as a Part 5 declaration or a s13 Authority direction). Together, the RA Regulation and s68 of the RA Act set a high bar for when the Minister could feasibly access these reserve powers. The combined provisions limit the ability of the Minister to authorise urgent works to only those extreme situations where an authorisation is likely to be the only viable option to avoid or mitigate significant impacts to people, property and the environment.

For example, the extreme conditions of the Gospers Mountain fire during the 2019 bushfire crisis presented significant risks to the survival of the world's last remaining stand of Wollemi Pine in the wild. The NSW National Parks and Wildlife Service (NPWS) and NSW Rural Fire Service (RFS) undertook an unprecedented environmental protection mission to protect the critically endangered species, which included aerial firefighting and works within the reserve to establish an irrigation system. While these operations were possible to achieve through existing provisions, having standing arrangements that can support unique and innovative interventions such as these more broadly may be of considerable assistance to Government in the future.

The RA Regulation expands the application of the s68 Ministerial authorisation powers beyond a declared State of Emergency or a Part 5 declaration, providing Government with more options and tools to respond quickly, decisively and effectively in the event of a disaster.

It should also be noted that public authorities and other entities undertaking authorised works would still be expected to apply planning and environmental best practice, exercise due diligence and communicate transparently with the public in relation to any works to be undertaken.

■ **Table 5.1 Overview of benefits and costs of RA Regulation and No Regulation**

	Potential Benefits	Potential Costs
Option 1 - No Regulation	<ul style="list-style-type: none"> • Regulatory processes restricted to existing Act provisions. This in turn may: <ul style="list-style-type: none"> – avoid introducing new regulatory processes and associated administrative costs – avoid potential or perceived risks around broader use of s68 Ministerial authorisations for expediting development (e.g. concerns around reduced formal assessment and consultation on projects) 	<ul style="list-style-type: none"> • Cannot effectively achieve the objective of the regulatory proposal (use of s68 provisions in <i>exceptional circumstances</i> require regulations) • Other options (aside from No Regulation) would need to be explored (see Alternative Approach below)

■ **Table 5.1 Overview of benefits and costs of RA Regulation and No Regulation**

<p>Option 2 - RA Regulation</p>	<ul style="list-style-type: none"> • Allows s68 Ministerial authorisation powers to be used in more situations - Can expedite urgent and essential development in circumstances involving significant and widespread harm to life, or damage to property or the environment • Applies pre-emptively - where a disaster may occur that is likely to result in significant and widespread impacts • Significant time savings and compliance cost savings for proponents associated with reduced approval requirements • Moderate administrative and operational cost savings for approval bodies (due to reduced approval requirements) • Significant social and economic benefits from faster reconstruction and reinstatement of infrastructure & services: <ul style="list-style-type: none"> – speeds up community recovery and reduces period of local economic productivity losses (e.g. faster return to work/home/studies/childcare; return of local economic activity) – reduces costs for temporary arrangements post-disaster (e.g. costs of alternative accommodation and alternative utilities/infrastructure for extended periods) 	<ul style="list-style-type: none"> • Minor time and administrative costs for preparing and issuing authorisations • Expanded scope of s68 provisions may increase potential or perceived risks associated expedited approvals - such as concerns regarding reduced formal assessment and consultation on projects
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RA Regulation compared with Alternative Approach

As indicated above, Option 1 (No Regulation) cannot achieve the objective of the regulatory proposal. The RA Act provisions related to the use of Ministerial authorisation powers in *exceptional circumstances* are dependent on a regulation being made.

An alternative approach (Option 3) that has been considered includes developing tailored regulatory responses (on a case-by-case basis). This could include:

- site-specific or development-specific SEPPs (e.g. Special Activation Precincts, sector-specific SEPP amendments), regulations, directions and other tools to simplify zoning and assessment pathways (e.g. expedited EPIs, Site Compatibility Certificates (SCCs), complying development certificates (CDCs)),
- switching off certain planning instruments and regulations to further streamline approval processes, remove red tape and to encourage faster recovery,
- supplementing regulatory tools with boosted resources and expertise (e.g. surge staff, panels) to assist with influx, backlogs and complexity.

Different planning tools are available and could be used to streamline the assessment and approval of essential and urgent development following a disaster event. This type of approach has been

applied previously, most recently in response to the 2022 Lismore floods. Targeted planning changes were made in 2022 to support flood recovery and redevelopment in the Lismore area including new SEPP and regulation provisions to permit land use changes and approve new building and reconstruction works faster.

See **Appendix C** for a worked example of the Alternative Approach being applied in response to a theoretical disaster scenario.

The main benefit of Option 3 is that it relies on existing, well-understood planning processes and can be tailored to suit the unique circumstances that arise in each case. For example, a number of streamlined development approval processes already exist within the planning system and planning controls can be readily established following a disaster event to cater for specific development needs at that time.

Other potential benefits of Option 3 include some time savings and compliance cost savings for proponents (government and private) and reduced administrative and assessment costs for approval bodies compared to Option 1. Note. The quantum of these savings and benefits are not as significant as Option 2 (see **Appendix C** for details).

Potential costs of Option 3 include longer timeframes and higher administrative costs to Government associated with developing the regulatory tools to respond to a disaster event on a case-by-case basis (estimated to take around 2-6 months to put provisions in place). Compared to the RA Regulation, this also means that Option 3 is a largely re-active tool and unable to be applied quickly in order to address imminent disasters.

While faster than the status quo, the resulting streamlined assessment and approval processes are also likely to be slower and more expensive than if undertaken via a Ministerial authorisation (where planning processes are switched off entirely).

See **Appendix C** for further details on the findings of the CBA work.

Table 5.2 Overview of benefits and costs of Alternative Approach (Option 3)

	Potential Benefits	Potential Costs
<p>Option 3 - Alternative Approach</p> <p>Tailored regulatory responses (on case-by-case basis)</p>	<ul style="list-style-type: none"> • Works within existing, well-understood planning processes and can be tailored to unique circumstances of each case • Depending on regulatory mechanisms used in each case: <ul style="list-style-type: none"> – approval processes may be faster than Option 1 (No Regulation) – processes may still involve formal assessment and consultation (compared to Option 2) • Time savings and compliance cost savings (e.g. assessment costs) for proponents associated with faster approval pathways (e.g. CDCs, SCCs) • Moderate administrative and assessment cost savings for approval bodies (where approval pathways are expedited) compared to Option 1 	<ul style="list-style-type: none"> • Higher administrative costs to Government in establishing bespoke regulatory approaches • Longer timeframes to develop special regulatory tools to respond to each disaster event (e.g. 2-6 months) • Streamlined assessment and approval processes still slower compared to s68 Ministerial authorisation (Option 2) • Largely re-active tool - not easily applied quickly to address up-coming disasters (compared to Option 2) • Time savings and compliance cost savings for proponents - But savings not as significant as RA Regulation (n.b. assessment and approvals processes generally still apply)

Conclusion and preferred option

The objective of the regulatory proposal (section 8, RA Regulation) is to facilitate and expedite urgent and essential development in circumstances involving significant and widespread harm to life, or damage to property or the environment.

Option 1 (No Regulation) would mean that the *exceptional circumstances* provisions in section 68 of the RA Act would have no effect (because the Act provisions rely on regulations being made). Option 1 therefore cannot achieve the intended objectives of the regulatory proposal on its own.

Option 2 (RA Regulation) and Option 3 (Alternative Approach) are both capable of achieving the objective of the regulatory proposal. The RA Regulation however is considered to provide the least net cost and greater net benefit because:

- it allows for faster and more pro-active responses to disaster threats and impacts;
- it provides significantly more time and cost savings to proponents, and more administrative and operational cost savings for assessment/approval bodies;
- potential risks associated with the RA Regulation (reduced assessment and consultation on development) can be managed and reduced by Government in each case through the application of planning and environmental best practice, exercising due diligence and appropriate communication and transparency.

For these reasons, Option 2 - the RA Regulation - is considered to be the preferred option.

6. Fees

Background

Part 10, Division 1 of the RA Act sets out fee provisions, including:

- a fee may be charged if the Minister, Authority or CEO does any of the following:
 - supplies a service, product, commodity or publication
 - gives an approval or other permission
 - gives information
 - receives an application for an approval or other permission
 - issues a certificate, direction or other requirements
 - another thing in the exercise of functions under the RA Act, at the request of a person or body or for the benefit of a person or body.
- a fee is payable by the person or body:
 - to whom or at whose request the service, approval or information is supplied or given, or
 - from whom the application is received, or
 - at whose request the thing is done.
- fees or other money due to the Minister or Authority may be recovered as a debt in court.

The fee provisions in the RA Act are based on similar fee levying provisions in the EP&A Act (s7.44). The provisions cover a wide-ranging set of services - some of which are not expected to be required at this stage as the Authority does not currently undertake related functions (e.g. processing applications, giving approvals or permission, issuing certificates). It is possible however that the Authority may provide various services to certain bodies over time, and that the Authority may need to recover costs incurred in the delivery of those services. For example, the Authority could be asked by a public authority or other entity to undertake (or commission) technical research or studies into disaster risk assessment or management, or other work related to disaster prevention or recovery.

The fee provisions in Part 10, Division 1 of the RA Act allow the Minister and Authority to recoup costs incurred when requested by a person or body to undertake various services. Section 84 of the RA Act includes specific regulation making powers for charging fees, including allowing for regulations to be made that either prescribe a fee or prescribe a method of determining the fee (including who can determine the fee).

It should be noted that the fee provisions only apply to relevant services or actions taken by or on behalf of the Minister or Authority. For example, the fee provisions could not be used by another public authority or SOC to cover its costs when undertaking works in compliance with a s13 Authority direction.

The following section examines the fee regulation-making powers.

Refer to **Appendix B** for a summary of the RA Act fee provisions and the related RA Regulation provisions.

RA Regulation

The fee provisions within the RA Regulation set out a basic model for cost recovery and provide an indication of how the Minister or Authority may seek to calculate and recoup certain expenses.

The objective of the regulatory proposal is to allow for the Minister or Authority to recover costs incurred when providing various services - by prescribing a method for calculating costs and determining fees payable.

The regulatory provisions are modelled on a similar generic cost recovery mechanism set out in section 252 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) and provide a basic fee calculation model, including a cap on the fee amount that can be charged.

The fee provisions in the RA Regulation do not impose any fees or charges on any persons (including private individuals, landowners, businesses, or other members of the public), except as provided under the section 85 of the RA Act. Of note, fees are only payable by a person or body that has requested a service of the Minister or Authority under the RA Act (e.g. they have requested advice, approval or information).

The RA Regulation fee provisions are explained below.

Determining costs and fees

RA Regulation, section 9(1)-(4)

Section 9 of the RA Regulation sets out the fee provisions for the purposes of section 84(2)(b) of the RA Act.

Under the regulation provisions, the Minister or CEO may determine the fees payable for a relevant service or action. If there is an inconsistency in the fee determination, the Minister's determination prevails.

In determining the fee, the Minister or CEO must consider the cost of the relevant service or action to the Minister, the Authority, the CEO, and any other person who provides the relevant service or action on their behalf.

The maximum fee that may be charged is 120% of the total cost of the relevant service or action to those persons.

The provisions provide a simple method for calculating reasonable costs that may be incurred by the Authority and other players involved in providing services or actions under the RA Act. For example, if a government agency requested the Authority to undertake disaster research or assessments, the Authority would be able to recoup its costs in undertaking that work (e.g. staff costs; costs to commission external work; costs incurred by the Advisory Board assisting on the Authority's behalf etc).

The potential services that may be provided by the Authority are broad in nature and difficult to prescribe a set service fee amount for. For this reason, the method for calculating costs and determining fees payable is focussed on identifying general reasonable costs incurred by key players who may be involved in providing the service and allows the fee amount to be determined on a case-by-case basis.

Fee deposits and prepayments

RA Regulation, section 9(5)

Section 9(5) of the RA Regulation sets out fee provisions in relation to deposits and prepayments for the purposes of section 84(3) of the RA Act.

Under the regulation provisions, the Minister or CEO may require the payment of a deposit for, or full or partial prepayment of, a fee charged under section 84(2)(b) of the RA Act.

The provision allows for the Minister or Authority to require advance payment (or partial payment) of fees. Advance payments can provide a measure of security in recouping costs, as well as assisting in covering the Authority's expenses in performing services (e.g. providing funds to commission external service providers to assist with projects).

Cost–benefit analysis of options

This section provides a qualitative review of the benefits and costs of the RA Regulation compared with no Regulation, and the RA Regulation compared with a possible, viable alternative option.

The options are referred to as:

Option 1 - No Regulation

Option 2 - RA Regulation Alternative Approach

Option 3 - Alternative Approach

The Alternative Approach (Option 3) outlined below includes calculating and negotiating payment arrangements with the person/body who requests the service on a case-by-case basis (outside the standard fee provisions in the RA legislation).

RA Regulation compared with No Regulation

The fee provisions in the RA Regulation (Option 2) provide a method for calculating costs to determine fees payable. The method is currently used for similar purposes under the EP&A Act.

The key benefit of this approach is certainty. It provides the Authority with a basic fee levying mechanism and signals to agencies and other bodies who may request their services what the fee rate would be. It applies a simple, generic fee calculation method and allows for fees to be determined on a case-by-case basis. This approach avoids prescribing set fee amounts that may not be suitable or relevant for all services and actions under the RA Act.

The provisions include a fee cap (120% of total costs) to maintain a reasonable level of maximum cost recovery so that the provisions remain a transfer of costs, rather than introducing any substantial new costs to government and other potential beneficiaries of the Authority's services. If the Authority does charge out fees at the maximum rate, the additional 20% of costs (above 100% cost recovery) would represent an additional administrative cost (beyond the costs that would have otherwise been incurred by the Authority and transferred to the beneficiaries).

In contrast, having no Regulation in place (Option 1) would mean that there is no established method for calculating and determining fees payable or any other mechanism for the Authority to recover its costs when providing services. The Minister or CEO would not be able to rely on the fee provisions in section 84 of the RA Act, as these provisions rely on regulations being made to prescribe fees or prescribe a method for determining fees.

Option 1 create uncertainty as to how the Authority could recoup its costs and, if it could recoup costs, how those costs would be calculated (including capped). There may also be potential difficulty for the Authority to commit to undertaking services for agencies and other benefactors if there is no clear process for issuing a fee for the service.

■ **Table 6.1 Overview of benefits and costs of RA Regulation and No Regulation**

	Potential Benefits	Potential Costs
Option 1 - No Regulation	<ul style="list-style-type: none"> N/A - Fee mechanisms in the RA Act (s84) do not operate unless there are related regulations 	<ul style="list-style-type: none"> Uncertainty as to how the Authority's services would be covered and how costs may be calculated and recouped Potential difficulty for Authority to commit to undertaking services for persons/bodies if there is no guarantee that fees can be charged
Option 2 - RA Regulation	<ul style="list-style-type: none"> Provides Authority with basic fee levying mechanism and signals to agencies and persons who may request Authority services what the fee rate would be. Simple fee calculation method and allows fees to be determined on a case-by-case basis - Avoids prescribing set fees that may not be suitable or relevant for all services and actions under the Act. Fee approach is a known method currently used effectively under the EP&A Act for similar purposes. Provision identifies whose costs may be factored in and caps fee at 120% total costs, maintaining a reasonable level of maximum cost recovery and certainty. Allows for flexibility in when fees are paid including deposits, prepayments, and partial payments - Provides security for recouping costs, and may assist Authority in covering its early expenses (e.g. providing funds to commission external service providers to assist with projects). 	<ul style="list-style-type: none"> N/A - In general the fee provisions represent a transfer of costs, rather than the introduction of new costs. The capping of cost recovery at 120% limits fee levying to a reasonable maximum level. If fees are charged out at the maximum rate, the additional 20% of costs (above 100% cost recovery) would represent an additional administrative cost (beyond the costs that would have otherwise been incurred and transferred to the beneficiaries).

RA Regulation compared with Alternative Approach

As indicated above, Option 1 (No Regulation) cannot achieve the objective of the regulatory proposal because the RA Act provisions are dependent on a regulation being made.

An alternative approach (Option 3) for recovering costs for Authority services may be to calculate and negotiate payment arrangements with the person/body who requests the service on a case-by-case basis. This option was considered in the development of the regulation.

The main benefit of Option 3 is flexibility in calculating and determining fees in each instance. It would allow the Authority to establish its own internal protocols for charging services and allow for individual agreements to be reached with agencies and other bodies as to what payments may be suitable in each case. This could include a nominal payment, significantly reduced fees, fee waivers, or payment of larger sums (beyond 120% cost recovery).

While flexibility in charging for services may have advantages, it does reduce certainty for persons requesting services as to what the Authority's charge out rates may be. It may also slow down service delivery as negotiating fees in each instance will take time.

As with Option 1 (No Regulation), Option 3 also sits outside the fee regime under the RA Act. Charges would not be linked to the fee liability and debt recovery provisions in the Act, thereby reducing security that payments will be made.

■ **Table 6.2 Overview of benefits and costs of Alternative Approach for recovering costs**

	Potential Benefits	Potential Costs
Option 3 - Alternative Approach Negotiating payments on a case-by-case basis	<ul style="list-style-type: none"> • Fees could be negotiated between the Authority and person/body requesting services on a case-by-case basis • Greater flexibility for the Authority in calculating and determining fee amounts <ul style="list-style-type: none"> – Authority could waive fees or provide services at significant cost reductions – Authority could also increase cost recovery levels beyond 120% 	<ul style="list-style-type: none"> • Upfront uncertainty (for persons/bodies who request services) of fee amounts that may be charged by the Authority • Potentially slower service delivery due to having to negotiate and agree to payments in each case. • Reduced security of payments <ul style="list-style-type: none"> – charges would not be tied to RA Act fee levying provisions – charges would not be linked to the liability and debt recovery provisions in the Act (s85, 86).

Conclusion and preferred option

The objective of the fee provisions (section 9, RA Regulation) is to allow the Minister or Authority to recover costs incurred when providing various services - by prescribing a method for calculating costs and determining fees payable.

Option 1 (No Regulation) would prevent the fee provisions in section 84 of the RA Act from having effect (because the Act provisions rely on regulations being made). Option 1 therefore cannot achieve the intended objectives of the regulatory proposal.

Option 2 (RA Regulation) and Option 3 (Alternative Approach) are both capable of achieving the objective of the regulatory proposal. The RA Regulation (Option 2) however is considered to provide greater net benefit because:

- it provides upfront certainty that the Authority can levy fees when it has undertaken services for persons/bodies when requested and the maximum fee payable,
- it enlivens the related fee liability and debt recovery provisions under the Act, and
- it provides a clear and simple method for calculating costs and determining fees, including capping fees at a reasonable maximum level of cost recovery - a method which is currently used effectively under the EP&A Act for similar purposes.

For these reasons, Option 2 - the RA Regulation - is considered to be the preferred option.

Conclusion

This report sets out the the rationale and objectives of the RA Regulation (the regulatory proposal) and outlines the assessment of its potential regulatory impacts. In assessing the RA Regulation, various options were considered including a 'No Regulation' scenario and other alternative approaches to achieving the objectives of the regulatory proposal. The assessment includes a comparison of the costs and benefits of these options.

The assessment has found that the RA Act can generally operate without regulations as the Act provides sufficient detail to guide most functions and processes outlined in the legislation. The key exceptions to this are the provisions around the issuing of s68 Ministerial authorisations during "exceptional circumstances" and the charging of fees under the RA Act. These Act provisions require regulations to be made to give the principal legislation effect. Furthermore, the Act provisions related to implementing the SDMP and DAPs and issuing s13 Authority directions would be limited in scope without supporting regulations to expand their application. For these reasons the RA Regulation is preferred over having no Regulation.

Other alternative options to achieving the objectives of the regulatory proposal were examined in this assessment. Non-regulatory options for encouraging coordinated Government responses to disasters, implementing the strategic disaster plans, and charging fees can provide flexibility and reduced regulatory burden (e.g. lower compliance risk). The assessment has found though that the RA Regulation provides greater certainty and clarity in terms of what is required of public authorities and other entities. It is also expected that desired on-ground outcomes are more likely to be achieved through a regulatory tool. This includes the implementation of priorities and actions within strategic disaster plans at the local and project-specific level and the carrying out of essential services and infrastructure works in a timely manner in response to disasters.

Alternative regulatory approaches were also considered as an option for expediting urgent and essential development in circumstances involving significant and widespread harm to life, or damage to property or the environment. While there are a number of regulatory options available, unlocking the s68 Ministerial authorisation powers (in these exceptional circumstances) provides the greatest benefit and least cost of the options considered.

On balance, it was found that the RA Regulation is the most likely option to achieve the objectives of the regulatory proposal stated in Chapter 2.

The RA Regulation is therefore the preferred option and delivers the greatest net benefit to the community.

Appendix A - List of terms

■ **Table A1. List of abbreviated terms used within the RIS**

Abbreviation	Full form
Authority	NSW Reconstruction Authority
CEO	Chief Executive Officer of the NSW Reconstruction Authority
DAP	disaster adaption plan under the RA Act
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
ES Act	<i>Essential Services Act 1988</i>
LG Act	<i>Local Government Act 1993</i>
Minister	Minister or Ministers administering the RA Act (unless otherwise specified)
Part 5 declarations	Declarations made under Part 5 of the RA Act for declared projects, declared reconstruction areas and declared disaster prevention areas.
RA Act	<i>NSW Reconstruction Authority Act 2022</i>
RA Regulation	<i>NSW Reconstruction Authority Regulation 2023</i>
Relevant entity	Defined in Schedule 4 of RA Act and means a local council, government agency or SOC
RIS	Regulatory Impact Statement
s13 Authority directions	Directions given by the Authority (by written notice) to relevant entities to take action under section 13 of the RA Act
s68 Ministerial authorisations	Authorisations given by the Minister (by order) to undertake development under section 68 of the RA Act
SDMP	State disaster mitigation plan under the RA Act
EMPLAN	State Emergency Management Plan under the SERM Act
SERM Act	<i>State Emergency and Rescue Management Act 1989</i>
SL Act	<i>Subordinate Legislation Act 1989</i>
SOC	State-owned corporation
SSD	State significant development
SSI	State significant infrastructure
T&I SEPP	<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>

Appendix B - Summary of RA Act provisions related to RA Regulation

■ Table B1. Summary of RA Act provisions related to RA Regulation

RA Act Ref	Summary of RA Act provision	Related RA Regulation provision
Part 2 - NSW Reconstruction Authority s13 Authority may direct relevant entities	The Authority may issue a notice to direct relevant entities to take certain action. The Authority may do so if the relevant action relates to a disaster or likely disaster, is necessary to give effect to the objects of the RA Act, and directing action to be taken immediately is appropriate under the circumstances.	s4 Authority may direct certain planning authorities The Authority may issue directions under s13 of RA Act in relation to <i>relevant planning functions</i> (defined under s2.21(2) of EP&A Act) of a planning authority (other than the Minister administering the EP&A Act).
		s5 Authority may direct other relevant entities The Authority may issue directions under s13 of the RA Act in relation to a relevant entity: <ul style="list-style-type: none"> • providing an <i>essential service</i> (see ES Act, s4(1)) • carrying out development under T&I SEPP
Part 4 - State disaster mitigation plan (SDMP) and disaster adaptation plans (DAPs) s38 Implementation	A relevant entity must have regard to the SDMP and any relevant DAP when exercising functions prescribed in the regulations.	s6 Implementation of SDMP and DAPs by relevant entities A relevant entity must have regard to the SDMP and any relevant DAP when exercising the following functions: <ul style="list-style-type: none"> • applying for development consent under EP&A Act • applying for SSI approval under EP&A Act • carrying out development under T&I SEPP • providing an essential service (see ES Act, s4(1)) • reviewing the State Emergency Management Plan and recommending alterations to it under SERM Act
		s7 Implementation of SDMP and DAPs by Authority The Authority must have regard to the SDMP and any relevant DAP when exercising its functions under the RA Act.

RA Act Ref	Summary of RA Act provision	Related RA Regulation provision
<p>Part 7 - Additional step-in functions and powers of Authority</p> <p>s68 Ministerial authorisations</p>	<p>The Minister may authorise development to be undertaken without approval or assessment under the EP&A Act, or without consent from any person in certain circumstances.</p> <p>Such an authorisation may be given in <i>exceptional circumstances</i> (among other circumstances) if immediate action is required to protect public safety and welfare, and no other mechanisms under the RA Act are appropriate in the circumstances.</p> <p><i>Exceptional circumstances</i> means circumstances prescribed by the regulations.</p>	<p>s8 Ministerial authorisations in exceptional circumstances</p> <p>For the purposes of the Ministerial authorisation powers under s68(4) of the RA Act, <i>exceptional circumstances</i> are prescribed as:</p> <ul style="list-style-type: none"> • a disaster that has resulted in significant and widespread harm to life or damage to property or the environment has occurred, • a disaster may occur that is likely to result in significant and widespread harm to life or damage to property or the environment.
<p>Part 10 - Miscellaneous</p> <p>s84 Fees</p>	<p>The Minister or Authority may charge a fee for various services or actions outlined in s84(1) of the RA Act (e.g. supplying services, giving approvals or information, issuing directions or other requirements etc).</p> <p>The fee may be charged as prescribed by the regulations or as determined in accordance with the regulations.</p>	<p>s9 Fees</p> <p>The Minister or CEO may determine, either generally or in a particular case, the fee for the relevant service or action. In the event of an inconsistency, the Minister's fee determination prevails.</p> <p>In determining the fee, the costs to the Minister, the Authority, the CEO, and any person who provides the relevant service or action on their behalf, must be considered.</p> <p>The maximum fee that may be imposed is 120% of the total cost to those persons.</p> <p>The Minister or CEO may require the payment of a deposit for, or full or partial prepayment of, a fee charged.</p>

Appendix C - Summary of CBA for Authority direction & Ministerial authorisation provisions

Chapters 3 and 5 of the RIS outline the key benefits and costs associated with the regulations to support the provisions under section 13 (Authority directions) and section 68 (Ministerial authorisations) of the RA Act. The information includes both a quantitative and qualitative review of the benefits and costs of the RA Regulation compared with no Regulation, and the RA Regulation compared with a possible, viable alternative option.

The Department engaged consultants Deloitte to undertake modelling of two theoretical disaster scenarios to estimate and compare potential benefits and costs of the different management responses (the three options). The method maps out basic costs (e.g. administrative and labour costs) and benefits (e.g. time and cost savings, other success measures) that could reasonably be attributed to the three options.

The scenario modelling method, assumptions and key findings from the work are outlined below. The primary findings (including costs and benefits) have been considered and incorporated into the RIS (See tables in Chapters 3 and 5).

Section 13 Authority Directions

Scenario 1 - Restoring utilities following major storm events

Deloitte modelled potential management responses to a theoretical scenario involving a series of extreme storm events that result in significant and widespread power outages across a metropolitan area. While the scenario focused on restoring electricity services, the model could also be applied to other types of utilities and infrastructure failure affecting a large area or a combination of services at the same time that require centralised coordination (e.g. damage to telecommunications, water and sewerage, transport networks etc).

Options analysis

The three options modelled for scenario 1 are referred to as:

Option 1 - No Regulation (where the Authority would not have reserve powers to issue directions to public authorities and SOCs to provide essential services or undertake infrastructure works following a disaster event - Government relies on existing processes and standard agency and service provider responses)

Option 2 - RA Regulation (where the powers under s5 of the RA Regulation are used to direct government agencies or SOCs to restore services via a s13 Authority direction)

Option 3 - Alternative Approach (where non-statutory agreements or MoUs between the Authority, other government agencies and SOCs are used to support coordinated recovery and reconstruction in response to the disaster event).

The model also includes variations for Option 2 and Option 3:

A. Standard restoration works -

Option 2 - Authority directs service provider to undertake immediate works to restore the network to its previous existing standard.

Option 3 - Authority establishes agreement with service provider to restore the network in a timely manner

B. Build back better approach -

Option 2 - Authority directs service provider to undertake more extensive works to upgrade, relocate and improve the design and placement of infrastructure to improve resilience to future disaster events

Option 3 - Authority establishes agreement with service provider to undertake more extensive works to upgrade, relocate and improve the design and placement of infrastructure to improve resilience to future disaster events

Key inputs and assumptions for model

To estimate the potential costs and benefits of each option, a number of inputs and assumptions were included in the model in relation to the scale and nature of the disaster scenario, estimated timeframes to undertake certain processes/steps to restore and improve the electricity network, and potential costs associated with these actions.

Key inputs and assumptions used across the options include:

- Modelled event and impacts - 140 000 homes and businesses are without power for up to a week as a result of significant and widespread power outages after a series of storm events
- Estimated timeframes for the relevant planning authority to assess the proposed works under the *Environmental Planning and Assessment Act 1979* (EP&A Act):
 - 92 days for Part 5 assessment (Option 1)
 - 122 days for Part 5 to rebuild with more resilience (Option 2)
 - 180 days for Part 4 to rebuild with more resilience (Option 2)
- Given that s13 direction powers do not affect assessment processes, it was assumed that compliance costs and other regulatory costs are the same for all Options, including:
 - costs incurred by the service provider to comply with EP&A Act assessment requirements and other relevant legislation; and
 - costs to government to exercise its statutory assessment and approval functions (where relevant).

Key findings

Applying the scenario model, Deloitte compared the three options against the following: costs to residential customers, costs to businesses, cost of intermittent outages and costs of future similar outages (from future storm events). The findings include:

- Option 2 (RA Regulation) presents the greatest benefit for reducing costs to residential, business customers, reducing cost of intermittent outages. Option 2, where the Authority directs the entity⁶ to rebuild to a higher standard, presents the greatest reduction of costs of future similar outages.
- There are minor additional administrative costs (Authority costs associated with policy, legal and administrative processes) under this Option to issue Authority directions compared to Option 1 (No Regulation).
- Administrative costs, however, would be lower under Option 1 and Option 2 (due to time gains) compared to Option 3 (Alternative approach) where the Authority must prepare, negotiate and finalise non-regulatory agreements with entities on a case-by-case basis (i.e. in anticipation of or in response to a particular disaster).
- Under Option 2, if a s13 Authority direction requires upgraded and more resilient infrastructure:
 - initial restoration costs would be the same, however, the "building back better" approach would present additional construction costs
 - construction costs would be greater than Option 1 (e.g. where a service provider restores infrastructure to existing standards);
 - construction costs would be generally the same as the Option 3 of negotiating with agencies and service providers to upgrade works via non-regulatory agreements on a case-by-case basis.
- Additional construction costs may be incurred (under s13 directions) if entities are required to undertake further upgrades/resilience works beyond what would normally be undertaken.
- These additional construction costs may be offset by longer-term benefits of providing resilient infrastructure ("build back better" approach) and reducing the cost of similar outages and subsequent restoration works in the future.
- These benefits apply to both the RA Regulation and the alternative option (agreements). Under these approaches, costs of future disaster events may be reduced or avoided including:
 - costs associated with having to repeatedly restore works; and
 - costs associated with establishing and operating temporary arrangements while restoration works are underway in each repeated case; and
 - local productivity losses for the duration of the disruption in each repeated future case; and
 - costs to residential customers of intermittent outages resulting from long-term network damage.
- The total benefit of reducing the future incidence of similar outages for the theoretical scenario is estimated at \$176 million.
- In comparison, Option 1 (No Regulation – where a service provider chooses to restore infrastructure to existing standards) would not accrue the long-term benefits that would otherwise be expected for infrastructure upgrades and building to more resilient standards.
- Option 1 sees costs associated with the disaster impacts repeated over time, with future events causing infrastructure failure or damage. Therefore, this option has the highest costs associated with it over time.

Section 68 Ministerial Authorisations

Scenario 2 - Rebuilding and reconstruction of a town following an extreme disaster event

⁶ Relevant entity is prescribed as an entity providing an essential service or carrying out development under the *State Environmental Planning Policy (Transport and Infrastructure) 2021*. This does not apply to individuals.

Deloitte modelled potential management responses to a theoretical scenario that requires rebuilding in a tourist town after a significant disaster event that has caused widespread impacts to the town including water and sewerage infrastructure, commercial and residential buildings and affected freight movements between two major national centres.

Options analysis

The three options modelled for scenario 2 are referred to as:

Option 1 - No Regulation (Ministerial authorisation powers would be limited to use during a declared State of Emergency or in relation to a Part 5 declaration - existing processes to assess, approve and undertake rebuilding and reconstruction works would apply)

Option 2 - RA Regulation (where the *exceptional circumstances* powers under s8 of the RA Regulation are used by the Minister to immediately authorise the undertaking of reconstruction works under s68 of the RA Act)

Option 3 - Alternative Approach (where the Government develops a tailored regulatory response to simplify the planning pathways to deliver approvals for on-ground works faster - In this example, a site-specific State Environmental Planning Policy (SEPP) is developed to streamline planning approvals via complying development mechanisms).

Key inputs and assumptions for model

To estimate the potential costs and benefits of each option, a number of inputs and assumptions were included in the model in relation to the scale and nature of the disaster scenario, estimated timeframes to undertake certain processes/steps to rebuild the town, and potential costs associated with these actions.

Key inputs and assumptions used across the options include:

- Modelled event and impacts -
 - Main access routes to the tourist area, as well as freight movement between Melbourne and Sydney (which requires route divergence until road repairs are completed)
 - Water and sewerage infrastructure affected in the area
 - Town population and tourist figures standard across options in the model (4500 people affected). Estimates include figures for evacuation, temporary accommodation, and estimates on downturn in tourism during recovery period.
- Timeframes for relevant planning authority to assess the proposed works under EP&A Act:
 - 92 days for road reconstruction
 - 100 days for Part 4 assessment (rebuild critical infrastructure)
 - 83 days for local development assessment for dwellings and tourist accommodation.
- Under Option 3 (Alternative approach) the following assessment timeframes apply after the SEPP has commenced:
 - 92 days for road reconstruction
 - 100 days for Part 4 assessment (rebuild critical infrastructure)
 - 14 days for complying development for 25 percent of the development assessments (DAs) required for the dwellings and tourist accommodation
 - 83 days for the remaining local development assessment of dwellings and tourist accommodation.
- Under this scenario, construction costs to undertake recovery and rebuilding works are assumed to be the same for Option 1 (No Regulation) and Option 3 (the Alternative approach).

- Option 2 (RA Regulation) of this scenario sees the Ministerial Authorisation requiring a higher and more resilient standard in the rebuild.
- Compliance costs and other regulatory costs would be expected for the Option 1 (No Regulation) and Option 3 (Alternative approach), including:
 - costs incurred by the developer/service provider to comply with EP&A Act assessment requirements and other relevant legislation; and
 - costs to government to exercise statutory assessment/approval functions.
- While there are potential costs associated with s68 directions (such as the perceived risks associated with expedited approvals – such as concerns regarding reduced formal assessment and consultation on projects), councils, agencies and other entities would still be expected to apply best practice and exercise due diligence in undertaking authorised works.

Key findings

Applying the scenario model, Deloitte compared the three options against the following: government policy response times, government assessment costs, cost of redirecting freight, pod temporary rehousing costs, lost tourist revenue, DA assessment costs, CDC assessment costs and rebuilding costs.

The findings include:

- There are some additional administrative costs under the RA Regulation to issue a Ministerial authorisation compared to Option 1 (No Regulation) due to increased government costs associated with policy, legal and administrative processes.
- Administrative costs however would be lower under Option 2 (RA Regulation) compared to Option 3 (Alternative approach) of preparing and making a site specific SEPP. This is due to significant differences in the length of time taken to prepare the instruments.
- Option 2 has lower government assessment costs compared to Option 1 or Option 3.
- Option 3 has fewer government assessment costs than Option 1 based on the assumption that more streamlined and expedited assessment and approval pathways would be used.
- Option 3 may reduce statutory assessment periods (including reduced need for rezonings, expedited approvals, CDCs), however these timeframes will still be longer than under Option 2 where assessment and approval requirements are switched off via s68 Ministerial authorisation.
- The benefits of Option 2 includes faster delivery of on-ground works through reduction in time for formal assessment and approval processes compared to Option 1 and Option 3.
- Therefore, under the scenario, Option 2 sees
 - lower temporary arrangements costs, and
 - a faster return to business as usual (e.g. return of tourist revenue) therefore reduced local productivity losses.
- Compared to Option 1 (No Regulation), Option 3 (Alternative approach) has
 - lower temporary arrangements costs, and
 - a faster return to business as usual (e.g. return of tourist revenue) therefore a reduction in local productivity losses.
- Compared to Option 2 (RA Regulation), Option 3 (Alternative approach) has:
 - higher temporary arrangement costs, and
 - slower return to business as usual (e.g. return of tourist revenue) therefore higher local productivity losses.
- Using a s68 Ministerial Authorisation to "build back better" - while increasing higher construction costs at the time of development, may reduce likelihood of future disasters as a result of having more resilient infrastructure.