INDEPENDENT COMMISSION

Review of the Island Regulatory and Appeals Commission

Interim Report

Submitted by Commissioner Rory Francis

September 18, 2026

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1.0 Introduction

The Independent Review of the Island Regulatory and Appeals Commission (the Review) was established by the Government of Prince Edward Island (the provincial government) in May 2026 to consider whether the processes and structure of the Island Regulatory and Appeals Commission (IRAC) are aligned with its mandate, and to identify options for improvement. The Review is led by Commissioner Rory Francis, appointed under the *Public Inquiries Act*.

The Review operates at arm's length from both the provincial government and IRAC. It sets its own process, decides what it examines, and reaches its own conclusions. Neither the provincial government nor IRAC directs its work.

The Review is considering IRAC's mandate and operations as a whole and across its three functional areas as a regulator, administrator and appellant body. Also within the Review's consideration are the underlying legislation and regulations which ultimately dictate the scope of IRAC's activities. The Review has been specifically instructed not to comment on active files, hearings, and applications in front of IRAC.

Public engagement is a top priority to inform the work of the Review. To enable this, the Review offered public hearings in five locations across Prince Edward Island. Based on response, two public meetings were held with 20 public presentations. A public call for written submissions resulted in 63 submissions.

The Review has held over 40 meetings with community organizations, municipal leaders, industry organizations, provincial government departments, IRAC Commissioners, IRAC staff, and other stakeholders. The Review has also reviewed relevant legislation and best practices across Canada and beyond.

The purpose of this Interim Report is to provide a summary of findings to date and to communicate the directions being considered to improve how PEI's regulatory and appeals tribunal system can serve the community.

This Interim Report is intended to provide Island residents, community members, and other stakeholders an opportunity to digest the Review's work to date and to contribute their observations and criticisms before the final report is completed.

This report invites readers to:

- understand how IRAC currently works;
- consider the issues and challenges identified through the Review;

- identify matters, perspectives, or impacts that may have been overlooked; and
- provide feedback and constructive critique on the proposed directions for change.

This approach reflects the Review's commitment to transparency and meaningful public engagement. By sharing its preliminary findings and proposed directions before reaching final conclusions, the Interim Report provides an opportunity to test and improve those ideas against the knowledge, experience, and perspectives of residents and stakeholders.

The feedback received will help inform and strengthen the Review's final recommendations and contribute to a final report that is practical, well-founded, and responsive to the needs of Prince Edward Island.

The Review's final report is due on November 1, 2026.

2.0 IRAC Overview

The Island Regulatory and Appeals Commission was established in 1991 as one of the first initiatives of   Reform, bringing together the Public Utilities Commission, the Land Use Commission and the Office of the Rentalsman. The intent in grouping these bodies was to gain efficiency through economies of scale and to concentrate expertise in one place.

IRAC is a corporation established under the *Island Regulatory and Appeals Commission Act* and operates as an independent quasi-judicial tribunal at arm's length from the provincial government, industry and any other interest. It is largely self-sustaining, funded through assessments, levies and licence fees charged to the province and to the bodies it regulates, and as well as from the provincial government. IRAC reports to the Legislative Assembly through the Minister of Education and Early Years.

The last examination of IRAC was completed in 1994, three years after its creation, and was carried out by the provincial government's own Policy Unit. More than three decades have passed since.

IRAC is a relatively small organization carrying a broad mandate. It is led by a Chair who also serves as Chief Executive Officer, a Vice-Chair, and one further full-time Commissioner, together with three part-time Commissioners who sit on hearing panels. A Chief Operating Officer oversees three divisions, Land and Corporate Services, Finance and Regulatory Affairs, and Appellate Services, with a complement of seventeen staff positions across them. The Office of the Director of Residential Tenancy, with a Director and eight staff, is a separate body that reports to the Chair on administrative matters.

Beyond its own enabling statute, IRAC draws authority from twenty-nine provincial statutes, ten of which were added to its jurisdiction in March 2026 with the proclamation of the *Financial and Consumer Services Statutes Amendment Act*.

IRAC’s responsibilities fall into three areas that differ from one another in important ways: Appellate, Regulatory, and Administrative.

Appellate responsibilities

IRAC hears appeals from decisions already made by someone else, whether a municipal council, a provincial agency, a registrar or superintendent, or the Director of Residential Tenancy. An appeal reaches IRAC because a party to the original decision brings it, and IRAC decides the outcome, with power to confirm, vary or reverse the decision under appeal.

Most of these appeals proceed as a fresh hearing of the matter rather than as a review of the original decision-maker's reasoning, with IRAC able to receive new evidence and to substitute its own decision for that of the first decision-maker.

This is the widest of the three areas of responsibility, reaching across twenty-four provincial statutes, and the work is unevenly spread across them. The great majority of appeals arise under two of those, the *Residential Tenancy Act* and the *Planning Act*. Others, such as the *Environmental Protection Act*, produce appeals only occasionally. Several statutes have produced few appeals over the years, and some have produced none at all, including the ten added in March 2026, under which no appeals to IRAC have yet been brought.

Regulatory responsibilities

Here IRAC sets the terms on which a regulated sector operates. It approves the rates, tariffs and capital expenditures of electric utilities under the *Electric Power Act*, exercises general supervision over water and sewer utilities outside the four largest municipalities under the *Water and Sewerage Act*, sets petroleum prices and margins and licences retailers under the *Petroleum Products Act*, reviews automobile insurance rate filings under the *Insurance Act*, and approves the rates charged by the Island Waste Management Corporation under the *Environmental Protection Act*.

The work reaches IRAC largely in the form of applications it must consider and as filings required by legislation. IRAC can also initiate a review on its own motion, as it has done with the current examination of petroleum margins.

Administrative responsibilities

Under the *Lands Protection Act* and the *Municipal Government Act*, IRAC administers legislated processes and makes recommendations to the provincial government, with whom final decisions rest. IRAC has an important enforcement role under the *Lands Protection Act*.

Under the *Lands Protection Act*, applications to acquire land holdings are received, analyzed and forwarded to Executive Council with a recommendation, but the decision rests with Executive Council. IRAC also administers the annual land holding disclosure process and compliance with land holding limits.

Municipal boundary and restructuring proposals follow a similar path, with IRAC holding hearings where required and reporting its findings and recommendations to the responsible Minister, who in turn makes a recommendation to Executive Council.

These distinctions matter. In its appellate role IRAC decides; in its regulatory role it sets rates and supervises on a continuing basis; in its administrative role it prepares and recommends while another body decides.

The processes, the timelines, the parties involved and the finality of the outcome differ accordingly. Yet the same Commissioners sit across all three, drawing on the same staff and the same structure. Whether one organization should hold these functions together, and whether the current structure allows each of them to be performed well, is central to what the Review has examined.

Staffing and Organizational Structure

As stated previously, IRAC carries out its extensive mandate with three full-time Commissioners and three part-time Commissioners who sit on hearing panels, and a staff complement of seventeen positions distributed across three divisions, being Land and Corporate Services, Finance and Regulatory Affairs, and Appellate Services.

The Office of the Director of Residential Tenancy operates with a further nine positions: a Director, a Senior Residential Tenancy Officer and Investigator, two Residential Tenancy Officers, an Office Administrator and four Intake Officers.

Nine of the seventeen staff positions are excluded from the bargaining unit and the remainder are unionized. Union coverage and employment are separate matters here. Section 7 of the *Island Regulatory and Appeals Commission Act* empowers IRAC to appoint its own staff and provides that the *Civil Service Act* does not apply to any person employed by it.

So IRAC recruits and appoints independently of the Public Service Commission while applying the provincial classification levels and administering a collective agreement for its unionized positions.

The seventeen positions are distributed across four groupings, each supporting a different part of IRAC's mandate.

> **Appellate Services:** includes three positions: General Counsel, Legal Counsel, described as new and vacant, and the Commission Clerk.
>
> **Land:** includes a Director (who is also IRAC's Chief Operating Officer) and four Analysts, two of whom are on secondment, with the Director's time allocated 55%to land and 45% to general operations.
>
> **Finance and Regulatory Affairs:** includes five positions, being a Director, a Finance, Human Resource and Regulatory Clerk, two Regulatory Officers, and a

Senior Financial Advisor that IRAC describes as a new position and vacant, supported by external legal, engineering and accounting assistance as required.

Corporate services: includes three positions, being a Senior Systems Specialist, a Policy Analyst and Communication Advisor, and a Receptionist/Administrative Assistant, each supporting all divisions of IRAC as well as the Residential Tenancy Office.

IRAC notes that General Counsel provides legal support across all its mandates.

The electricity file warrants a particular note. IRAC advises that its electrical regulatory staff have in recent history consisted of a senior financial advisor, supported by external consultants, and that two regulatory analysts were added in the past twelve months who provide support on the electrical file as needed. A competition for a full-time senior regulatory advisor remains active, and an engineering technical advisor has been retained on contract.

The defining feature of this arrangement is that capacity in most mandate areas is assembled from fractions of shared positions rather than from positions belonging to that area. This is not unusual in small organizations.

The staff allocations IRAC provided for 2026-27 and demonstrated in Figure 1 make this visible. Nine positions in the organization are committed wholly to a single area.

- Four are analysts in land.
- Four are regulatory positions, including the vacant senior position for electricity and a casual site inspector for petroleum.
- One is the Commission Clerk, who is divided between planning and rental appeals but works only on appeals.

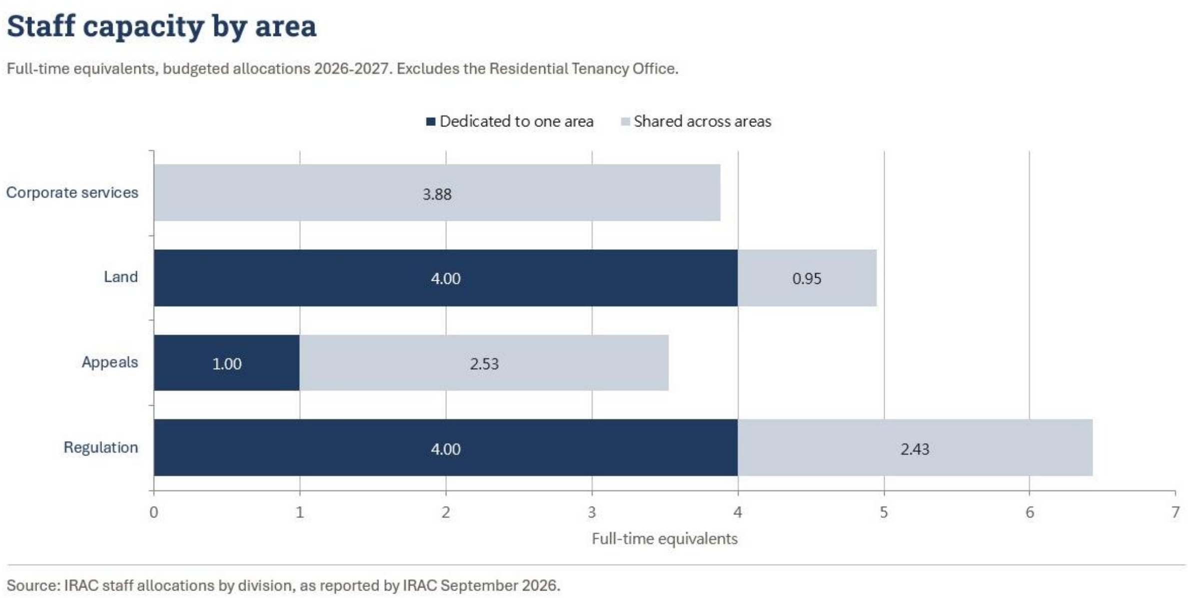


Figure 1. *Staff capacity by area, dedicated and shared positions.*

Every other area draws on people whose time is shared. The appellate function, which generates the largest share of public contact with IRAC and the greatest volume of submissions to the Review, operates on the equivalent of three and a half positions, and the only position dedicated to it is a clerk.

The adjudicative work itself, carried by the Chair/Chief Executive Officer, the Vice-Chair, the Commissioner, General Counsel and Legal Counsel, is entirely fractional. Corporate Services of course holds no dedicated positions.

This is not a new observation. The 1994 review found that the breadth of the IRAC's responsibilities meant many of its staff carried more than one area of responsibility, and that reducing the mandate would not produce a proportional reduction in staff, because those same people would still be needed elsewhere. Three decades later the pattern holds, across a wider mandate and a more technical one.

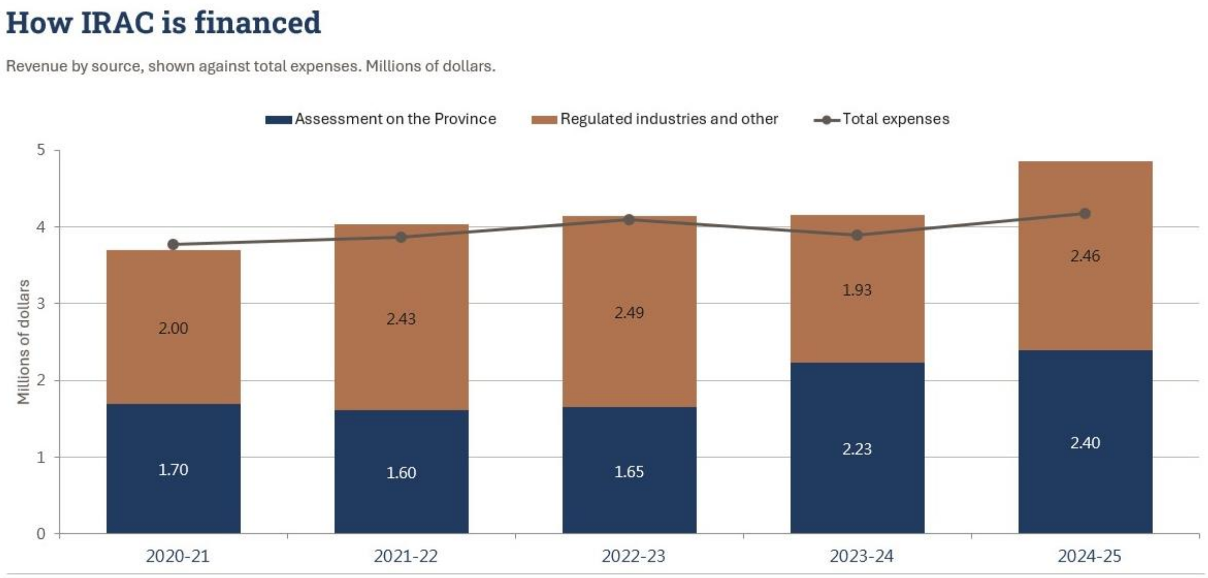
Vacancy and absence take effect quickly at this scale. Two of the four positions in land are on secondment. The senior position for electricity regulation is vacant with a competition open. The Legal Counsel position supporting appeals is vacant. Vacancies are not unusual in the life of an organization. However, in a complement of this size, each removes a material share of the capacity available in the area affected, and there is no bench from which to cover it.

Capacity in each mandate area is assembled from slices of shared positions, which places a ceiling on the specialist knowledge any one area can hold and leaves the organization exposed whenever a single position falls vacant.

Financing

IRAC receives no operating grant from the province. Under the *Island Regulatory and Appeals Commission Act* it charges assessments, levies, licence fees and permit fees on the bodies and matters it regulates, and on the Province. Regulatory assessments and licence fees are paid by the petroleum industry, Maritime Electric, Summerside Electric, water and wastewater utilities, and automobile insurers (Figure 2). Non-resident application fees under the *Lands Protection Act* contribute to the cost of administering that Act, with the Province assessed for any shortfall. The Province is assessed for the cost of the appellate functions and for the operation of the Residential Tenancy Office.

In the 2024-25 fiscal year, IRAC's revenue was $4.85 million, and its expenses were $4.18 million, with the assessment on the Province amounting to $2.40 million, or 49% of revenue.



Source: IRAC annual reports, 2020-21 to 2024-25. The assessment on the Province covers the appellate functions, the Residential Tenancy Office, corporate services and any shortfall under the Lands Protection Act.

Figure 2. How IRAC is financed: revenue by source, shown against total expenses.

Expenses have grown modestly. They stood at $3.77 million in 2020-21 and at $4.18 million in 2024-25, an increase of about 3.5% per year, and less than the rate of inflation over the same period.

Where the growth has occurred is instructive. The two functions assessed to the province account for almost all of the increase, with the Residential Tenancy Office rising from $1.15 million to $1.34 million and appeals from $0.79 million to $0.91 million between 2023-24 and 2024-25 alone.

The functions funded by the industries IRAC regulates have been flat or lower in nominal terms across the same period, with public utilities at roughly $0.60 million, petroleum at $0.41 million, land and property at $0.64 million, and automobile insurance at $0.15 million per year. In real terms, the cost of IRAC's regulatory work has declined.

The Review heard no complaints about what IRAC charges in its regulatory functions. None of the industries that pay its assessments raised the cost of regulation as a concern, and the automobile insurance sector expressed satisfaction with the comparatively low cost of administration through IRAC compared to other jurisdictions.

Complaints were registered regarding non-resident application fees under the *Lands Protection Act* (LPA) and its requirement that IRAC retain 50% of the application fee even if the application is denied. There is a persuasive argument that this requirement is a barrier to business investment in the province, discussed in detail in the Carver Report.

On the evidence available, IRAC has been run as a lean organization. It is not a large or costly organization, and it has absorbed growth in the complexity of its work without a corresponding growth in its budget. That observation carries a caution, developed in section 4.1: the recommendations in this report will cost money, and a structure that gives each mandate area dedicated expertise cannot be delivered at the present cost base.

There is no evidence that IRAC is limited in its capacity to carry out its work by limits placed on it by the provincial government or by the mechanics of its ability to pass costs on to the parties it regulates.

One feature of the funding model is worth noting. In 2024-25 revenue exceeded expenses by approximately $673,000, largely because non-resident application fees under the *Lands Protection Act* rose from $0.53 million to $1.09 million. Those fees are driven by transaction volume rather than by the cost of the work, and they swing considerably from year to year.

The result is a funding base with a volatile element in it, and a model in which the province absorbs both shortfalls and, in effect, the consequences of surpluses.

3.0 Review Principles

It is recognized that IRAC carries out its role in a complex public policy environment. IRAC's decisions touch many aspects of daily life for Island residents, from the price paid for essential utilities, rent, and petroleum products, to community planning decisions, land ownership and its implications for economic prosperity, to disputes between landlords and tenants.

These are important roles whose conduct is essential in a civil democratic society. IRAC-like entities exist in every province of Canada, every state in the United States, Europe, and Japan.

When conducting a review of a body such as IRAC, it is important to be clear at the outset about the principles against which its performance is to be assessed. A review of this kind can easily become a catalogue of complaints and defences. What gives it discipline is a stated understanding of what the organization exists to do and what it should look like when it is doing it well.

Three sets of principles inform the Review's approach.

- The first is independence, which is the condition that makes the rest possible.
- The second is the set of public policy objectives that IRAC's functions are intended to serve, which describe what the system is for.
- The third is the quality of justice delivered in carrying out those functions, which describes how well it is being served in practice.

Independence

An independent regulator or appeals tribunal overseeing diverse sectors exists to insulate decision-making from short-term political pressure, commercial interests, and the influence of any single stakeholder group.

Across varied domains, the same underlying rationale applies - markets or private relationships in these sectors often involve significant power imbalances that require independent oversight to prevent exploitation and ensure fair outcomes. Independence provides several foundational benefits.

Predictability and stability: All stakeholders need confidence that rules won't shift arbitrarily with each political cycle, supporting long-term planning and investment.

Technical and specialized expertise: Complex regulatory and appellate decisions require subject-matter knowledge, practical experience, and balanced judgment. Dedicated expertise helps ensure that decisions are informed by the relevant evidence, technical context, and established principles.

Insulation from populist pressure: Elected officials face incentives to favor whichever constituency is most vocal (low energy prices, development approvals, etc.); independence allows decisions based on evidence and established principles.

Procedural fairness: A quasi-judicial function suits sectors where individual rights and significant financial interests are at stake.

Balancing competing interests: When balancing interests, an independent body can weigh evidence impartially rather than favoring the most powerful party.

Public Policy Objectives

The functions IRAC performs serve a defined set of public objectives. Some of these pull against one another, and the work of a regulatory and appellate body lies substantially in holding them in balance.

In rate setting: to give utilities the opportunity to earn a fair return on their investment while keeping the cost of their monopoly services affordable; to apportion those costs fairly across the different classes of customers; and to provide rates that are stable and predictable.

In appeals: to provide a route for reconsidering decisions of provincial government agencies that is faster, simpler and lower in cost than formal judicial proceedings; and to keep relatively smaller disputes from adding to the burden on the courts.

Across functions: to allow those affected by a decision to intervene in it, as individuals in an appeal or as a community in a rate setting proceeding; and to have matters decided by people who combine specialist expertise with sound and balanced judgment.

In larger jurisdictions, to achieve these objectives, the roles are often divided among multiple agencies. This is generally a function of scale and specialization, influenced by political history and tradition.

It is therefore important when conducting a review of a regulatory and appeals tribunal to consider whether these objectives can be met when a wide range of responsibilities are mandated to one organization.

Quality of Justice

The quality of a regulatory and appellate body's work is not measured by its decisions alone. It is also measured by how those decisions are made and how the people affected by them perceive the delivery of justice.

Three dimensions of justice apply to any organization mandated to perform the functions IRAC performs, and together they offer a practical standard for assessing how well those functions are being carried out. For the purpose of this report, we define Distributive, Procedural, and Interactional justice in these ways:

Distributive justice concerns correctness and fairness in outcomes. It asks whether the benefits and burdens arising from regulatory decisions are allocated fairly equitably across the individuals, groups and generations affected by them.

Procedural justice concerns the fairness of the process by which a decision is reached. It rests on four elements:

> **Voice and participation,** meaning that those affected by a decision have a meaningful opportunity to present their views and their evidence, and that their perspective is genuinely heard and considered.
>
> **Neutrality and impartiality**, meaning that decisions are made consistently and objectively, on the basis of relevant facts, established rules and transparent criteria, free of bias, favouritism or improper influence.
>
> **Respect and dignity,** meaning that participants are treated courteously and professionally, with appropriate recognition of their rights, interests and concerns.
>
> **Trustworthiness and good faith,** meaning that decision-makers demonstrate competence, integrity and openness, and a sincere intention to reach a fair and lawful outcome rather than a predetermined one.

Interactional justice concerns the treatment people receive in their direct dealings with the body. It has two aspects. The interpersonal aspect is the manner in which people are dealt with, free of dismissive, demeaning, intimidating or prejudicial behaviour. The informational aspect is the quality of what they are told: clear, candid and timely explanations of the process, of the decision, and of the reasons behind it.

These three dimensions come from an established body of research on justice and fairness, developed in the study of organizations and applied over several decades to courts and administrative decision-making bodies.

These are essential attributes of a well-functioning regulatory and appeals tribunal. Being the decision-maker in such matters often does not lead to popularity. Trust, a sense of fairness, and ongoing public satisfaction with the work of the agency depends on its achievement of justice in all its attributes.

These three aspects of justice provide a useful framework for assessing not merely whether decisions are legally correct, but whether the process itself generates public confidence and is perceived as fair.

System Thinking

There is one further analysis required to assess the underlying issues where there is a perception that a regulatory or appeals tribunal is not meeting its obligations. That is to consider the broader systemic components and relationships at work in each specific area. IRAC does not operate alone. In each of its four key areas IRAC sits within a wider policy ecosystem. The public outcome is the product of how that ecosystem functions as a whole. In the following examples, multiple stakeholders influence the ecosystems in which IRAC operates:

> **Planning appeals under the *Planning Act*.** Parties to the appeal; the municipality, as the author of its bylaws and official plan; the provincial government, as the source of the *Planning Act* and its regulations; the business and development community; IRAC.
>
> **Residential tenancy appeals under the *Residential Tenancy Act*.** Tenants; landlords; property investors; the Residential Tenancy Office, as the first-instance decision maker; the provincial government, as the source of the *Residential Tenancy Act*; IRAC.
>
> **Electric utility regulation under the *Electric Power Act*.** The regulated utility; the PEI Energy Corporation; the provincial government, as the source of the *Electric Power Act*; electricity ratepayers; intervenors in rate proceedings; New Brunswick Power, as the source of imported energy; IRAC.
>
> **Land holdings, under the *Lands Protection Act*.** Applicants; current landowners; the agri-food industry; the business community; the provincial government, as legislator and as decision maker on applications; IRAC, as administrator and enforcer of land holding limits.

In each of these systems, governments and IRAC play distinct but connected public policy roles. Governments set the rules through legislation, regulations, and municipal bylaws. IRAC applies those rules as a regulator, administrator, or appeals tribunal. Together, these roles help maintain a fair balance among competing stakeholder interests and support the sense of equity needed in a civil society.

IRAC can only make decisions within the mandate and authority given to it by the applicable Act, regulation, or bylaw. Where those legal instruments are unclear, outdated, or incomplete, IRAC's ability to achieve fair and practical outcomes is constrained.

The quality of the legislation, regulations, and bylaws that guide IRAC's work is therefore critical. Clear public policy direction is the responsibility of municipal and provincial governments, which create and amend those instruments through public and legislative processes.

As this report outlines, legislative modernization and targeted amendments are needed in areas that shape IRAC's work. This is a consequence of a lack of clarity and public policy direction from provincial governments of all stripes over three decades. In more than a few cases, dissatisfaction directed at IRAC appears to arise from problems rooted in legislation or policy choices outside IRAC's direct control.

Interim Report

This Interim Report identifies numerous opportunities for improvement within PEI's regulatory and tribunal system. This is hardly surprising given that this is the first independent review of the system in 35 years. It is more surprising that the system has held up this long.

The Directions for Change that follow are grouped first by overarching structure and governance issues, and then by each of IRAC's main mandate areas, so that system-wide changes and area-specific ones can be read together.

> **4.0 Structure and Governance** covers the matters that cut across the whole organization: how IRAC is structured and governed, how Commissioners are appointed, how the organization is resourced and managed, and how it accounts publicly for its work.
>
> **5.0 Appeals Tribunal** covers IRAC's appellate function, under which it hears appeals from decisions made by provincial government bodies and officials, including those under the *Residential Tenancy Act* and the *Planning Act*, together with the relationship between the Residential Tenancy Office and the appeal that follows from it.
>
> **6.0 Regulatory Tribunal** covers IRAC's regulation of monopoly and price-regulated sectors including electrical utilities, water and wastewater utilities, waste management services, and automobile insurance, where IRAC sets the rates paid by Island residents and businesses.
>
> **7.0 Administrative Tribunal** covers the responsibilities IRAC carries out under the *Lands Protection Act* and the *Municipal Government Act*, where IRAC administers a process and provides advice, and the decision rests with the provincial government.

Application of Recommendations

The first recommendations in this report propose restructuring the Island Regulatory and Appeals Commission.

As will be discussed later, such significant changes will take time. Therefore, the recommendations following that are directed to IRAC are done so with the expectation that many of the recommendations can and should be implemented in a timely fashion and before transitioning to the new operating model, where practical.

4.0 Structure and Governance

The continuity of IRAC's service over decades reflects a genuine commitment to high-quality service, which the Review observed among current staff and Commissioners. This commitment is reflected in the general satisfaction of Island residents with the many thousands of IRAC processes and decisions over the past 35 years.

The Review found that IRAC has highly professional staff who are hard-working and dedicated to their job. The organization has been doing its very best to deliver good results but within a structure mandated by legislation that has not changed in this regard for 35 years and does not reflect the complexity of modern society or the sophistication of the parties that come before it.

That said, there is ample evidence that trust between IRAC and some Island residents has eroded, and that major changes are necessary for the province's regulatory and appeals system to hold the trust and respect of Island residents. These changes are not only directed to IRAC, but also to provincial government agencies and other stakeholders within the system.

4.1 Organizational Structure

Current Findings

The current governance model and structure of IRAC is not compatible with the organization's responsibility to provide an effective, trusted and efficient range of services to Island residents into the future. Over time, IRAC has accumulated mandates that have little substantive relationship to one another.

The central rationale of this restructuring is to separate what needs to be separate, and share what does not.

Electricity rate regulation, for example, requires expertise in utility economics, accounting, engineering, capital planning, rate design, energy policy and increasingly energy transition issues. A planning appeal requires a different adjudicative skill set: statutory interpretation, administrative law, land-use planning, evidence and procedural fairness. *Lands Protection Act* and other administrative and enforcement roles introduce still other areas of expertise.

It is counter-productive to require the same group of Commissioners and staff to span all these disciplines. Specialization at the Commissioner and staff levels has important advantages over the generalist model.

Directions for Change

- The provincial government should legislate a complete restructuring of IRAC to create two independent Boards of Commissioners: the PEI Energy and Utilities Board, and the PEI Land and Appeals Board.
- PEI Energy and Utilities Board
  - Economic regulation
  - Specialized Commissioner in Energy Regulation
  - Regulatory processes and procedures appropriate to utilities regulation
  - Institutional accountability for utility regulation and performance
- PEI Land and Appeals Board
  - Administrative adjudication
  - Commissioners selected for adjudicative/legal/planning expertise
  - Procedures designed around appeals and hearings
  - Emphasis on procedural fairness, accessibility, and timely disposition
  - Institutional accountability for tribunal performance
- Each Board should have three dedicated full-time Commissioners holding an appropriate range of subject-matter-expertise as well as associated skills in adherence to natural justice and evidence-based decision-making. Each Board would exercise its assigned statutory decision-making powers.
- The new Boards should be supported by a single administrative support tribunal providing dedicated subject-matter-expertise including land use planning, finance, and electrical utility regulation, together with human resource, legal and communications support to each Board. There is no need to duplicate these services.
- The Energy and Utilities Board and the Land and Appeals Board should report to the Legislative Assembly annually through the Minister of Justice and Public Safety, who would have administrative accountability for legislation, appropriations, and the annual reports of the Boards.
- Amendments to the *Island Regulatory and Appeals Commission Act* should require that the Chair of the two new Boards and the Minister responsible develop a joint, publicly shared, memorandum of understanding clarifying the administrative role of the Ministry, and the independence of the adjudicative role of the Boards.

Commentary

PEI is large enough to require specialization in decision-making by each Board, but too small to justify duplication of administrative infrastructure.

The goal is for each of the Boards of Commissioners and support staff to become specialized in their respective areas of responsibility. This positively influences procedures, timelines, quality of decisions, transparency, and accountability of each Board. This model eliminates the need for part-time Commissioners.

The PEI Energy and Utility Board would be responsible for economic regulation of electrical utilities, electricity system planning, renewable energy, energy efficiency and demand side management, petroleum products, automobile insurance, as well as water and wastewater utilities.

The PEI Land and Appeals Board would encompass the appeals tribunal function across 24 pieces of legislation, the administration and enforcement of the *PEI Lands Protection Act*, and administrative functions under the *Municipal Government Act*.

The single administrative support tribunal should allow for both effectiveness in terms of quality of advice and assistance to each Board and operational and cost efficiency. There will be an increased operational cost to provide an increase in specialist roles and maintain administrative capacity.

Giving effect to these changes will require a redraft of the *Island Regulatory and Appeals Commission Act*, along with amendments to the other Acts that reference IRAC.

4.2 Emerging Regionalization of Electricity Planning and System Management

This section is presented here because of its implications for structure and governance.

Current Findings

In July 2026, the Premiers of Prince Edward Island, New Brunswick and Nova Scotia signed a memorandum of understanding to explore greater cooperation in the planning and management of the region's electricity system. The agreement recognizes that the three provinces are already interconnected and that closer coordination of electricity generation, transmission and future investments could improve reliability, reduce costs and help meet growing electricity demand. The provinces will examine options ranging from better coordinated planning to the possible creation of a regional organization to manage parts of the Maritime electricity system (Maritime Integrated Energy System Operator- MIESO).

For PEI, this could mean that some decisions about how electricity is generated, moved and managed increasingly take place on a regional basis, while PEI would continue to need strong provincial oversight to protect Island consumers, regulate electricity rates and ensure that PEI pays a fair share—and no more—of the costs of a more integrated Maritime electricity system.

Directions for Change

- Given the Maritime provinces' plans to examine the option of a more integrated electricity system, the Energy and Utilities Board should be given, in legislation, the mandate to participate in regional planning and cost-allocation discussions in the interest of PEI consumers.

Commentary

This potential direction for more regional policy and planning in energy management is further impetus for the creation of a dedicated and specialized energy regulatory Board for PEI.

It is acknowledged that there is much work to be done and time required for provincial governments and stakeholders to investigate, evaluate and possibly establish a MIESO, as well as the mechanisms for regulating under a new operating regime.

As the regional discussions unfold, the new regulatory model proposed above in 4.1, in combination with the implementation of other recommendations of the Review, will provide the basis for a competent energy regulatory Board, fit for purpose in a changing and challenging regional energy environment.

4.3 Commissioner Appointments and Evaluation

Current Findings

The long history of appointment of IRAC Commissioners by Executive Council without a transparent, independent, merit-based process, and often through political connections, provides much room for suspicion that IRAC decisions are not independent from government influence.

In this regard, the Review has found no evidence that government, at either political or bureaucratic levels, is inappropriately influencing IRAC decision-making. However, that is not a defence of the current process. IRAC defends its independence fiercely, perhaps to a fault in terms of its communications with stakeholders.

The current appointment process is also not one that optimizes for the range of specialization and decision-making strengths of candidates. It is casual, not calculated. The appointments have never been treated with the consideration due to a role tasked with making hundreds of challenging decisions each year, on complex rate setting processes and on disputes and appeals where the parties are often far apart. The credibility of those decisions rests on the integrity of the Commissioners, the organization and the trust the public places in it.

In addition to the selection process, the Review has identified additional areas for improvement.

> **Lack of proactive management** of appointment and re-appointment terms for Commissioners to maintain a predictable balance between experienced and new Commissioners.
>
> **Lack of clarity regarding responsibility** for initiating the process of extending or replacing Commissioners. Currently the terms of all three part-time Commissioners have expired and now serve under the authority of the *Interpretation Act*. There is no defined process for communication between IRAC and the provincial government regarding the expiry of Commissioner terms.

Lack of a formal orientation process or performance evaluation process for Commissioners.

While IRAC has internal processes to manage conflict-of-interests, provisions within the *Island Regulatory and Appeals Commission Act* are inadequate.

A substantive revision of the *Island Regulatory and Appeals Commission Act* will be required to rectify these deficiencies.

Directions for Change

- Adopt a merit-based and transparent Commissioner selection process, with published position offerings, defined terms, and attention to expertise and diversity, carried out by an external recruitment committee.
    - Criteria should emphasize analytical skills, oral and written communication skills, and the capacity to weigh both sides as well as technical credentials. A short list of top candidates would be presented to Executive Council for decision.
    - Commissioner appointments should be for an initial five-year term with a maximum extension of 10 years. Reappointment should be subject to a mandatory performance review carried out by the Chair of the Boards.
- For clear governance and accountability, it is recommended that there be a single Chair for both Boards, and a Vice Chair for each. The Chief Operating Officer of the administrative support tribunal would report to the Chair of the Boards.
- Implement staggered and predictable Commissioner terms so that turnover is managed effectively
- Clarify that it is the Tribunal's responsibility to formally notify Executive Council of pending expiries of Commissioner's terms at least six months in advance.
- Establish a formal orientation and training program for new Commissioners. It would be beneficial but unlikely that most new Commissioners would come into the role with prior experience working with administrative tribunals.
- Enhance the Conflict-of-Interest provisions within the *Island Regulatory and Appeals Commission Act* and require IRAC to develop and publicly publish its conflict-of-interest guidelines and processes.

Commentary

Various models of the proposed merit-based appointment process are currently in place for quasi-judicial appeals tribunals and regulatory bodies in Canadian provinces and territories. The Ontario Energy Board currently utilizes MOUs to ensure clarity of roles and shared processes, and the protection of tribunal independence.

4.5 Mandatory External Review

Current Findings

It is well known that this is the first external review of IRAC since its establishment in 1991.

Canadian practice increasingly distinguishes adjudicative independence from institutional accountability. While there is no uniform Canadian requirement for independent external review of regulatory and appeals tribunals, several jurisdictions require or provide for periodic mandate and institutional reviews of public agencies and tribunals.

Ontario and British Columbia provides the most developed tribunal-specific model, requiring prescribed adjudicative tribunals to undergo a comprehensive review at least every six years. Alberta requires reviews of covered public agencies at least every seven years, while other jurisdictions employ periodic or risk-based mandate reviews, audits and special independent reviews.

Given the scope of the recommendations of this current review, it will be important to examine within a reasonable time frame the extent to which recommendations have been implemented both by provincial government and by the tribunal system (two Boards and the administrative tribunal), the effectiveness of the changes, and outcomes observed.

As well, the legislation should mandate a regular external review of the tribunal system. The review should examine mandate; continued need; allocation of functions between entities; governance; independence and accountability arrangements; appointment and competency systems; administrative structure; staffing and resources; caseload and timeliness; accessibility; procedural fairness; service standards; cost and efficiency; stakeholder experience; performance measurement; and whether legislative, structural or operational changes are required.

Directions for Change

- The provincial government should commit to carrying out an external assessment of the implementation of the Review's recommendations three years after release of the final report.
- The provincial government should amend the *Island Regulatory and Appeals Commission Act* to mandate an external review of the organization every six years.

4.6 Communications Between IRAC and Government

Current Findings

In carrying out its various statutory responsibilities, IRAC develops considerable institutional knowledge about how the legislation and regulations it administers operate in practice. Through its decisions and administrative experience, IRAC is well positioned to identify recurring ambiguities, procedural difficulties, gaps, unintended consequences and opportunities to improve the effectiveness of the statutory frameworks within which it operates.

The Review has learned that IRAC is rarely engaged by the provincial government departments when legislation affecting its mandates is being reviewed or amended. IRAC has also expressed the concern that participation in such discussions could be inconsistent with the independence required of an administrative tribunal.

The Review considers it important to distinguish **adjudicative independence from institutional isolation**. IRAC must remain completely independent of government direction or influence in deciding matters that come before it. That principle does not, however, preclude appropriate communication between IRAC and the provincial government concerning the operation of legislation, regulatory processes, administrative experience or potential legislative deficiencies, provided appropriate safeguards are maintained.

Indeed, the absence of such communication may deprive both IRAC and the provincial government of information that could improve the clarity, effectiveness and administration of legislation.

The responsibility for determining public policy and proposing legislation rests with the provincial government and the Legislative Assembly. IRAC's role should not be to advocate particular policy outcomes. It can, however, appropriately identify systemic issues arising from its experience administering and interpreting legislation and bring those matters transparently to the provincial government's attention.

Directions for Change

- The provincial government and IRAC should establish a formal protocol governing institutional communications between IRAC and provincial government departments. The protocol should permit communication concerning legislation, regulations, statutory processes, administrative matters and emerging systemic issues, while expressly prohibiting communications intended to influence active or reasonably anticipated proceedings.

- IRAC's annual report should include a section identifying, where appropriate, legislative or regulatory provisions, procedural requirements or other systemic matters that its experience during the preceding year suggests warrant clarification, review or consideration by the provincial government.

- IRAC should examine practices used by comparable Canadian regulatory and appeals tribunals and develop appropriate protocols governing communications between IRAC, responsible ministers and provincial government departments.

Commentary

IRAC's effectiveness depends in significant measure on the quality and clarity of the legislation and regulations under which it operates. As the body that applies those statutory frameworks on a continuing basis, IRAC possesses institutional knowledge that can assist the provincial government in identifying problems and opportunities for improvement.

Such communication should not transform IRAC into a policy-making or policy-advocacy body. Nor should the provincial government seek IRAC's views on how an active or anticipated proceeding should be decided.

The objective is instead to establish a transparent and appropriately bounded relationship in which the provincial government remains responsible for policy and legislation, while IRAC contributes its institutional experience concerning how the statutory framework operates in practice.

Properly structured, such communication strengthens rather than compromises institutional effectiveness and independence.

4.7 Accountability

Current Findings

Section 16 of the *Island Regulatory and Appeals Commission Act*, requires IRAC to report annually to the responsible Minister on its activities and its finances. That report is the principal means by which both the provincial government and the public learn how IRAC is performing. The Review has found that the reports do not carry sufficient information to serve that purpose.

The Annual Reports describe IRAC's appeals role briefly and give the number of matters dealt with in each area of responsibility. They contain nothing on service times, neither how long a decision takes nor what the target is.

The same is true of the regulatory activities. There is a count of licences issued to petroleum sellers and general information concerning Maritime Electric, but nothing on pricing trends, on the factors that inform rate decisions, or on other matters that would be of use to the public and the provincial government.

The financial statements, prepared by a third-party auditor, are clear and concise. The reports also include the activities of the Residential Tenancy Office (RTO), in greater detail than most subjects but with the same gaps. The presence of the RTO's report within the IRAC Annual Report is highly unusual given RTO is a separate entity that does not report to IRAC. This will be covered in detail later in this report.

Annual reporting is common practice among administrative tribunals, and comparators are readily available. Federally, the Canada Industrial Relations Board offers one. Provincially, the New Brunswick Energy and Utilities Board and the Ontario Energy Board provide models, as does the Nova Scotia Utility and Review Board, whose successor tribunal began operating in 2025-2026.

Almost without exception these bodies report more than IRAC does. They set out service standards and whether those standards were met, describe the subject matter of disputes and applications, summarize significant decisions, and give the cost to the consumer of providing regulatory services. It is notable that IRAC's 2024-2025 Annual Report is the strongest of its recent reports and provides a base on which to build.

Across the major functions of IRAC, a consistent observation by stakeholders is that too often, the time from initiation of an action to final decisions are too long. The Review heard this particularly regarding appeals and applications under the *Planning Act*, the *Residential Tenancy Act*, and the *Electric Power Act*.

It is acknowledged that sufficient time must be given to each stage of these processes to provide procedural fairness to the participants. To be fair to all parties, the default is sometimes to grant every request for extension, every new area of investigation, etc. with the result being excess delay. Procedural fairness is a hallmark of tribunal processes, but that does not mean each step should only go as fast as the slowest participant.

There are too many examples of unreasonable delays in the movement of files, undermining IRAC's credibility. When decisions are likely to be unpopular with at least one party, it is not helpful to IRAC's public reputation that processes including timelines do not meet expectations.

IRAC has recently (September 2026) adopted service standards for several of its divisions, together with a decision deadline and review policy. The Review welcomes this. It is notable that those documents state that the standards assume full staffing of the division and may require adjustment when a division is not at full staffing levels. It is the responsibility of management to maintain staffing levels necessary to meet service standards.

Directions for Change

- IRAC should expand its annual reporting on appellate activity to include:
    - expected service standards and timelines for the issuance of decisions together with data on whether targets are being met;
    - statistical data on the disposition of matters considered, including the high-level grounds of disposition such as merits, jurisdiction or standing, and procedural fairness;
    - data and context for judicial appeals of IRAC decisions; and
    - data on whether unresolved matters are accumulating.
- IRAC should expand its reporting on regulatory activity to include pricing, trends and rate-setting factors in the regulated industries, together with developments and projects underway within them.
- The Director of Residential Tenancy should publish a separate annual report rather than reporting under IRAC's umbrella. See more on the Residential Tenancy Office in Section 5.5.

5.0 Appeals Tribunal

IRAC's appellate function is the part of its work that Island residents encounter most directly. A party who is dissatisfied with a decision already made by someone else, whether a municipal council, a provincial official or the Director of Residential Tenancy, may bring that decision to IRAC, which hears the matter afresh and may confirm, vary or reverse it. As set out in Section 2.0, that jurisdiction now includes more than twenty provincial statutes.

The work does not spread evenly across the statues, in fact, two Acts account for almost all of the appeals brought to IRAC annually (Figure 3).

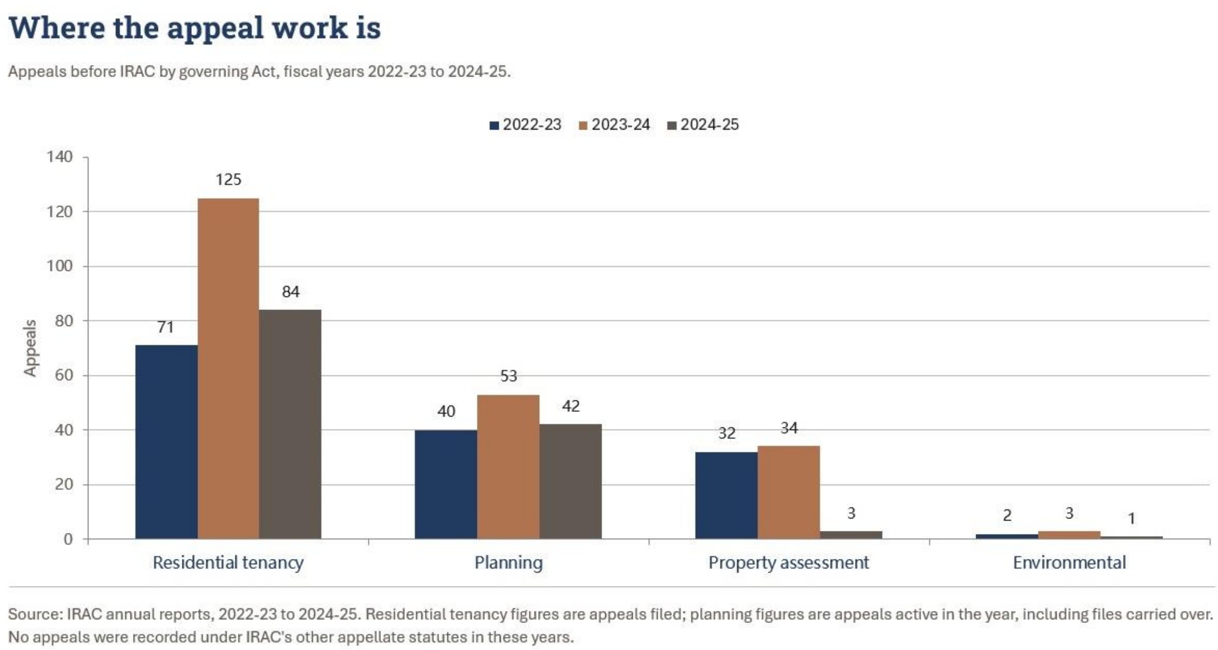


Figure 3. Appeals before IRAC by governing Act, 2022-23 to 2024-25.

Appeals under the *Residential Tenancy Act* are brought from orders of the Director of Residential Tenancy and are the largest category by a clear margin. Appeals under the *Planning Act* are brought from decisions of municipal councils, in those municipalities that have official plans, and from decisions of the Minister responsible for the *Planning Act* in the unincorporated areas where the provincial government is the planning authority.

Together these two account for the large majority of the appeals IRAC hears. Property assessment appeals appear in the record in two of the past three years and then fall away almost entirely. Environmental appeals are relatively rare. Under the remaining appellate statutes, the annual reports record no appeals at all in this period, and under the ten statutes added in March 2026 the first appeals are still to come.

The pattern in what the Review heard from the public engagement mirrors the pattern in the caseload. Almost half of issues raised with the Review concerned appeals, and nearly all concerned either *Residential Tenancy Act* or *Planning Act* matters.

It is important to note that what was raised about residential tenancy did not always concern appeals to IRAC. Most contributors did not distinguish between the Residential Tenancy Office (RTO), which decides these matters in the first instance, and IRAC, which hears appeals on the Director's orders. Many described experiences that belonged to the RTO rather than to IRAC. That confusion is itself a finding, addressed below under section 5.5.1.

Given the predominance of *Residential Tenancy Act* and *Planning Act* appeal matters in overall workload, and in concerns brought before the Review, those are covered in detail in the following sections.

The sections which follow address the appellate function in four parts.

> **Sections 5.1 through 5.3** concern matters arising across the whole of the appellate jurisdiction: the clarity of the governing legislation, the scope and nature of an appeal, the conduct of appeal processes, and mediation.
>
> **Section 5.4** concerns appeals under the *Planning Act*.
>
> **Section 5.5** concerns appeals under the *Residential Tenancy Act* and the Residential Tenancy Office from which those appeals come.

5.1 Clarity and Efficiency of Appeals Processes

Current Findings

As already discussed, IRAC hears appeals under several pieces of legislation, although its appellate workload is concentrated on a small number of those.

These pieces of legislation set out certain rules that IRAC must apply when it deals with appeals under the respective enactments. Usually, the governing legislation sets out the number of days a party has to file an appeal, allows IRAC to determine applicable rules of procedure, and grants IRAC the power to decide matters by issuing orders confirming, varying, or reversing the underlying decision.

IRAC has established its own Rules of Practice and Procedure, which cover numerous topics. These include the process for adding interveners, rules for the admission of evidence, requests to keep documents confidential, and other topics.

IRAC has informed the Review that there is a prehearing conference for every matter. In these conferences parties discuss the possibility of mediation, as well as preparatory steps for a potential hearing. In these meetings, IRAC staff may also raise preliminary issues and ask the parties about the same.

Despite the steps that IRAC has implemented, submissions to the Review suggest that the public's perception is that IRAC's processes could stand to improve. Participants raised issues around the length of time it takes to deal with preliminary issues and the associated cost, as well as the length of time it can take to reach a resolution generally. A scan of IRAC's jurisprudence confirms that these issues can take a long time to resolve. In some cases, it takes IRAC months to determine that a matter was filed after the expiry of the legislated appeal period.

The Review has, in addition, identified a handful of other issues with IRAC's procedures. Time limits for appeals are not uniform across legislation, even where there does not appear to be a reason for different time limits. Timelines for submissions and procedural steps are not prescribed by rules or legislation; instead, IRAC communicates them to parties on a case-by-case basis. Although this approach maintains flexibility, it comes at the cost of clarity and consistency. In addition, IRAC's *Rules of Practice and Procedur*e do not uniformly apply across IRAC's jurisdiction; some enactments require the application of different procedural rules.

Although IRAC works diligently, there are always means to improve procedural fairness and efficiency.

Directions for Change

The Review makes the following recommendations for clarifying and streamlining the appeals process:

- The provincial government should amend legislation under IRAC's appeals tribunal purview to make uniform the deadlines for submitting appeals as well as the process on appeals, except where there is a strong justification for departure (as in the case of terminations of tenancies, for example).
- IRAC should establish a process that proceeds in writing for quickly dismissing appeals where it is plain and obvious that the appellant lacks standing or that IRAC otherwise lacks jurisdiction.
- IRAC should create a mechanism for expediting proceedings where cases have dragged on beyond acceptable timelines.

- IRAC should establish and publish clear timelines for steps in the appeals process in its *Rules of Practice and Procedure* (noting that IRAC retains the ability to depart from these where the interest of fairness might so require).
- IRAC should establish and apply case management procedures to matters that become procedurally complex, whether because of complicated subject matter or because of particularities of the parties involved.

5.2 Scope of the Appeal Processes

Current Findings

Although most of the enactments IRAC supervises provide that IRAC will hear matters in a manner akin to a judicial appeal, most of its appellate work involves statutes that apply a different standard. Typical appeals involve a reviewing body identifying legal errors and obvious factual errors in an underlying decision. However, most of IRAC's appellate work involves hearing matters freshly instead of conducting reviews.

In the case of appeals under the *Residential Tenancy Act,* section 89(8) of that law says that appeals are “by way of re-hearing”. Although the Act gives IRAC some discretion about whether to hear new evidence in these re-hearings, IRAC has informed the Review that functionally it always agrees to hear new evidence. The result is that parties can effectively not participate in proceedings before the RTO Director, knowing they are entitled to a second hearing before IRAC. IRAC has informed the Review that prior legislation used to prohibit this behaviour, but that the 2023 *Residential Tenancy Act* does not.

Appeals under the *Planning Act* proceed by way of a de novo hearing. A de novo hearing is a completely new proceeding where a court or tribunal hears a case from the beginning, as if the first decision or trial never happened. This is not expressly required under the legislation, but in a 1997 reference decision, the Court of Appeal determined that this was the intent of the legislature. Subsequently, IRAC developed a two-part test for dealing with planning appeals in which it asks whether the planning decision failed to follow proper process and procedure, and whether the planning decision has merit based on sound planning principles within the field of land use and urban planning and as enumerated in the Official Plan.

Despite the 1997 reference case saying that “[t]he findings of the person or body appealed from are irrelevant”, the Court of Appeal in 2013 said that IRAC’s two-part test is an appropriate method of hearing planning appeals and said that it was appropriate that

"[IRAC] usually employs deference toward planning decisions by Council that are properly made."

Directions for Change

The Review makes the following recommendations regarding the scope of appeals:

- The provincial government should amend the *Residential Tenancy Act* and the *Planning Act* to make appeals to IRAC more traditional appeals, so that parties are more clearly able to understand IRAC's role as an appeals tribunal rather than as a first-instance decisionmaker, and so that IRAC's role is more consistent across its areas of supervision.
- The provincial government should amend the *Planning Act* to clarify the applicable standard of appeal. It should maintain IRAC's two-part test and recognize the application of sound planning principles on substantive issues.
- IRAC should establish rules concerning when it will hear fresh evidence on appeals. Where there is no reason an argument or a piece of evidence was not before the first-instance decisionmaker, IRAC should consider whether it is fair to hear the new issue or evidence.

5.3 Mediation

Current Findings

IRAC offers mediation to the parties in an appeal, at no cost, and raises it as a matter of course rather than leaving the parties to ask. Once the appeal record and initial submissions are in, IRAC staff canvass whether the parties are open to a negotiated resolution, and where all are willing, staff facilitate the mediation. If it does not resolve the matter, the appeal proceeds to a hearing.

Mediation is offered across IRAC's appellate jurisdiction and not only regarding *Planning Act* appeals, though in practice it is in planning appeals that parties most often participate.

Across the five years to March 2025, mediation resolved between one and eight planning appeals a year, and further appeals were withdrawn after the parties reached a resolution privately, following contact IRAC initiated. Because those are recorded as withdrawals, the published figures understate what mediation or other alternate dispute pathways contributes. In any given year, more planning appeals conclude through mediation, withdrawal or settlement than through a hearing.

This is also one of the instances in which a recommendation of the 1994 review has been taken up and sustained. That review recommended IRAC place more emphasis on dispute mediation at the early stages of land use appeals, and that is what IRAC does.

Directions for Change

The Review has little to recommend here beyond commending IRAC, and providing encouragement to continue and to formalize what it is already doing.

- IRAC should publish a short mediation policy or practice direction, setting out when mediation is offered, how it is conducted, and the confidentiality that attaches to it.
- IRAC should report annually on mediation offered, accepted and resolved, so that its contribution is visible rather than inferred.

5.4 Planning Act Appeals

Under section 28 of the *Planning Act*, a person may appeal a decision made in the administration of a planning bylaw or regulation. In municipalities with official plans and development bylaws, the decision under appeal is that of the municipal council or its development officer. In unincorporated areas, where the Province is the planning authority, the decision under appeal is that of the Minister responsible for the Act.

An appeal is therefore heard between the appellant and the decision-maker whose decision is challenged, and frequently a third party, being the developer or applicant whose permit or approval is at stake. Three-party appeals are common and shape much of what follows, since they multiply the interests to be accommodated at every stage.

The *Planning Act* provides for the appeal but does not prescribe the standard IRAC is to apply in hearing it. That standard comes from the courts. In 1997 the Prince Edward Island Court of Appeal held that, on a reading of the *Planning Act* together with the *Island Regulatory and Appeals Commission Act*, an appeal to IRAC under the *Planning Act* is a hearing *de novo*. The practical effect is that the matter is heard afresh rather than reviewed on the record of the decision below. All parties may file evidence that was not before the original decision-maker, and IRAC advises that this is communicated to parties as a matter of course.

The planning authority whose decision is under appeal is itself a party to the appeal and may file new evidence in support of the decision it made. On concluding a planning appeal, IRAC may confirm the decision under appeal, substitute its own decision, or return the matter to the planning authority for reconsideration. IRAC advises that the last of these is used from time to time and is the more likely course where the defect identified is procedural.

The volume of *Planning Act* appeals is modest, but the rate at which it clears is slow. In 2024-25, eighteen new planning appeals were filed and twenty-three were carried forward from the previous year. IRAC issued five Orders. Across the three years to March 2025, the number of appeals active in a year ran from forty to fifty-three and back to forty-two, while the number decided by a hearing in any year was between three and eight (Figure 4).

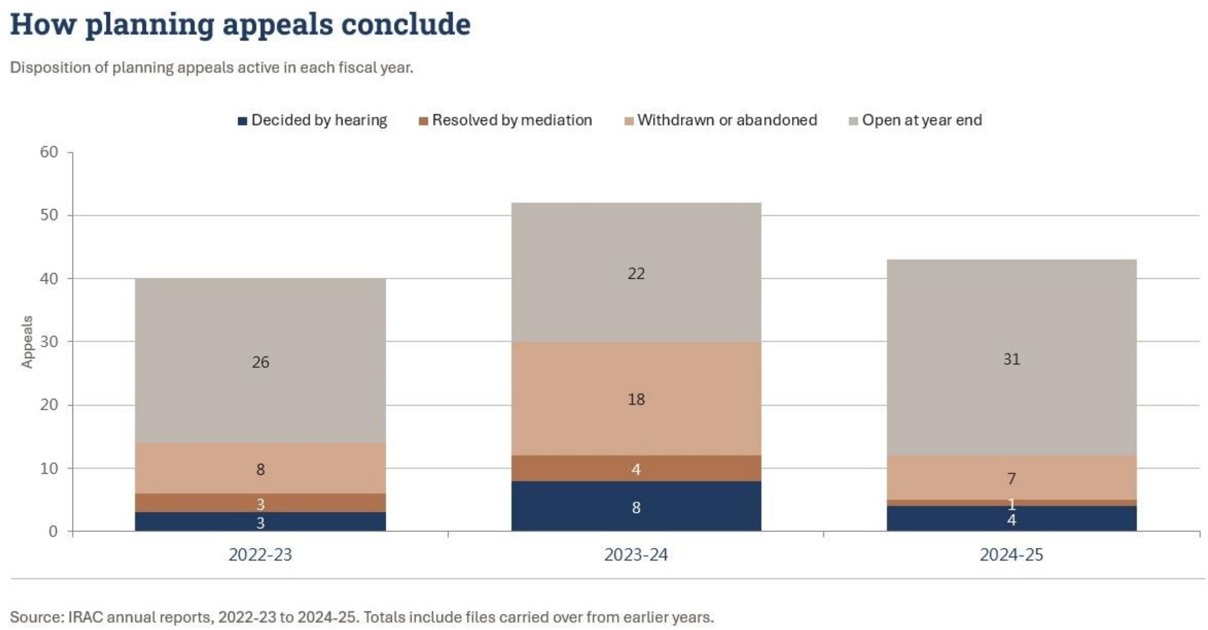


Figure 4. Disposition of planning appeals active in each fiscal year, 2022-23 to 2024-25.

However, most appeals conclude another way, or do not conclude at all within the year in which they arrive. At the end of 2024-25, thirty-one planning appeals remained open. IRAC's own reporting shows why. Fourteen were on hold at the request of the parties. Six were awaiting a hearing date. Four were awaiting information from the parties. In four, IRAC was considering a preliminary issue. Two were in mediation, and in one a decision was issued after the reporting period closed (Figure 5).

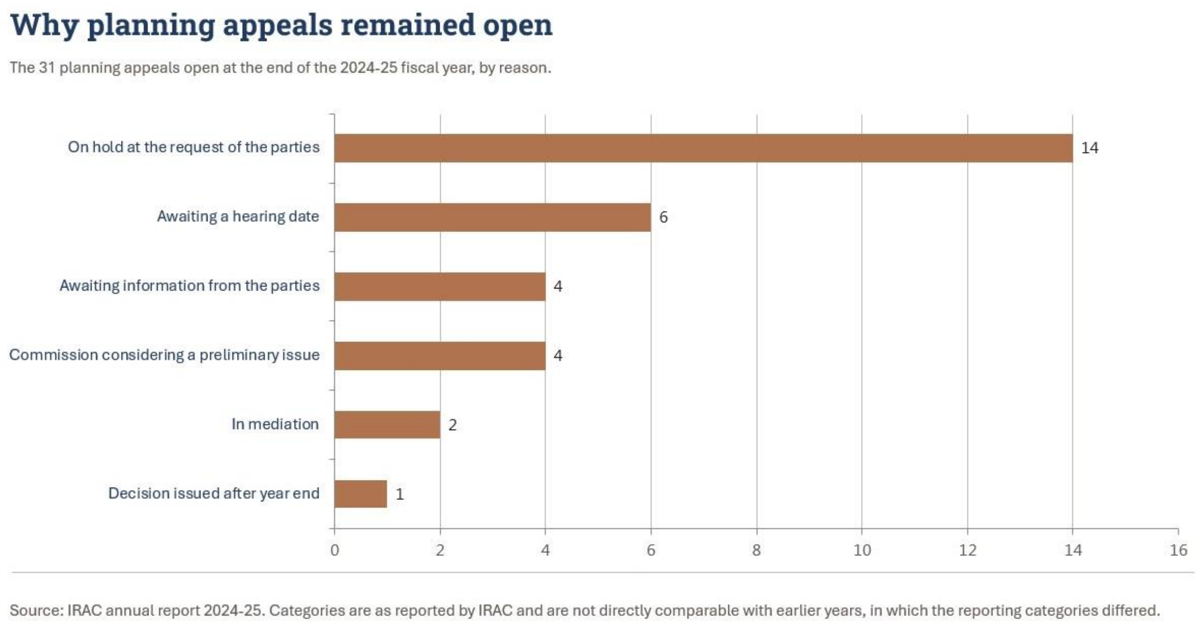


Figure 5. The 31 planning appeals open at the end of 2024-25, by reason.

The picture that emerges is not one of files sitting unattended. The largest single cause of an appeal remaining open is the parties themselves, whether because they are pursuing a resolution, awaiting information, or not yet ready to proceed. That said, a file that has been open for eighteen months is experienced as delay whatever its cause.

What the Review heard about planning appeals from public sessions fell into three themes:

> **Standing.** The 2023 amendments to the *Planning Act* narrowed the right of appeal to an aggrieved person, and the Review heard objections from both directions. Appellants argued that the test now excludes legitimate concerns, including whether a municipality followed its own process. Municipalities argued that appeals which ultimately fail the test consume months and tens of thousands of dollars before that is determined. Both want the question resolved earlier. This is addressed further in section 5.4.1.
>
> **Expertise of decision-makers.** Several submissions proposed that any panel hearing a planning appeal include a Registered Professional Planner.
>
> **Cost and delay.** Two municipalities described appeals running well beyond a year, each incurring roughly $25,000 in legal and professional costs, with development stalled in the interim. Applicants described the same problem from the other side, being the cost of uncertainty while a matter remains unresolved.

Against this, several features of IRAC's planning appeal practice are working and should be recognized.

- Appeals are triaged when filed, and the municipal record is reviewed by staff and counsel rather than simply received.
- A pre-hearing conference is held in every appeal, at which the issues in dispute, the parties' readiness and any preliminary questions are canvassed before a hearing is scheduled.
- Mediation is offered to the parties at no cost, and where it is taken up, it resolves matters without a hearing.

These are sound practices, and the low number of appeals reaching a hearing suggests they are having a positive effect.

5.4.1 Aggrieved Person Standing

Current Findings

In November 2023, the *Planning Act* was amended to define who may bring a planning appeal. Section 27.1 limits the right of appeal to an aggrieved person, a term that includes the applicant, the Minister, an affected municipality, certain community organizations, and, at clause (d), *an individual who in good faith believes the decision will adversely affect the reasonable enjoyment of the individual's property or property occupied by the individual*. Section 28 then authorizes an aggrieved person, so defined, to appeal the land use decisions listed in that section.

Since the amendment came into force, IRAC has built a body of decisions applying the standard and now has several published decisions interpreting it.

Upon review, it has been determined that where a question of standing is obvious on the face of a notice of appeal, IRAC raises it on its own initiative and puts it to the parties before the appeal proceeds further. Therefore, when possible, standing is determined early in the process.

Additionally, parties may raise the issue of standing at the pre-conference hearing, or subsequently at the point of hearing. To date, every determination on aggrieved person's status has been made on written submissions, without a hearing.

The Review heard concerns about this from both directions. Appellants and community organizations argued that the test now excludes legitimate concerns, including whether a planning authority followed its own bylaws and processes.

Municipalities argued the opposite, describing appeals that consumed months of staff time and tens of thousands of dollars in legal costs before the appellant was found not to have standing at all.

The Review has determined that the difficulty here is not the standard itself. It is a matter of timing and awareness. Standing is settled later than it needs to be, and the appellants least likely to understand the test are those without legal representation.

Directions for Change

The Review does not recommend any change to the definition of an aggrieved person. The 2023 amendment brought clarity to a question that was previously open, and IRAC is applying it appropriately.

- IRAC should put the question of standing expressly to the parties at the outset of every planning appeal, rather than only where a difficulty is apparent on the face of the notice of appeal or where a party raises it.
- IRAC should publish plain-language guidance on the “aggrieved person” standard, together with its decisions applying it, so that a prospective appellant can understand before filing.
- Where standing is raised only after the record has been filed, IRAC should consider determining it together with the substantive appeal rather than sequentially, consistent with the direction on preliminary issues in section 5.1.

5.4.2 Land Use Appeals in Rural Areas

Current Findings

Some of the most controversial appeals brought before IRAC are those where development proposals in unincorporated rural areas without official plans involve developments that, from a commonsense perspective, seem incompatible with the uses of adjacent properties. Often, development in rural areas involves the loss of prime resource land.

With the *Planning Act* and its regulations as the primary decision-making tool, the provincial agency responsible for land use planning, currently the Department of Land and Environment, coordinates the assessment using its own regulations, such as the subdivision regulations, and consults other regulatory agencies on how the proposal relates to the regulations they administer, including watercourses, buffer zones and highway access.

There is no mechanism within the *Planning Act* to protect agricultural or other resource lands.

When appeals of such development proposals in rural areas come before IRAC, IRAC can only assess the decision of the provincial government and the evidence presented by the appellant through the lens of the *Planning Act* and its regulations. Those viewed as incompatible developments are unfairly portrayed in communities as a failure of IRAC to do the right thing. In fact, without a Provincial Land Use Plan, IRAC has no basis for interceding.

Directions for Change

- The provincial government should continue to move forward with the development of a Provincial Land Use Plan.

Commentary

A Provincial Land Use Plan would address many of the issues facing development in rural areas. It would provide appropriate zoning, address compatibility issues, and conservation and protection of agricultural and other resource land. This recommendation will be reinforced again later in the *Lands Protection Act* section of this report.

5.5 Rental Appeals & Residential Tenancy Office

Appeals under the *Residential Tenancy Act* are the largest single category of appeals coming before IRAC. In 2024-25 it received 84 rental appeals and issued 76 Orders. Across the three years to March 2025 it received 280 (Figure 6).

These appeals are heard by way of re-hearing, usually by teleconference, and are closed to the public to protect the privacy of the parties, though the Orders are published. An appeal may dismiss the matter, vary the Order under appeal, or allow the appeal in whole or in part.

Every one of those appeals begins somewhere else. The right of appeal under section 89 of the Act is a right to appeal an Order of the Director of Residential Tenancy, and an appeal reaches IRAC only because the Residential Tenancy Office has decided the matter first.

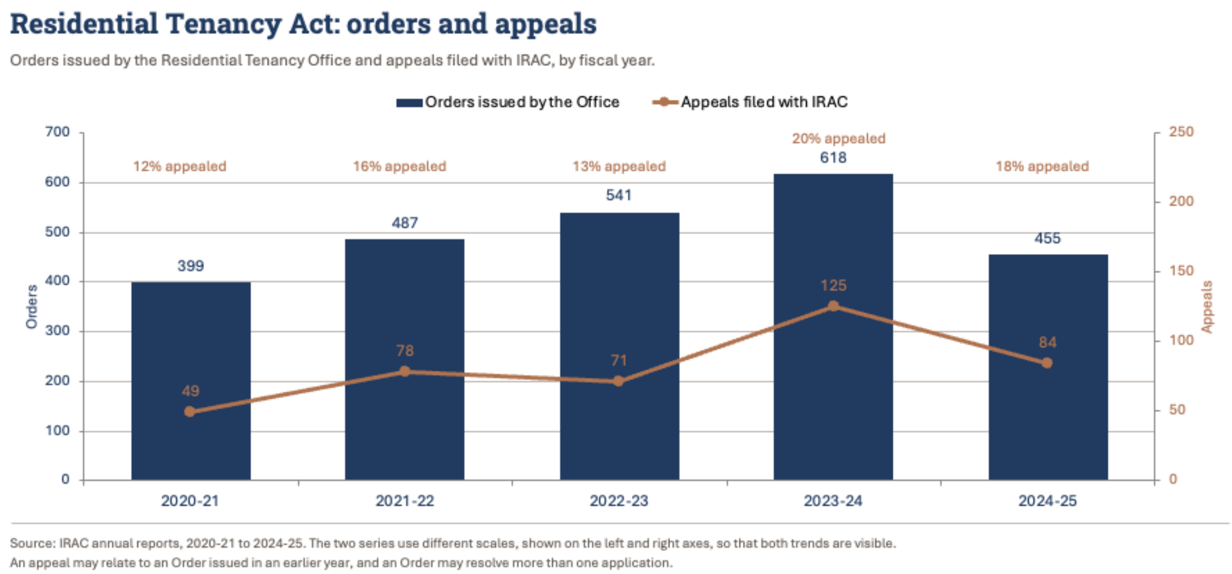


Figure 6. Residential Tenancy Office orders and *appeals to IRAC*.

The Residential Tenancy Office (RTO) has been the front line of dispute resolution between tenants and landlords since it was established as the Office of the Rentalsman in 1975. It consists of a Director and eight staff who respond to public enquiries, receive applications, hear cases through hearings, provide mediation, receive formal complaints and issue Orders. In 2024-25 the RTO handled roughly twelve thousand enquiries, received more than nine hundred applications, and issued 455 Orders. IRAC's 84 appeals in that year represent roughly one appeal for every five or six Orders the RTO issued. This is a very high appeal rate.

The work of the RTO is demanding. Its staff deal daily with parties in conflict over housing, often at the point where one side stands to lose a home and the other an income.

While, this is a review of IRAC, the related work of the Residential Tenancy Office has been included for several compelling reasons.

The first is that IRAC's rental appellate function cannot be assessed in isolation from the process that produces the appeals. How a first instance decision is made, on what record, within what timelines and with what explanation to the parties, determines what arrives at IRAC and in what condition.

Second is that the separation between the two bodies, which the 2023 *Residential Tenancy Act* was intended to establish, has not been achieved in practice. They share premises and staff, and the RTO’s budget, staffing and communications still pass through IRAC. That entanglement bears directly on IRAC's independence as the body hearing appeals from the Director's Orders, which is squarely within the Review's mandate.

Third is that Island residents do not distinguish between them. The largest share of engagement from the public concerned residential tenancy. Most of it described the conduct and decisions of the Residential Tenancy Office rather than of IRAC. IRAC is being held publicly responsible for the decisions of a separate body, in disputes that outnumber by six or sevenfold the appeals it actually hears. Setting out accurately which body does what is therefore part of the Review's task.

The recommendations that follow are accordingly of two kinds. Some are directed at the Residential Tenancy Office, concerning its governance, its placement and its operational support. Others are directed at IRAC, concerning the relationship between the two bodies and the appellate function IRAC exercises over the Orders of the Director.

5.5.1 Residential Tenancy Office Governance

Current Findings

Under the *Rental of Residential Property Act*, in force before 2023, the Residential Tenancy Office was a division of IRAC, reporting to the Chief Executive Officer. The Chief Executive Officer also provided oversight of the hiring of the Director, budget approvals, financial administration, staffing, annual reporting, communications and organizational planning.

During the development of the new *Residential Tenancy Act*, it was identified that an appellate tribunal should not be hearing appeals of its own decisions. The 2023 *Residential Tenancy Act* attempted to correct this by making the Director of Residential Tenancy an appointment of Executive Council, fully responsible for the Office's own procedures, staffing and management (*Residential Tenancy Act*, Section 7).

However, that separation has not been achieved in practice. The Office continues to occupy the same premises as IRAC, and for all practical purposes is still run as though it were a division of IRAC. The Director continues to submit staffing requests, budget decisions and communications through IRAC. The Office does not table its own annual report before the Legislative Assembly; its activities appear as a section within IRAC's annual report. Several staff are shared between the two organizations and both bodies remain legislatively assigned to the Minister of Education and Early Years.

The Review received many submissions regarding the hearing procedures and decisions attributed to IRAC, when the procedures and decisions in question were in fact those of the Residential Tenancy Office, a separate and independent body.

This is an important point. IRAC is not only being held responsible for the decisions of a separate agency. IRAC is perceived to be directly involved in landlord-tenant disputes that outnumber, by an order of magnitude, the appeals it actually hears under the *Residential Tenancy Act*. This incorrectly reinforces a sense that IRAC's reach has exceeded its grasp.

Directions for Change

- The Residential Tenancy Office should be entirely separated from IRAC with its own premises, its own budget, and its own staff and its own accountability.
- The Residential Tenancy Office should be established as an independent office reporting to the Legislature through the Minister of Housing and Communities.
- A memorandum of understanding between the Minister responsible and the Director of Residential Tenancy should set out the operational support to be provided by the Department including staffing, budgeting, legislative and regulatory amendments, and communications, while protecting the independence of the Residential Tenancy Office in its decision-making.
- The Director of Residential Tenancy should continue to be appointed by Executive Council but based on the recommendations of an independent recruitment panel, similar to the one recommended for IRAC Commissioners, and for a similar 5-year appointment with possible 10-year reappointment terms, subject to performance review.
- The Residential Tenancy Office should develop and implement a public communications plan that, among other things, distinguishes its role under the *Residential Tenancy Act* from the role of IRAC as the appeals tribunal.

Placing the Residential Tenancy Office within a line department addresses the current absence of any clear reporting relationship and accountability for the Office and gives it access to the departmental machinery needed to support its operation.

The Review recognizes that the Ministry responsible for housing is also responsible for the Housing Corporation, the Crown corporation responsible for social housing in the province and therefore a substantial landlord in its own right. Although cases coming before the Residential Tenancy Office rarely involve the Housing Corporation, the perception of a conflict of interest was carefully considered.

Two factors weigh against that concern. First, a Minister Responsible is a conduit to the Legislature, not the tribunal's adjudicative supervisor. The amendments to the *Residential Tenancy Act* directing the development of the MOU would solidify this. Second, the Housing Corporation is run by its own chief executive officer, and day-to-day property management is overseen by nine regional Housing Authorities, placing further distance between the Corporation and the Office.

The overriding consideration was alignment. Responsibility for the *Residential Tenancy Act* should reside with Ministry responsible for developing and implementing housing policy: the Department of Housing and Communities. The issues the *Residential Tenancy Act* deals with, in terms of availability and condition of rental housing, on the other are the same questions that Ministry exists to address, and they carry the same economic and social consequences for the province. On balance, the Review is satisfied that this placement offers more benefit than risk.

5.5.2 Residential Tenancy Office Procedures

Current Findings

The Review received a substantial volume of submissions and presentations concerning the procedures of the Residential Tenancy Office. The matters set out below lie within the purview of the Director of Residential Tenancy, and the directions that follow are addressed there.

Four concerns recurred:

- the time taken to schedule a hearing and to receive an Order once heard;
- the length and complexity of the Office's forms, and particularly the standard rental agreement, which runs to twenty-six pages;
- the opportunity to streamline matters such as non-payment of rent where the evidence is clear and undisputed; and
- the apparent absence of a route through which the public or a tenant could raise a concern about a landlord not complying with the Act.

On the last of these, the 2023 *Residential Tenancy Act* gave the Director authority to receive and investigate complaints of non-compliance with the Act. Within the last year, a compliance complaint process has since been established, with its own portal for complaints, along with published rules and guidance on what to expect. While the process exists, it has not yet been promoted by the RTO.

Regarding the other matters, at present every application proceeds to a hearing. The Act permits the Director to make an Order without a hearing, yet that authority has not been used. Hearing capacity is the scarcest resource the RTO has, yet hearings are granted in equal measure to matters that are genuinely contested and matters that are not.

Section 7(2)(d) of the *Residential Tenancy Act* makes the establishment and publication of rules of procedure for proceedings under Parts 5 and 6 a responsibility of the Director. To date, no such rules have been adopted, and the Office continues to operate under a modified version of IRAC's rules. This sustains the confusion described in section 5.5.1.

Directions for Change

The Residential Tenancy Office should take the following actions.

- Establish and publish rules of procedure for proceedings under Parts 5 and 6, as required by section 7(2)(d) of the *Residential Tenancy Act*, rather than continuing to operate under a modified version of IRAC rules.
- Develop and publish service standards, in particular timelines from application to hearing and from hearing to Order, and report annually on performance against them.
- Make use of the RTO's existing authority to decide matters without a hearing, as a priority uncontested cases of non-payment of rent or reimbursement of damage deposits, reserving evidentiary hearings for serious damage to property or serious breaches of the Act or of a tenancy agreement.
- Expand the options for hearings beyond teleconference and allow parties to request the format best suited to their circumstances.
- Review the length and complexity of the Office's forms, beginning with the twenty-six page standard rental agreement.
- Actively promote the compliance and complaints process so that the public and tenants know a route exists to report non-compliance with the Act or an Order without filing an application for dispute resolution.

5.5.3 Amendments to the *Residential Tenancy Act*

Current Findings

The 2023 *Residential Tenancy Act* made a number of changes to policy and procedure that were raised with the Review by both landlords and tenants. The Review learned that some of these changes are causing delays in decisions, driving appeal numbers up in particular areas, and producing consequences that were likely not intended.

The pattern is visible in the Residential Tenancy Office's own caseload (Figure 7). Of the 915 applications received in 2024-25, the largest categories were breach of statutory conditions at 390, security deposits at 300, termination at 142, and applications for rent increases above the maximum annual allowable amount at 63.

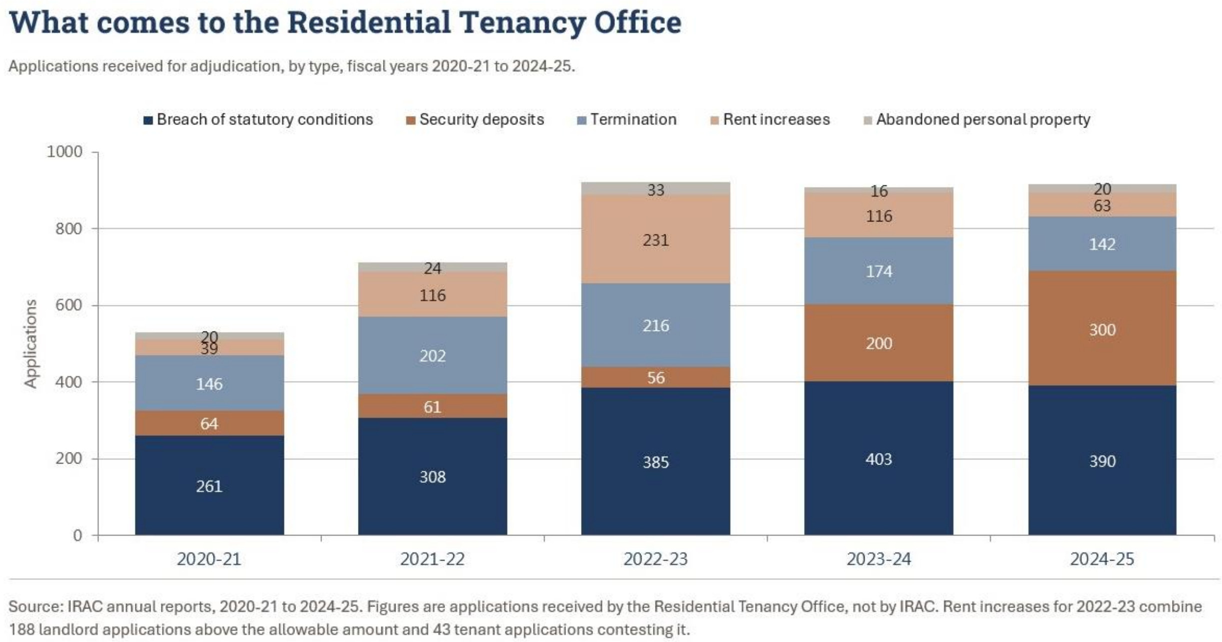


Figure 7. Applications received by the Residential Tenancy Office by type.

Security deposit applications are the outlier. The Office received 56 in 2022-23, 200 in 2023-24, and 300 in 2024-25. That is more than a fivefold increase in two years, against a total application volume that has been essentially flat in that period.

The cause appears to be the timeline prescribed in Section 40 of the *Residential Tenancy Act*, which requires a landlord either to return the deposit or to apply to the Director within fifteen days after the tenancy ends, failing which the landlord pays the tenant double the deposit and forfeits any claim against it. The consequence of missing the deadline is severe enough that a landlord who is still gathering quotations or inspecting a unit will file an application to preserve the position rather than risk it. The Office is therefore receiving applications generated by the timeline itself rather than by any dispute between the parties.

Through the public engagement processes, four specific provisions within the Act were consistently raised:

> **The right of appeal where a party did not participate in initial hearing (section 89).** An applicant must attend the hearing before the Director, but a respondent who does not attend retains the right to appeal to IRAC. This delays a final outcome and adds appeals that the first instance process could have resolved. It is most acute in non-payment matters, where the tenant remains in the unit throughout. Other jurisdictions, including New Brunswick, have legislated that a clear case of non-payment of rent is not appealable, on the basis that there is no legal right to withhold rent.

The security deposit timeline (section 40). Fifteen days is tight where a landlord may have multiple units turning over on the same date, or must obtain quotations for damage and repairs, or must complete the inspection required under section 38 before the position is known.

Fixed-term tenancies (section 52). Enforcement has been inconsistent, leaving some landlords unable to recover possession on an agreed end date because the tenancy is deemed to renew.

Rent increases (sections 49 and 50). There is a lack of clarity and inconsistency in decisions of the RTO on the application of the annual allowable increase where a unit is vacated and no increase has been applied over several previous years. The interaction between the annual allowable amount capped at three per cent under section 49 and applications above that amount under section 50 is not well understood by either landlords, tenants or consistently adjudicated by the RTO.

Appeals to IRAC also rose out of proportion to applications received by the RTO. Applications were essentially unchanged between 2022-23 and 2023-24, at 921 and 909, while appeals to IRAC rose from 71 to 125. This appears to be the result of the amendment in 2023 permitting a party to file an application without being required to appear at the RTO hearing while retaining the right of appeal.

Amending these provisions would shorten the time to a decision for both tenants and landlords, remove security deposit applications that exist only to protect a position, and produce more consistent interpretation of lease terms and rent increases.

Directions for Change

- Amend section 89 to narrow the right of appeal to IRAC, so that a party who does not participate in the first instance hearing has no right of appeal except where IRAC is satisfied that the party was unable to participate for good reason.
- Amend section 40 to extend the period within which a landlord shall either return the security deposit or apply to the Director from fifteen days to thirty days, so that a landlord has sufficient time to complete the inspection required under section 38 and to assemble supporting information.
- Amend section 52, respecting the deemed renewal of a fixed-term tenancy, so that the circumstances in which a fixed term ends are clear to both parties.
- Amend sections 49 and 50 to clarify the application of the annual allowable rent increase where a unit has been vacated and no increase has been applied in

previous years; and to make plain the relationship between the annual allowable amount and applications for an increase above it.

5.5.4 *Residential Tenancy Act* Appeals

Current Findings

In addition to *Planning Act* appeals, *Residential Tenancy Act* appeals represent a significant part of IRAC's appellate workload. There are typically between 50 and 100 residential tenancy appeals per year, most often in the 70-80 range. This represents roughly 15-20% of decisions of the Director of Residential Tenancy.

As noted above, the process for residential tenancy appeals is different than the process under other acts, because the *Residential Tenancy Act* requires a re-hearing of issues instead of a typical appeal where the underlying decision is scrutinized instead of the matter being reheard.

The governing legislation confirms that IRAC has some discretion to determine whether it should hear new evidence. Nevertheless, IRAC has advised the Review that functionally, it always agrees to hear new evidence.

The Prince Edward Island Supreme Court has confirmed that although IRAC is to conduct a re-hearing and must form its own judgment based on the entire record, the underlying decision remains part of the record and is not completely tossed aside.

The Act mandates that an appeal must be heard within 30 days of its receipt, and IRAC maintains internal standards for the timeliness of residential tenancy appeals. IRAC aims to issue decisions within 30 days of the matter being heard. IRAC submitted data to the Review that suggests it very often meets the legislated standard for hearing matters, but that it often exceeds its internal 30-day goal for issuing decisions (Figures 8 and 9).

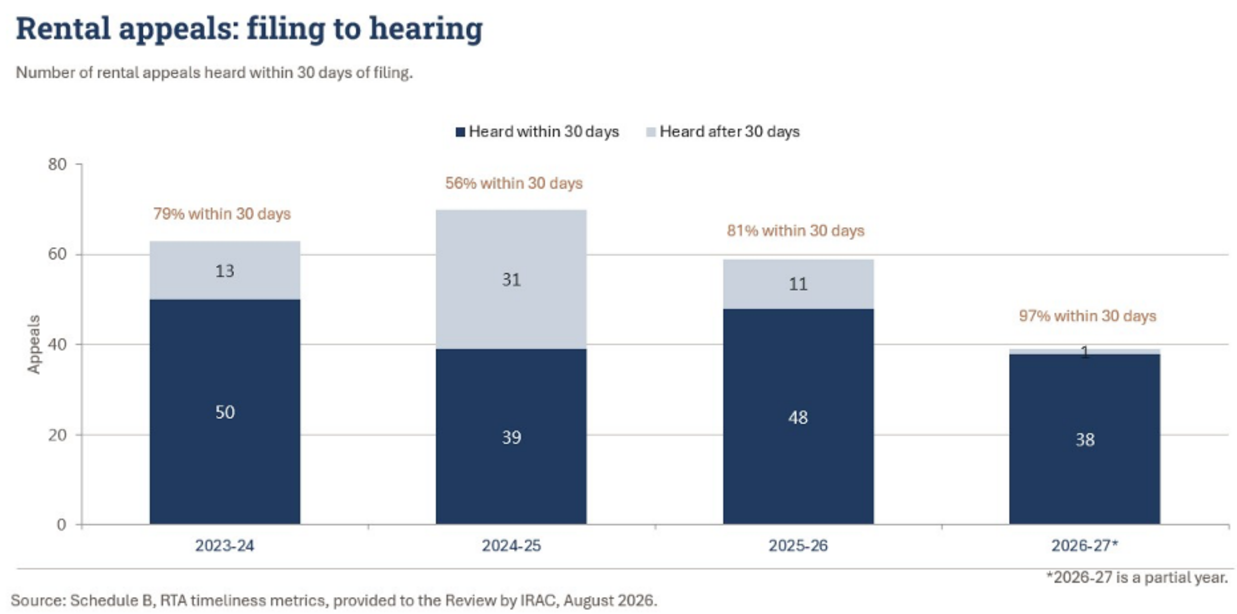


Figure 8. Rental appeals timeline to hearing.

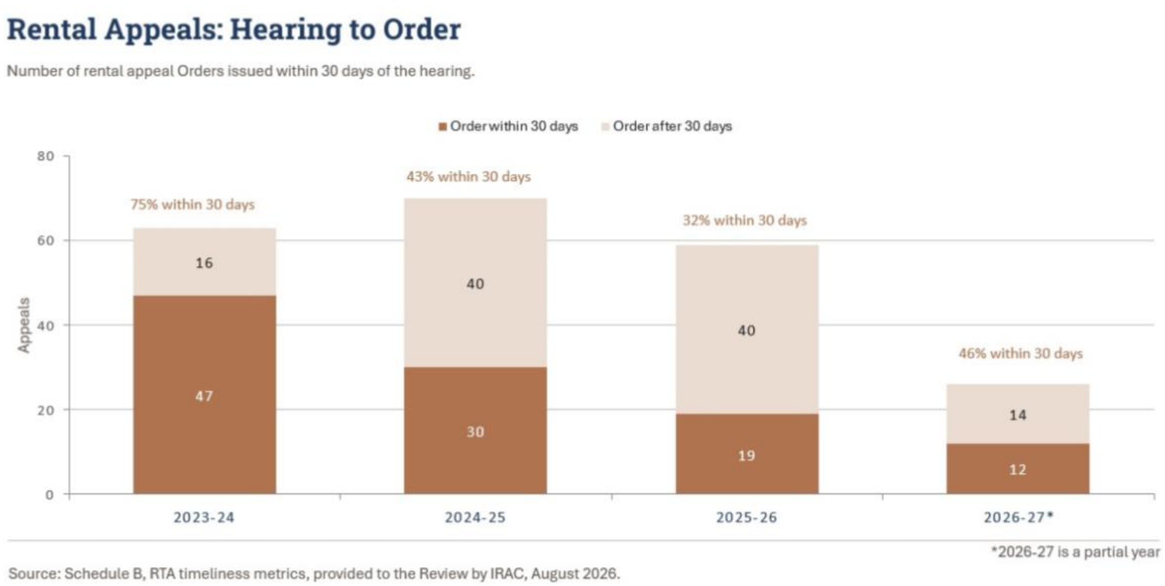


Figure 9. Rental appeals timeline hearing to written order (decision).

Participants from the public have raised concerns about bias. Landlords complain that IRAC assists tenants to a degree that is unfair, while tenants say that IRAC unduly favours landlords. Both sides perceive that IRAC is biased toward the other side. This indicates a perception issue rather than an issue of actual bias. Furthermore, it is highly probable that the comments refer, at least in considerable measure, to decisions of the RTO and not IRAC.

Some participants in the Review raised concerns that not every decision of the Director of Residential Tenancies should be appealable. In fact, the *Residential Tenancy Act* and its accompanying regulations have a mechanism for precluding appeals that are worth an amount below a prescribed threshold. Right now, that threshold is $50.

The Review has also heard calls for the publication of IRAC's service timelines, calls to limit the scope of residential tenancy appeals, and concerns about confidentiality for parties. Upon further inquiry, it was clarified that many of these references were actually to the RTO.

Directions for Change

The Review makes the following recommendations in respect of *Residential Tenancy Act* Appeals.

- Amend the regulations under the *Residential Tenancy Act* to increase the minimum amount in dispute before an appeal may be brought to IRAC.
    - The threshold should be set at a level that preserves access to appeal for meaningful residential tenancy disputes while discouraging appeals where the cost, delay and administrative burden are disproportionate to the amount at issue.
    - It should also recognize that comparatively modest amounts can still be significant to landlords and tenants and that minor disputes require finality where an appeal would cost more, or take longer, than the issue reasonably warrants.
- As noted in section 5.2 of this report, amend the *Residential Tenancy Act* to change the re-hearing standard to a more typical appeal. This will clarify the role of the Director of Residential Tenancy as initial decisionmaker and that of IRAC as an appellate review tribunal.
- As noted in section 5.2 of this report, IRAC should establish a framework for determining when it is appropriate to hear new evidence on appeals. It should note circumstances where it is inappropriate to drag proceedings out for matters that could and should have been raised before the Director.
- IRAC should develop a plan for communicating its process for dealing with confidentiality under its *Rules of Practice and Procedure* to parties who have concerns about disclosure of their information.
- In line with recommendations under section 4.7 of this report, IRAC should publish more information regarding internal service timelines, including targets and whether those targets are being met.

6.0 Regulatory Tribunal

IRAC's regulatory responsibilities affect essential services and costs experienced directly by Island residents and businesses. They include the regulation of electrical utilities, water and wastewater utilities, petroleum products, automobile insurance, and Island Waste Management Corporation rates (Figure 10).

In these areas, IRAC is not reviewing decisions made by others; it is the regulator responsible for making decisions that balance the interests of consumers, regulated entities, and the broader public interest.

The Review examined whether IRAC has the legislative authority, specialized expertise, resources, processes and regulatory tools necessary to perform these functions effectively, efficiently and fairly. Particular attention was given to electrical utility regulation, where increasing technical complexity, the energy transition, major capital requirements and emerging regional approaches to electricity planning are placing new demands on the regulatory system.

The sections that follow identify opportunities to strengthen both the regulatory framework and IRAC's capacity to respond to these changing requirements.

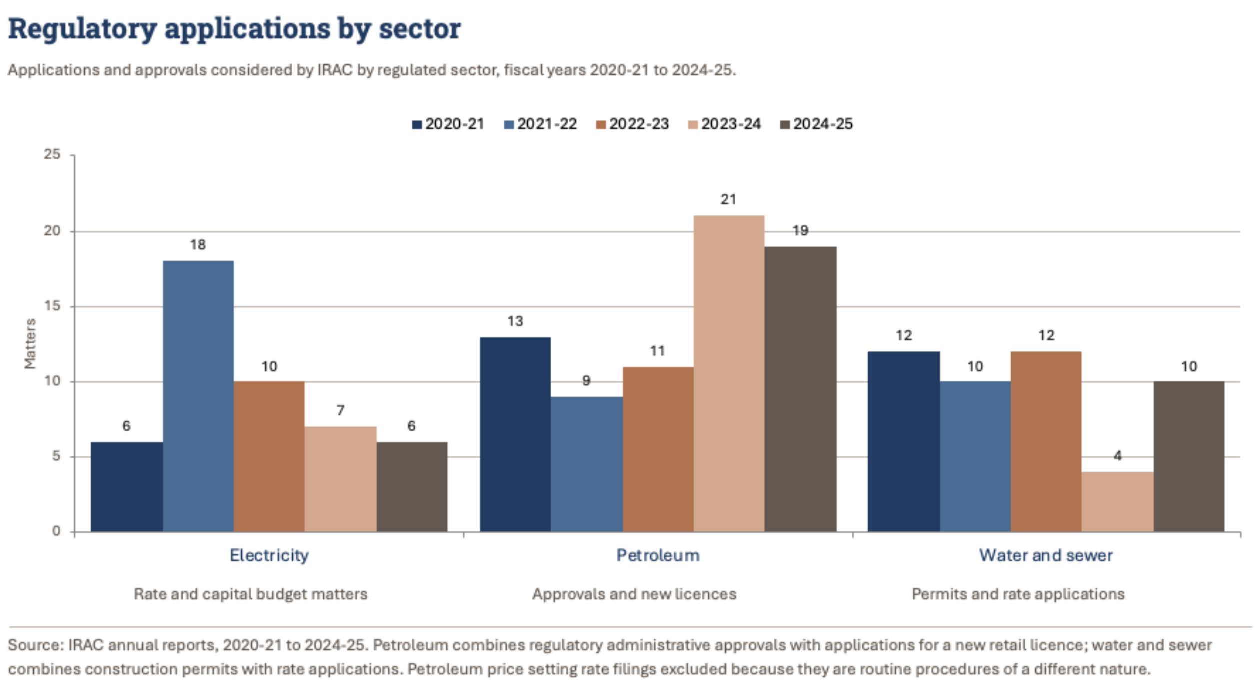


Figure 10. Regulatory workload in high volume areas; by sector, by year.

6.1 Electrical Utilities

A key function of economic regulators across Canada and internationally is to establish just and reasonable rates to be charged by the public utilities that provide monopoly services such as electricity distribution. In PEI, Maritime Electric is the monopoly provider of electrical power to all consumers except those served by Summerside Electric. Consistent with standard practice across Canada the rates charged by Maritime Electric, which is a private sector corporation with an incentive to maximize profit, are regulated by the provincial economic regulator, IRAC.

The purpose of economic regulation across jurisdictions is to balance the interests of customers and the interests of the monopoly service provider to ensure that the supply of electricity is sufficient to meet demand not only in the short run but also in the foreseeable future. Furthermore, the regulator oversees the planning needed to ensure that the electricity supply meets policy objectives such as being safe, reliable and consistent with all environmental and other policy objectives.

To achieve these objectives, the regulator must ensure that the utility's planning, investment plans and daily operations are prudent and consistent with best practices for electric utilities. As a result, these economic regulators must be given broad authority to review the operations of the utility in the process of approving rates that are in the public interest.

A key objective of economic regulation is that rates should be set at a level that provides a reasonable opportunity for the utility to recover all prudently incurred costs, including earning a reasonable market return on its capital investment. It is noteworthy that having a "reasonable opportunity" to recover costs places a burden on the utility to demonstrate that the costs it is seeking to recover were prudently incurred. While the company bears the burden of demonstrating that its capital and operating expenses are prudently incurred, the regulator has an obligation to exercise due diligence in reviewing and approving the costs that are to be recovered in rates.

Implicit in this objective is the recognition that the utility is a corporation with investors and, as such, it will not be sustainable or able to provide safe, reliable electricity to its customers in the long run unless it operates on a sound financial basis. This reality underlies the goal of setting rates that are sufficient but not excessive. The benchmark for IRAC and most other economic regulators is to determine the total cost of service for the utility and then set future rates that are sufficient to recover those costs from customers based on the best available forecast of production costs, operating and maintenance costs, revenue from sales, etc.

IRAC's approach to the regulation of Maritime Electric is consistent with the ratemaking principles and practices that are generally accepted across Canada and internationally. The Review has assessed the need for evolving IRAC's current practices by evaluating its operations using the following common benchmarks for the effectiveness of economic regulators.

The results are presented in sections as noted.

- Legislative authority (Section 6.1.1)
- Planning (Section 6.1.2)
- Procedural fairness (Section 6.1.3)
- Procedural efficiency and effectiveness (6.1.4)

It should be noted that the directions for changes outlined in the Legislative Authority section (6.1.1) cover points that are necessary to implement directions for change contained in the Planning section (6.1.2). As a result, while the issues being addressed are quite distinct, the discussions of the rationale for the recommendations are interrelated.

6.1.1 IRAC's Legislative Authority

All provincial tribunals responsible for regulating electric utility rates are established by statute, and their governing legislation sets out the powers each may exercise.

In PEI, Section 2 of the *Electric Power Act* defines the scope of Maritime Electric's (ME) monopoly, identifies the duties of public utilities, including ME, and defines certain powers of IRAC as the economic regulator. IRAC's regulatory authority in relation to ME specifically is derived primarily from the *Island Regulatory and Appeals Commission Act* ("IRAC Act").

IRAC's legislative authority is broadly consistent with the legislative authority of the other provincial tribunals that regulate the operations and rates of the other monopoly providers of electricity services across Canada. Nevertheless, IRAC's legislative authority and responsibilities should be carefully examined and clarified where necessary. Any need for legislative reform arises in large part because IRAC's legislative framework has not been comprehensively reviewed or updated for well over three decades, and rapid technological and economic developments have transformed PEI's electricity sector.

The recent evolution of the sector and opportunities for moving forward have recently been addressed in the *2025 PEI Energy Strategy* prepared by Dunsky Energy + Climate Advisors and submitted to Environment, Energy and Climate Action and PEI Energy Corporation.

Current Findings

Questions of IRAC's current legislative authority under the *Electric Power Act* and the *IRAC Act* have surfaced in recent years. This uncertainty is present in areas including long term planning, integrated resource planning, resource adequacy planning, and IRAC's authority and responsibility to explicitly take government policy goals into account in its decisions. This disconnect is illustrated, for example, by the lack of agreement as to whether the *PEI Energy Strategy* referenced above, or government's clean energy goals, should be taken into consideration by IRAC in determining whether an energy utility's expenditures are deemed to be prudent and recoverable in rates.

It is unclear whether these gaps are inherent in the wording of legislation or merely a matter of conflicting interpretations and views on IRAC's mandate. Parties disagree, for example, as to the extent to which IRAC should consider the full range of government policy in the absence of explicit direction in IRAC's governing legislation.

It seems that IRAC's historic focus on rate setting has not translated to its recognizing its broader role and its responsibility to provide oversight to the system planning processes within and among energy system partners. These medium- and long-term plans can have a massive impact on consumer rates.

Clarity is important when making regulatory decisions that involve approving capital and operating expenditures as a basis for setting rates. Regulators need clear guidance with respect to the costs that should be recognized as being prudently incurred. Policy goals are rarely intended to be pursued without regard to the costs that are reasonable to impose on electricity ratepayers.

The key point is that if there is ambiguity with respect to IRAC's roles in oversight of planning processes or their role as defined by government energy policy objectives, then legislative amendments should be made immediately to clarify those authorities.

Directions for Change

The findings above point to the need for reform the sectors legislative framework in four related areas.

- **Clarify IRAC's Statutory Authority and Objectives**: IRAC's governing legislation should establish clearly the organization's regulatory powers and authority as appropriate to a modern energy regulator.
    - In amending IRAC's legislation, government should include a set of objectives to guide IRAC in the execution of its duties. In essence, these

objectives define the public interest as it applies to the powers and duties of IRAC. Several jurisdictions include an "objectives" section in their regulator's enabling legislation which provides the degree of specificity that each government considers appropriate.

Legislation is most suited to identifying broad policy objectives. Legislative change takes time. Tools are also available to provide immediate and flexible policy direction consistent with government's responsibility to establish a flexible policy framework within which IRAC operates. In this way, government can add specificity to legislated objectives, which are necessarily broadly stated, by using non-legislative instruments to identify specific policies that should be accommodated by IRAC's decisions, even when the policy issue is transient.

- **Establish Explicit Authority for Integrated Resource Planning**: IRAC should have explicit authority to require and oversee integrated electricity planning processes that involve Maritime Electric, the PEI Energy Corporation and other relevant parties, to invest in infrastructure and to develop DSM, and other programs as necessary to protect the integrity of PEI's electrical system and ensure quality service to consumers in the short and long term.

To respond to this directive IRAC would have clear authority to bring Maritime Electric into the process as well as the PEI Energy Corporation, Summerside Electric and all other participants in PEI's electricity sector. As discussed in section 6.1.2, below, Integrated Resource Planning (IRP) should include all factors that influence demand and supply for electricity such as the development of renewable resources, demand-side management (DSM), demand response programs and the design and evolution of PEI's advanced metering infrastructure.

- **Clarify Responsibility for Resource Adequacy**: Ultimate responsibility and accountability for addressing both immediate and longer-term electricity-supply challenges should be clearly assigned to IRAC.

Of particular importance in defining the objectives of regulation, is to specifically give IRAC the ultimate responsibility and accountability for resource adequacy. When responsibility and accountability are shared by government, ME, EC and IRAC, the coordinated effort needed to implement effective crises management is impaired. This is most vividly illustrated by the absence of coordinated analysis, planning, and timely response to the looming shortall in energy supply in Prince Edward Island, over the past several years.

The most effective approach is for government to assign ultimate responsibility and accountability to a single entity that has the authority to coordinate and direct the relevant actions of other entities. All participants in the electricity sector need to be clear on who has primary responsibility and who must act in accordance with the overall effort. In PEI, at this time, IRAC is in the best position to require ME and EC to take coordinated action to address resource adequacy issues. No PEI entity can address the short-term and medium-term challenges cost-effectively on their own.

It should be recognized that it may be appropriate to shift this responsibility to a regional regulator if such is created in the future. Assigning overall planning responsibility to an independent regional specialist authority would be consistent with common practice in the larger Canadian provinces.

- **Require an Interim Electricity-Adequacy Plan**: IRAC should initiate and oversee a joint effort of ME, EC and others as required, to develop an interim resource-adequacy plan defining essential actions to supplement supply while also trimming demand through a combination of enhanced targeted DSM and demand response measures that addresses the imminent resource adequacy challenges

As mentioned above, the best illustration of the current legislative policy shortfall is the absence of clear responsibility and accountability for ensuring that the imminent risk of peak electricity demand exceeding available supply is addressed without delay, while medium-term solutions are assessed. This situation is unacceptable.

While specific recommendations for resolving the challenges facing PEI in the coming winter are not part of the Review's mandate, the fact that the necessary actions have not been taken in recent years demonstrates that change to the regulatory environment is overdue.

6.1.2 Planning

Evolution of Electricity-System Planning

PEI's electricity system, like those in other jurisdictions, is constantly evolving in response to changes in infrastructure, technology, demand and provincial government policy. Throughout much of the 20th century, system planning (for "the legacy system") was a relatively and comparatively straightforward: forecast the future annual electricity consumption and peak demand, and then secure sufficient generation and capacity, including an appropriate reserve margin, to meet those requirements.

In the legacy system, meeting annual electricity requirements and peak demand was primarily accomplished by building and/or contracting for an appropriate supply mix. Modern electricity-system planning is more complex. On the demand side, energy efficiency, demand-side management (DSM) and demand response (DR) can reduce consumption or peak demand, potentially avoiding the need for additional generation, transmission and distribution capacity. The term “negawatt” is sometimes used to describe electricity consumption avoided through these measures. Its value is related to the cost of the supply and infrastructure that would otherwise be required.

Electricity system planning has also become increasingly complex as variable renewable resources, particularly wind and solar, have taken on a larger role in PEI’s supply mix. This shift has been driven in part by the provincial government’s objective of reducing greenhouse-gas emissions by favouring non-emitting generation over fossil-fuel-based resources.

On the supply side, all generating facilities experience planned and unplanned outages, while wind and solar output varies with weather and time of day. Increased reliance on variable renewable resources:

- creates challenges for maintaining a reliable balance between supply and demand
- requires planners to consider not only total annual energy but also the timing, availability and reliability of different resources.

Integrated Resource Planning, discussed further below, is therefore increasingly important to ensure that these resources are coordinated with other supply, storage and demand-side measures throughout the year.

Moreover, a range of measures can also help manage the variations in output from renewables. Within limits, storage technologies, such as grid-scale batteries, can shift periods of surplus supply to periods of insufficient generations. Demand Response (DR) programs can compensate customers for reducing consumption during periods of high system demand. Where DR is relied upon as a system resource, the resulting demand reductions must be enforceable, controllable and otherwise sufficiently reliable to be incorporated into resource planning (in other words, as reliable as ramping up traditional generation technologies).

Demand Response can take a variety of forms, including interruptible rates for large customers; programs allowing utilities to control selected residential or commercial loads; incentives for customers with backup generation to reduce their grid consumption; peak-reduction rewards; and the coordinated use of distributed storage and electric-vehicle charging. Individual customer contributions may be small, but their aggregate effect can be material.

Integrated Resource Planning. The contemporary approach to electrical system planning is referred to as Integrated Resource Planning (IRP), which takes a holistic approach to balancing electricity supply and demand. IRP evaluates supply-side and demand-side resources on a comparable basis to identify a least-cost portfolio capable of meeting forecast demand while maintaining reliability and satisfying applicable policy objectives. Where environmental objectives are incorporated into the planning process, the comparison may also account for relevant environmental costs in addition to direct market costs.

The legislative changes proposed in section 6.1.1 establish the legislative framework that is needed for PEI to transition to best practices for planning its electrical system. This current section expands on the changes needed to ensure that PEI has a safe, reliable and affordable electricity supply in the future. Specifically, 6.1.2 focuses on the planning process itself including the respective roles of IRAC and Maritime Electric, the scope of the plan and the transition from the current approach.

Current Findings

Several participants at the Review stakeholder meetings raised concerns related to electricity-system planning. Presenters made the following recommendations:

- applicants be required to present and compare alternatives rather than advancing only a preferred proposal;
- emerging capacity constraints associated with electrification be addressed on a timely basis; and
- the electricity sector be examined comprehensively rather than through continued fragmented decision-making.

Taken together, these and other concerns indicate that PEI's electricity system is not currently conducted through a comprehensive IRP process (based on contemporary IRP principles and practices). A contemporary IRP would consider imported and on-Island supply, storage, DSM, DR and other available resources in relation to forecast demand. It would also address uncertainty in future demand and resource availability, including the need for appropriate reserve margins.

PEI has taken steps toward more coordinated DSM planning. Amendments made in 2017 brought the PEI Energy Corporation (PEIEC) within the DSM planning provisions of Section.16.1 of the *Electric Power Act*, enabling PEIEC to prepare and submit a province-wide energy-efficiency and demand-side resources plan and enabling IRAC to allocate approved costs among participating public utilities.

The amendments did not expressly remove Maritime Electric's existing status or responsibilities as a public utility under Section.16.1. The resulting allocation of DSM planning and implementation responsibilities between Maritime Electric and the PEI Energy Corporation remains unclear and may impede fully coordinated planning.

The Review acknowledges that the PEI electricity system is not static. Other elements of a more integrated electricity system are also developing. These include wind supply obtained through the PEI Energy Corporation, savings produced through its DSM programs and the capabilities being created through Maritime Electric's advanced metering infrastructure. Additional resources may be available from customers, DR aggregators and other third parties. These developments are useful, but they are not yet brought together through a comprehensive planning process that systematically compares supply, storage and demand-side alternatives.

The current project-by-project and year-by-year approach does not provide the same opportunity to compare alternative long-term portfolios or assess the combined contribution of all available resources. The immediate capacity concern also illustrates the potential value of DR and other demand-side resources. DR was identified as an important component of PEI's overall energy strategy in the 2025 Energy Strategy commissioned by the provincial government.

Directions for Change

- **Clarifying Planning Responsibilities.** A comprehensive plan for PEI's electrical system requires clear responsibility and accountability. IRAC should be clearly authorized as the single entity to oversee the holistic planning needed to maintain the balance between electricity supply and demand in both the short and long term. The resulting plan should identify the least-cost approach consistent with reliability requirements and provincial government policy.

Although some jurisdictions assign this responsibility to an independent system operator, IRAC is the better option for PEI at this time, given the PEI's scale, geography and reliance on NB Power for much of its electricity supply.

This allocation of responsibility could be reconsidered if a provincial or regional system operator is established or if the Maritime Regional Energy accord moves forward.

IRAC must have clear authority to direct Maritime Electric to lead the technical work required to prepare the plan, since Maritime Electric has the necessary technical knowledge of the existing system. The plan would be developed under IRAC's oversight, with the PEIEC, Summerside Electric and other relevant electricity-sector participants contributing information and planning inputs within their respective areas of responsibility.

IRAC must also have clear authority and responsibility to direct all electricity suppliers and relevant entities to collaborate in the planning and implementation of coordinated DSM programs. This coordination is necessary to fully exploit DSM opportunities and ensure that demand-side resources are considered together with supply-side resources in the integrated planning process.

To exercise its oversight role, IRAC will need additional internal and external resources and expertise.

- **Establish a Periodic Integrated Resource Planning Process.** The framework should expressly require periodic Integrated Resource Plans, establish the planning horizon and minimum contents of those plans, require consideration of both supply-side and demand-side alternatives, and give IRAC explicit authority to establish IRP guidelines, review assumptions and scenarios, require revisions, and approve or accept the resulting long-term plan. *Changes outlined in section 6.1.1 would provide the necessary legislative and regulatory framework needed to support the enhanced approach to planning that is envisioned in this section.*

Under this clarified authority, IRAC would review Maritime Electric's long-term system planning through a periodic, public and integrated resource planning process. This process should be grounded in a holistic view of PEI's energy policy rather than limited to Maritime Electric's operational perspective. It should examine load forecasts, reliability requirements, supply resources, transmission and imports, storage, demand-side management, demand response and distributed resources, and require meaningful comparison of alternative portfolios and scenarios.

- **Adopt a Phased Approach.** To address the immediate concern that available electricity supply may be insufficient to meet peak demand under extreme winter conditions, IRAC should direct Maritime Electric to submit a short-term electricity-adequacy plan.

PEI's IRP methodology should evolve over time, with a streamlined or simplified plan considered first. A period of transition will be required as IRAC develops the capacity to fulfil its enhanced energy-regulation responsibilities.

The plan should incorporate all feasible generation, DSM and DR measures available from Maritime Electric, Summerside Electric, customers and third-party providers to improve the prospective supply-demand balance. It should also serve as the starting point for the transition to a medium- and longer-term integrated plan that considers the full range of demand-side and supply-side resources available to meet projected demand.

6.1.3 Procedural Fairness

Among Canadian energy regulators, commonly accepted aspects of procedural fairness include:

- Support for public participation (including support for small consumers).
- Transparency in communications to all parties
- Timely notifications regarding proceedings, as well as relevant decisions and information occurring outside public processes
- Timely access to information relevant to proceedings (e.g. planning and operational information, expert reports)
- Consistent application of rules by and for all parties

Public Participation, Transparency and Consistency

An integral feature of IRAC's regulatory proceedings is public participation. IRAC's approach to facilitating the participation of individuals and public interest representatives is set out in IRAC's Rules of Practices and Procedures. IRAC's Rules are broadly consistent with the rules used by other regulators across Canada and internationally. However, there is no explicit mechanism to support the public participation/representation of smaller consumers.

The standard practice across Canada is to provide a mechanism that facilitates participation of small, vulnerable and underrepresented consumers. There are several approaches used in other jurisdictions:

- Provide intervenor funding to groups representing small, vulnerable and underrepresented consumers, based on their demonstrated capacity to serve as the voice of these consumers.
- Appoint a Consumer Advocate, responsible for representing the interests of these consumers in regulatory proceedings.
- Create a staff position inside IRAC, that would be responsible for representing the interests of these consumers in regulatory proceedings.

In some jurisdictions separate consumer advocates are funded to represent different customer classes (e.g., small volume/residential and commercial, and in some cases, industrial consumer groups).

The 2025 PEI Energy Strategy contains recommendations related to public participation, consumer protections, equity and transparency, which "may include:"

- Creating an Office of the Consumer Advocate (OCA) to formally represent residential and underrepresented consumers in regulatory, policy, and program development forums;

- Improving access for meaningful participation in the regulatory process such as including plain-language communications, multilingual and culturally appropriate outreach; and
- Clarifying adjudicated vs. non-adjudicated processes to increase transparency surrounding process and requirements, differentiate when formal hearings are needed versus when more flexible, consulting/guidance approaches are appropriate, streamlining proceedings and lowering participation barriers.

Current Findings

Submissions to the Review identified several concerns related to public participation and procedural fairness more broadly, including:

- The absence of funding for public interest interventions either through the appointment of a public intervenor or through funding of qualified intervenor representatives;
- Participants find the Rules to be unclear with respect to standing and participation criteria and some are concerned that the utility may exert influence over the participation decisions of IRAC;
- Late decisions on intervenor status compromise the effectiveness of interventions;
- Inadequate guidance is provided for non-specialists;
- The opportunities to test evidence are restricted; and
- Insufficient notification of decisions and arrangements occurring outside public processes.

To enhance transparency and fairness, IRAC should have a well-understood and accessible process for considering and deciding intervenor status and cost awards. It is appropriate for the applicant to provide input in the decision-making process, but it is IRAC's responsibility to decide and clearly explain its decisions related to public intervention.

If a staff position is created inside IRAC, its role could include exploring the impacts of regulatory decisions on small consumers, the prudency of expenditures, the adequacy of planning to meet small consumer demand, etc. This approach tends to be the most economical way to ensure that small consumer interests are represented. If this is the approach selected, the key issues are:

> **Increased complexity for staff:** Staff would conduct consultation processes with consumers. There are a variety of methods that could be used, and it should be left

to IRAC's discretion as to how that it is done. It should be noted that the staff will have to balance interests to some extent, because small consumers are not necessarily homogeneous in their interests.

Accountability and perception of bias: If staff represents small consumers, then IRAC's role could be misperceived as pursuing the customer interest as opposed to balancing customer and utility interests. As such, an appropriate accountability and reporting must be established for staff members representing small consumers to minimize the perception of bias.

If an external consumer advocate is established, the key issues are:

Funding: funding should come from ratepayers, consistent with how other cost awards are treated.

Input: The Consumer Advocate would require consultation processes with consumers. There are a variety of methods which could be used, and it should be left to the Advocate's discretion as to how that it is done. It should be noted that the Advocate will have to balance interests to some extent, too, because small consumers are not necessarily homogeneous in their interest.

Accountability: It is important that the Consumer Advocate has appropriate accountability for its operations. If the Advocate's office were part of IRAC the perception of bias/political interference could be minimized.

There are examples Consumer Advocates in other jurisdictions, which could be considered for implementation in PEI.

Directions for Change

- To support/improve (a) public participation, (b) transparent and timely communications and notifications and (c) consistent application of the rules to all parties, IRAC should develop and implement a complete consumer participation framework.

  This framework would include clear rules and procedures regarding:

  - consumer representation
  - intervenor eligibility
  - the process for deciding intervenor status, procedural assistance, participation rights, and cost awards.

- IRAC should institute a stakeholder consultation process that enables interested parties to present suggestions for improving its *Rules of Practice and Procedures*. The details of the participation framework should be left to IRAC.
- The provincial government should communicate its support for the establishment of a mechanism that facilitates participation of small, vulnerable and underrepresented consumers.
- Regardless of the mechanism selected, IRAC should also address the key concerns set out in public submissions to the Review to ensure:
    - transparent and timely communications and notifications;
    - clarifying and providing notification regarding decisions and arrangements related to adjudicated vs non-adjudicated processes and
    - consistent application of the rules to all parties.

6.1.4 Procedural Efficiency and Effectiveness

Current Findings

Balancing Efficiency and Effectiveness

The efficiency and effectiveness of regulatory processes are important to all participants. IRAC's procedures and practices should enable it to discharge its responsibilities in a timely and economical manner without compromising the scrutiny, procedural fairness and transparency required for sound public-interest decision-making.

The direct costs of regulation include the cost of IRAC's operations, the utility's compliance costs and the legal, expert and other hearing-related costs incurred by participants. Since many of these costs are ultimately recovered through utility rates, they are largely borne by customers. These costs must be weighed against the benefits of effective regulation, including protecting customers from paying unreasonable costs for monopoly services and providing the utility with incentives to operate efficiently.

Direct regulatory costs are not, however, the only relevant consideration. A poorly designed, under-resourced or inadequately implemented regulatory process can impose much larger indirect costs through delayed decisions, uncertainty, deferred investment and lost opportunities. Low regulatory expenditures do not represent genuine efficiency if they result in materially greater costs elsewhere in the electricity system.

At the same time, efforts to expedite proceedings must not compromise regulatory effectiveness. A process that approves an application quickly but fails to identify costs that are unnecessary or imprudently incurred may be inexpensive to administer but costly to ratepayers. Effective regulatory scrutiny also creates an incentive for the utility to exercise internal discipline before seeking recovery of its costs.

Regulatory processes are most efficient when they are proportionate to the impact, complexity and risk of the matter under consideration. Lower-risk applications may warrant streamlined review, while matters with significant financial, reliability or policy implications may require more detailed scrutiny. Where a utility has established a strong record of efficient and responsible performance, targeted audits or "deep dives" into selected areas may provide effective oversight without requiring a detailed examination of every cost item. Such reviews may be used independently or as part of a broader performance-based regulatory framework.

Capacity, Workload and Timeliness

There is concern that IRAC's budget, staffing and access to specialized expertise have not been sufficient to discharge its electricity-regulation responsibilities consistently and on a timely basis. The resulting backlog of electricity applications is an immediate concern. Delayed decisions can increase uncertainty, postpone necessary investments or programs and impair the ability of Maritime Electric to plan and serve its customers efficiently.

IRAC's electricity-regulation workload has increased substantially since the end of the government-mandated rate freeze. Rapid growth in electricity demand, driven in part by electrification, has also created a need for new infrastructure, supply resources and electricity programs requiring regulatory consideration.

The resulting requirement for additional staff resources is not simply a matter of increasing IRAC's budget or headcount. IRAC requires access to specialized technical and regulatory skills. In the short term, some of this capacity will likely have to be obtained through external advisers. Over the longer term, IRAC will require an appropriate combination of internal staff and external expertise, accompanied by deliberate knowledge transfer and the development of PEI-specific institutional knowledge.

IRAC has both a substantive obligation to reach decisions in the public interest and an institutional obligation to reach those decisions in a timely, predictable, transparent and economical manner. Addressing the present backlog while building sustainable long-term capacity will require a combination of immediate and systemic measures.

Rules and Procedural Discipline

The Review has identified possible ambiguity in IRAC's *Rules of Practice and Procedure* and the consistency with which they are applied. In particular, exceptions to stated filing requirements can create uncertainty or perceptions of unfairness where the circumstances justifying an exception, and the process through which it is considered, are not clear to all participants.

There are related concerns about whether existing application-completeness requirements, procedural schedules and case-management practices provide applicants and other participants with sufficient certainty regarding the information required, the process that will be followed and the expected timing of decisions. At the same time, procedural requirements intended to protect fairness may contribute to delay if the rules do not provide a transparent and expeditious means of addressing exceptional circumstances.

Potential Role for Performance-Based Regulation

Performance-Based Regulation, or PBR, has received attention in PEI, although it was not a major recurring concern raised during the Review's stakeholder meetings and public engagement. Nevertheless, the Review considers it an innovation worthy of careful examination as PEI's regulatory regime evolves.

PBR is an umbrella term covering a range of rate-setting approaches that place greater emphasis on incentives and measured outcomes than traditional cost-of-service regulation. Under one common form of PBR, an approved starting level of rates or revenues is adjusted for several years using a formula reflecting inflation, expected productivity improvements and other approved factors. A comprehensive cost-of-service review is typically conducted periodically to establish a new starting point.

PBR is intended to give the utility a stronger incentive to control costs and improve productivity. The utility may retain some of the benefits of efficiencies achieved during the PBR term, while customers share in expected productivity improvements through the rate-setting formula and, ultimately, through the rebasing of rates.

A well-designed PBR framework could lower the regulatory burden on IRAC, Maritime Electric and intervenors by reducing the frequency and scope of detailed cost-of-service proceedings. It could also reduce regulatory and compliance costs and provide customers and Maritime Electric with greater predictability regarding annual rate changes.

PBR does not, however, guarantee lower rates, eliminate hearings or prevent rate shocks. Significant adjustments may still arise from extraordinary events, major capital requirements or the periodic rebasing of rates.

Experience in other jurisdictions indicates that PBR works best when the initial cost and revenue baseline is sound, the rate-adjustment formula is supported by reliable evidence, and performance measures are clear and limited in number. The framework should include safeguards against improving financial performance by deferring necessary expenditures or reducing service quality, as well as provisions for exceptional circumstances and periodic review and rebasing. These lessons reinforce the need for a cautious, PEI-specific approach rather than the rapid adoption of a model developed elsewhere.

PBR is not a panacea. Developing the framework can initially require substantial regulatory effort, data and expertise. An unsuitable starting baseline or poorly designed formula can perpetuate inefficiencies, distribute risks unfairly between the utility and customers, or produce significant adjustments at the end of the PBR term.

Any PEI framework should therefore be proportionate to the size and circumstances of the jurisdiction and should not be adopted simply by transferring a model developed elsewhere.

Directions for Change

- **Review and Modernize the Rules.** IRAC should initiate a public and transparent review of its *Rules of Practice and Procedure*. The review should examine the practices of other Canadian regulators while adapting any resulting reforms to IRAC's mandate, resources and the circumstances of PEI.

  The review should address the concerns identified above and, in particular:

  - clarity and consistent application of the Rules;
  - transparent procedures for exceptions;
  - application-completeness requirements and standardized filings;
  - firm procedural schedules and proportionate limits on procedural steps; and
  - appropriate use of written hearings, oral hearings, settlements and ADR.

  The revised Rules should provide sufficient flexibility to respond to differing circumstances while ensuring that any exceptions are granted through a transparent, fair and consistently applied process.

- **Address the Current Backlog.** As a top priority, IRAC should address the current backlog. Doing so may require the use of expedited processes for selected matters. IRAC should consider a range of tools, including:
    - triaging applications according to their public-interest impact, risk and complexity, recognizing that lower-priority matters may receive less scrutiny than would be desirable under normal circumstances;
    - adopting an expedited process for simple, low-risk applications with limited potential adverse effects on the public interest, including a notification process under which approval may be granted without further process unless a substantive objection is raised; this could include using automation tools, including AI, to assist in analyzing appropriate applications;
    - combining similar or related applications;
    - using negotiated settlements or other forms of alternative dispute resolution, with IRAC reviewing any resulting agreement to determine whether it is acceptable in the public interest, including the interests of parties not represented in the negotiations;
    - using written hearings with appropriate limits on the timing and length of submissions;
    - using oral hearings only where necessary, with appropriate limits on timing and the length of cross-examination and submissions;
    - engaging additional external resources; and
    - reporting publicly on the size of the backlog, average processing times, the measures being taken to address it and the progress achieved.
- **Prevent the Backlog from Recurring.** IRAC should address the systemic causes of the backlog to reduce the likelihood that it will recur. It should consider:
    - establishing clear application-completeness requirements and returning materially incomplete applications for further work;
    - using standardized filing templates and checklists where appropriate;
    - adopting and enforcing firm but realistic procedural schedules for IRAC and all other participants;
    - placing reasonable limits on interrogatories, cross-examination and submissions, and avoiding unnecessary rounds of evidence; and

  - engaging external consultants to supplement staff resources in both the short and longer term, including establishing a roster of qualified advisers and maintaining continuity of expertise across ongoing, related or similar matters.

- **Strengthen Regulatory Capacity.** IRAC should assess the resources and specialized technical and regulatory skills required to manage its current and anticipated electricity-regulation workload. It should determine the appropriate combination of permanent staff and external expertise, taking into account the need for continuity and the development and retention of PEI-specific institutional knowledge.

- **Develop a Plan for the Introduction of PBR.** IRAC should lead a task group comprising representatives of Maritime Electric, the PEI Energy Corporation and the provincial government to develop a plan for the possible phased introduction of PBR into PEI's electricity-regulation regime. Consumer representatives, intervenors and other interested parties should also have meaningful opportunities to provide input.

  The task group should examine the objectives and potential scope of PBR in PEI:

  - alternative models and lessons from other jurisdictions
  - the expected benefits, costs and risks for customers, Maritime Electric and IRAC
  - the availability of the data and regulatory resources required to support PBR
  - appropriate performance and consumer-protection safeguards and
  - options for a measured, phased implementation.

The task group should not assume that an existing PBR model can be transferred directly to PEI or that rapid implementation is necessarily desirable. Its work should culminate in a publicly available assessment and implementation plan. If IRAC concludes that PBR is feasible and likely to benefit customers, the detailed framework should then be considered and approved through a formal public regulatory proceeding.

IRAC's role would be to establish and administer the regulatory framework, monitor results and hold Maritime Electric accountable for meeting the approved requirements. Maritime Electric would remain responsible for managing its operations and determining how best to achieve the required outcomes.

Participation in the task group would not commit IRAC to adopting PBR or any particular PBR model. Any proposed framework would remain subject to formal public review and approval by IRAC.

6.2 Water and Sewer

The Island Regulatory and Appeals Commission is the economic regulator of most public water and wastewater utilities in Prince Edward Island under the *Water and Sewerage Act*, supplemented by provisions of the *Island Regulatory and Appeals Commission Act* and the *Municipal Government Act*. IRAC has "general supervision and control" over regulated public utilities. Four larger municipal utilities, Charlottetown, Summerside, Stratford and Cornwall, are excluded from IRAC regulation. The remaining 26 utilities comprise 22 municipal utilities, three privately owned utilities and one government agency.

The underlying objective is to ensure that utilities have sufficient revenue to provide safe and adequate water and wastewater services, while protecting customers from unnecessary or unjustified costs and significant rate impacts.

IRAC's role is primarily economic and financial regulation, rather than technical or environmental oversight. Its main functions are to approve water and sewer rates, review the rate impacts of construction projects, assist with customer complaints, establish operating and accounting guidelines, and support utility administrators and boards. Technical approval of infrastructure remains with the Department of Land and Environment.

Rate regulation is the core function. Utilities cannot change rates without IRAC approval. IRAC reviews revenues, expenditures, projected costs and revenue requirements, provides public notice and an opportunity for customer input, and may proceed by public hearing or written process. It then issues an Order and approved tariff.

IRAC also oversees capital projects. Utilities must obtain a permit before constructing, altering or extending water or sewer systems. IRAC focuses on project necessity, costs and ratepayer impacts, while the Department of Land and Environment is responsible for technical and environmental standards.

Ongoing oversight is supported by annual financial reporting and a Uniform System of Accounts, which allow IRAC to monitor utility performance, compare costs and assess the adequacy of rates. IRAC also maintains *General Rules and Regulations* governing utility operations. IRAC's own *Briefing Book* notes these rules were last updated in 2010 and are due for revision.

Overall, IRAC acts as the independent economic regulator and ratepayer safeguard for PEI's smaller water and wastewater utilities, balancing the financial needs of utilities with the objective of maintaining reasonable and justified rates for customers.

Current Findings

IRAC's role in water and wastewater utility regulation is positively received by the communities it serves. No issues related to process, timeliness, or decisions were noted. Because the regulated utilities are within smaller communities with less administrative depth, it would appear that IRAC is a welcome assist in many cases.

The relationship and coordination in what is a two-part approval process shared between the Department of Land and Environment and IRAC seems to be working smoothly.

Directions for Change

- It is recommended that an MOU be formalized between IRAC and the Department of Land and Environment defining standard operating procedures for the joint review. This should be publicly available, allowing continuity and consistency in times of changing personnel assignments or legislative changes.

6.3 Petroleum Pricing

Under the *Petroleum Products Act*, IRAC regulates petroleum products in PEI by setting minimum and maximum prices, establishing wholesale and retail margins, and issuing annual retail and wholesale licences.

Licensing

IRAC licences the petroleum industry in PEI. Annual licences are required for wholesalers, retailers, retail-distributors and tank trucks. IRAC coordinates their issuance and renewal each year.

In 2024-25 it issued 307 licences. An application for a licence for a new retail outlet is not an administrative formality: the *Petroleum Products Act* requires IRAC to consider whether the outlet is warranted, having regard to public convenience and necessity and to the public interest.

Applications of this kind are infrequent, with three received in 2024-25 and none at all in 2022-23, but each is a substantive determination about whether a new outlet should be permitted to operate.

Other regulatory approvals

Beyond pricing and licensing, IRAC approves a range of changes within the industry. These include the transfer of a licence on a change of operator, whether at a retail outlet or a propane exchange, the installation or alteration of petroleum storage facilities, construction permits and extensions to them, and the designation of outlet licence classes and methods of dispensing. IRAC granted sixteen such approvals in each of the last two fiscal years. IRAC also maintains a petroleum database and licensing records and retains a casual site inspector who attends outlets in the field.

Price Setting

IRAC reviews gasoline, diesel and furnace oil prices on a scheduled cycle and propane prices biweekly. Staff monitor market conditions, wholesale rack and NYMEX prices, regional pricing, supply conditions and other market factors.

A pricing model calculates weekly and year-to-date weighted average prices, which inform IRAC's decision to increase, decrease or maintain regulated prices. Decisions are issued by Order. IRAC adjusted prices once weekly for many years and has since moved to twice-weekly scheduled adjustments on Tuesdays and Fridays in response to market volatility, a change that remains in effect until further notice.

Wholesale and Retail Margins

IRAC establishes margins intended to recognize wholesalers' and retailers' costs while providing an opportunity for a reasonable return. Wholesale margins are fixed by product, while retail margins have minimum and maximum levels. Petroleum products cannot be sold outside the prices and margins approved by IRAC.

Margin Reviews

Reviews may be initiated by industry application or by IRAC. They include public notice and opportunities for public and intervener participation. IRAC considers transportation and storage costs, sales volumes, operating costs, industry and government data, expert evidence, comparisons with other jurisdictions, and other relevant factors. Independent experts may also be retained.

Following an independent review begun in 2022, Order PC23-007 established new wholesale and retail margins effective January 2024 and indicated that motor-fuel retail margins would be considered for review every two years. In accordance with that Order, IRAC is currently undertaking a further petroleum margin and pricing methodology review, for which it has retained an independent expert whose report is published on its website, and is seeking public feedback.

Current Findings

Petroleum is the most frequently exercised of IRAC's regulatory functions and the most visible. IRAC set prices on 52 scheduled occasions in each of the past three fiscal years, in addition to the licensing and approval work described above. The function operates on the equivalent of 2.65 full-time positions.

The service is very close to self-funding, with licence revenue of roughly $427,000 in 2024-25 against divisional expenses of approximately $408,000. Unscheduled adjustments, a useful measure of the market conditions within the industry, fell from 22 in 2022-23 to one in 2024-25. The move to twice-weekly scheduled adjustments in 2026 indicates that volatility has since returned.

This is also the function that touches every household most often, and the one where the gap between what the public believes and what IRAC controls has historically been widest. IRAC sets neither the rack price at which refined product is delivered to Charlottetown Harbour nor the taxes applied at the pump, yet it has routinely been held responsible for both. The Review received comparatively little input on petroleum, and none of it questioned the regulated model.

The Review wishes to recognize the effort IRAC has made to close the communication gap. IRAC publishes its pricing methodology, a plain-language glossary of pricing terms, current and historical prices, and a pump price schedule that separates the margins from the tax components. It explains the market conditions behind each unscheduled adjustment.

More recently, staff have appeared in the media to address directly the belief that a fall in the price of crude should appear immediately at the pump, and IRAC has explained its methodology to a standing committee of the Legislative Assembly and published that presentation.

That effort appears to be working. Public and media discussion has become better informed, and recent commentary on pricing policy has been directed at the decisions that belong to the provincial government rather than at those that belong to IRAC. On a file where IRAC has limited ability to change the outcome, it has made a helpful effort in explaining it.

Directions for Change.

- PEI's mandatory annual licensing of wholesalers and each retail outlet is not aligned with many Canadian models and is considered by the Review as an unnecessary addition to the regulatory burden of IRAC and the affected businesses. The provincial government should consider replacing annual licensing with a continuing licence or registration, subject to an annual information return/fee and an obligation to report material changes. IRAC would retain full suspension, revocation, inspection and enforcement powers.

- The proactive communication approach IRAC has taken here is the approach recommended for its other mandate areas in sections 4.6 and 4.7. The model used here: published methodology, plain-language explanation, and proactive communication is highly beneficial and could be used elsewhere within IRAC's mandate.

6.4 Island Waste Management Corporation

The Island Waste Management Corporation (IWMC) is a Crown corporation responsible for operating PEI's waste management system. Under the *Environmental Protection Act*, IRAC regulates the rates IWMC charges for waste management services. When IWMC applies for a rate change, IRAC may approve the proposed rates, establish different rates, or refuse the application.

Rate applications are made public and advertised, with an opportunity for public comment.

Current Findings

In 2024, IRAC approved proposed changes to residential and commercial waste management rates. As in 2022 and 2023, the provincial government subsequently provided a grant to IWMC that allowed residential rates to remain at 2021 levels.

In December 2024, IWMC applied for further increases to residential rates effective January 2025 and commercial rates effective April 2025. On February 28, 2025, IRAC issued Order WM25-01, approving increases that were slightly below those requested.

No issues were identified with IRAC's role in regulating IWMC.

6.5 Automobile Insurance

Since 2003, IRAC has had general supervision over automobile insurance rates and premiums in PEI under the *Insurance Act*, while the Superintendent of Insurance oversees the broader business of insurance.

Insurers must obtain IRAC approval before changing automobile insurance rates and must also file annually with IRAC even when no rate change is proposed. Rates cannot be discriminatory, underwriting practices must comply with legislation, and filings must meet IRAC guidelines.

Applications proposing rate changes require actuarial evidence supporting the requested adjustment. IRAC staff review filings, request additional information where necessary, and prepare a summary and recommendation for IRAC consideration.

Insurers with insufficient PEI-specific data may rely on industry-based Rate Group Tables, principally CLEAR or IAO tables. These use broader industry or provincial data and generally result in more straightforward and faster regulatory reviews.

IRAC levies an assessment each year to insurers operating in the province to cover the cost of the regulatory process. IRAC's assessment period is the current fiscal year-end with calculations based on the insurers' most recent reported annual direct premiums (usually from prior year).

Current Findings

The Automobile Insurance industry has been highly complementary of the work carried out by IRAC both in terms of the quality of the processes and the reasonable costs to the industry for the service, which ultimately would be passed on to consumers through insurance premiums.

Directions for Change

- There may be no reason to disturb an arrangement that is working. However, it remains a curious feature of the present structure that this responsibility does not sit with the Superintendent of Insurance in the Department of Justice and Public Safety.

7.0 Administrative Tribunal

IRAC's third area of responsibility differs from the other two in a way that shapes everything about it. In its administrative role, IRAC receives applications, analyzes them, and makes a recommendation. The decision belongs to the provincial government.

Two Acts confer this role. Under the *Lands Protection Act,* IRAC receives applications to acquire land holdings, gathers the information needed to assess them, and makes independent recommendations to Executive Council, which may approve or deny the acquisition. IRAC also monitors the holdings of large landowners through an annual disclosure process and investigates and enforces compliance with the Act.

Under the *Municipal Government Act*, IRAC considers proposals to establish, restructure, amalgamate or dissolve municipalities, holds hearings where required, and reports its findings, recommendations and reasons to the Minister, who in turn recommends to Executive Council.

By numbers of files, duties under the *Lands Protection Act* is by far the largest of IRAC's areas of responsibility. In 2024-25, land applications accounted for roughly 515 files, averaging 525 per year over the past three years. These applications typical involve over 25,000 acres of land each year (Figures 11 and 12). The work is carried by a director and four analysts, with a panel of Commissioners meeting on a biweekly cycle to consider applications.

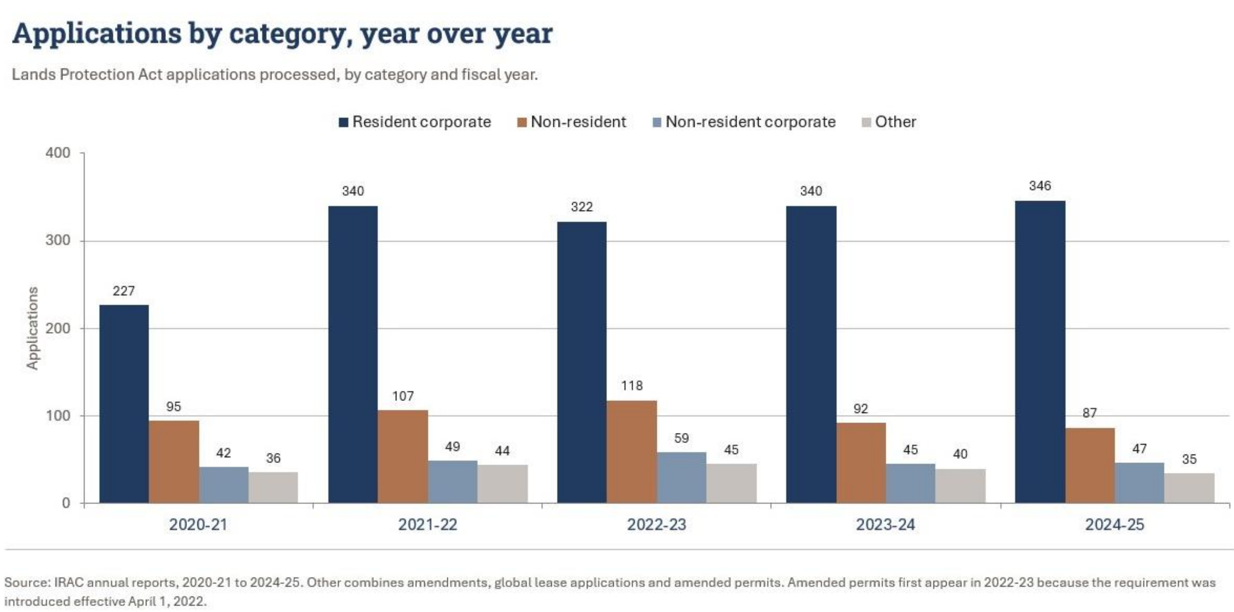


Figure 11. Applications under *The Lands Protection Act*, by category.

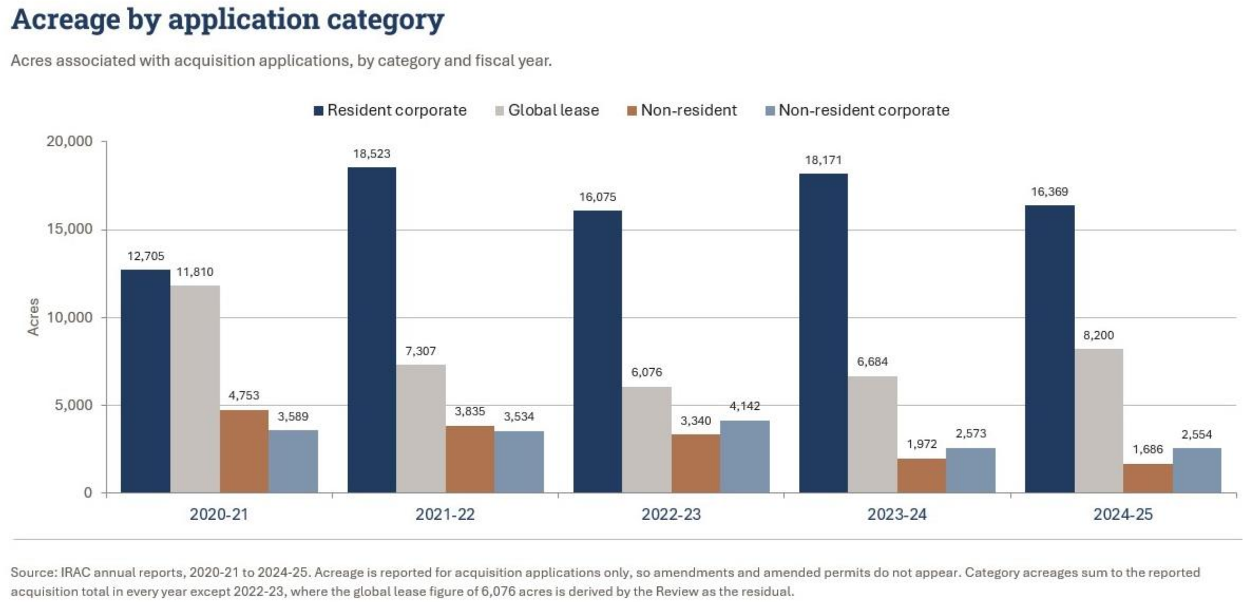


Figure 12. Acreage associated with *Lands Protection Act* applications, 2021-2025, by category.

Municipal restructuring proposals, by contrast are uncommon, with only two or three files in the past five years.

7.1 *Lands Protection Act*

Historical Overview

Prince Edward Island's *Lands Protection Act* (LPA) reflects the Island's distinctive history of land ownership and the public importance attached to preventing excessive concentration and absentee control of a finite land base. PEI's colonial land system divided virtually the entire Island into 67 large lots, many granted to absentee proprietors. The resulting landlord–tenant system became a defining political issue of the nineteenth century.

Concerns about outside ownership re-emerged in the twentieth century, particularly as non-resident purchases of coastal and agricultural land increased. Restrictions were introduced under the Real Property Act in 1972, and a proposed acquisition of approximately 6,000 acres by a non-resident corporation in 1981 helped precipitate enactment of the *Lands Protection Act* in 1982.

The Act expressly recognizes PEI's history of absentee ownership, its small land area and comparatively high population density, and the fragility of its land and environment. Its core purpose is therefore to regulate the ownership and control of land, particularly the amount and concentration of land that individuals and corporations may hold.

Principal limits

The central ownership ceilings are 1,000 acres for an individual and 3,000 acres for a corporation, measured as aggregate land holdings. The aggregation rules can attribute interests held through related corporations, shareholders, and other relationships to the landholder. Certain non-arable land may be excluded from the calculation, subject to statutory limits. In addition, a non-resident individual or a corporation generally requires Executive Council approval where an acquisition would result in holdings exceeding 5 acres or 165 feet of shore frontage. Leases and other interests conferring use; possession or occupation can also count as land holdings.

Application Processes

Applications under the *Lands Protection Act* fall into three categories.

> **Non-resident applications:** individuals who do not satisfy the statutory PEI residency test and seek to acquire land above the statutory threshold.
>
> **Corporate applications:** resident or non-resident corporations acquiring land above the threshold; corporate ownership, control and related holdings must be examined in determining aggregate holdings. It should be noted that this category includes farm corporations, which would include most family farms in PEI.
>
> **Lease/Global Lease applications:** particularly relevant to agriculture. Corporations or non-residents may seek approval for leased land, while a Global Lease Permit can authorize a specified aggregate amount of leased land without requiring a new approval each time individual leased parcels change.

IRAC administers the Act, investigates applications and makes recommendations, but the ultimate acquisition decision rests with Executive Council (Figure 13).

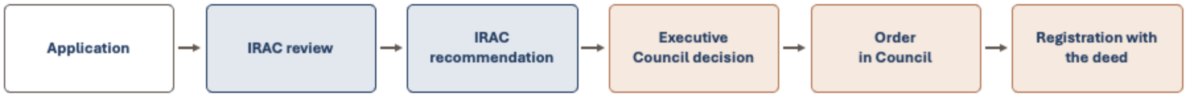


Figure 13. *Lands Protection Act* flow from application to approval.

As shown in Figure 14, only 4.8% of 1553 applications for land purchase were denied in the last three years. Eliminating resident business purchase applications from the calculation results in a denial rate of 12.8%. This is not to make a statement on the quality of the decisions being made given the very different types of applications reviewed.

Most of these approvals would include Land Identification Program conditions requiring non-development. As will be discussed later, this has turned out to be a deceptively weak mechanism but one giving the perception of control of land use.

Outcomes of land acquisition applications

Applications determined by Executive Council, by category and fiscal year.

Category	2023-24 applications	Denied	2024-25 applications	Denied	2025-26 applications	Denied	3-year denial rate
Resident corporate	340	2	346	0	292	0	0.2%
Non-resident	92	20	87	25	91	14	21.9%
Non-resident corporate	45	3	47	3	100	9	7.8%
Global lease	13	0	11	0	20	0	0.0%
Amended permits	6	0	6	0	11	0	0.0%
Non-profit	n/a	n/a	22	0	34	0	0.0%
Total	**496**	**25**	**519**	**28**	**548**	**23**	**4.9%**

Source: Letter from the Chief Operating Officer of IRAC to the Commissioner, July 30, 2026, responding to information request IR-1. Figures are outcomes determined by Executive Council on applications to acquire a land holding. They exclude applications to amend a land identification condition.

Figure 14. Outcomes of Land Protection Act applications, 2023-2026, by category.

As shown on Figure 15, the evidence is strong that provincial governments have to a very high degree followed the detailed rationale provided by IRAC for each application to either approve or deny non-resident purchases. This data and a review of the historical files also confirms that the provincial government is rarely if ever straying from policy guidance in its decisions on land purchases.

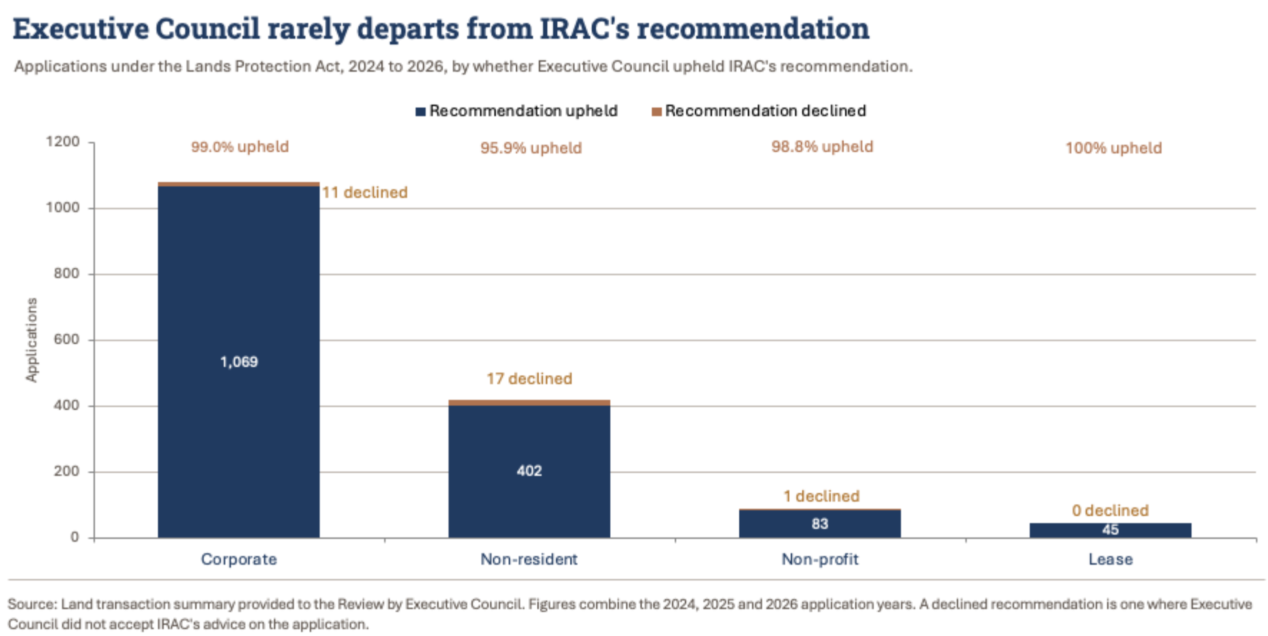


Figure 15. Executive Council concurrence with IRAC recommendations on Lands Protection Act applications, 2024–2026, by category.

While the function of IRAC related to the *Lands Protection Act* is primarily administrative and advisory to the provincial government, the enforcement role of IRAC has been underappreciated and misunderstood.

Recurring shortcomings and criticisms

Successive reviews, including the 2013 Carver Commission and the later Land Matters process, have generally confirmed strong support for protecting PEI's land base while identifying weaknesses in how the regime operates.

Reviews have consequently called for clearer definitions, improved ownership data, stronger monitoring and enforcement, greater transparency, clearer residency rules, and periodic evidence-based review of the statutory limits.

What We Heard

Presentations and submissions regarding the *Lands Protection Act* were among the top three areas of concern brought before the Review. Recurring themes included the following items.

- The importance of the *Lands Protection Act* in controlling non-resident land ownership, including shore frontage.
- The importance of *Lands Protection Act* in avoiding over-concentration of corporate ownership and protecting the distribution of economic opportunity.
- The importance of the *Lands Protection Act* in protecting agricultural land from development.
- The claim that IRAC is ill-equipped to investigate and enforce the provisions of the *Lands Protection Act*.
- The lack of transparency in decisions made by Executive Council under the *Lands Protection Act*.

Clearly there continues to be strong public support for the *Lands Protection Act* and its role in managing land ownership to optimize economic opportunity for PEI residents and businesses.

The role of the Review is not to conduct a review of the *Land Protection Act* per se, but to examine IRAC's administrative, advisory, and enforcement role relative to the LPA. The effectiveness of provisions of the Act has been closely examined as it relates to IRAC's role.

Land Identification Program

The **Land Identification Program (LIP)** established in 1995, is best understood as a "condition of approval" mechanism within PEI's *Lands Protection Act*. It does not itself determine whether a purchaser may acquire land. Rather, it allows Executive Council, when approving certain acquisitions, to attach a condition that the land be preserved for "non-development use".

That distinction is important to understanding IRAC's role in land-acquisition applications.

For acquisitions requiring approval under sections 4 or 5 of the *Lands Protection Act,* principally acquisitions by non-residents and corporations exceeding the statutory thresholds, IRAC reviews the application and makes a recommendation to Executive Council. Executive Council must consider IRAC's recommendation in deciding whether to issue the permit. Section 9 expressly authorizes Executive Council to attach conditions to that permit, including "that the land be identified under the Land Identification Program".

The LIP therefore provides a middle option between unconditional approval and refusal. The provincial government can permit land ownership while restricting land use.

The *Land Identification Regulations* define "non-development use" broadly to include such purposes as forestry, wildlife, agriculture, recreation, and permanent or seasonal residence, provided the use does not involve commercial or industrial development or subdivision. The stated regulatory objective is simply "to prevent development of land identified for non-development use".

The provincial government's description adds the underlying policy rationale: "preservation of resource land, protection against subdivision or commercial/industrial development, and protection against land speculation, in unincorporated rural and coastal areas".

This means an application that might otherwise raise concerns—for example, acquisition of a substantial tract of agricultural, forest or coastal land by a corporation or non-resident—can potentially be approved subject to the land remaining essentially in its existing/resource use.

> *It is important to note that the Land Identification Program was introduced in 1995 with the stated expectation that it would be a temporary initiative to control use of land purchases falling under the LPA until a Provincial Land Use Plan is in place. A Provincial Land Use Plan has never been developed.*

Historically, IRAC has described its role quite explicitly:

"The Commission is responsible for making recommendations to the Lieutenant Governor in Council [Executive Council] on the disposition of applications including recommendations whether the land should be identified."

In its guidance to applicants, IRAC places particular emphasis on identification when considering coastal land, active agricultural land, speculative transactions and land intended for subdivision.

There are effectively two related recommendations IRAC can make to Executive Council in reviewing an acquisition:

- Should the acquisition itself be permitted?
- If permitted, should the land be identified for non-development use?

The ultimate decision on both rests with Executive Council, not IRAC.

There are important exclusions. Under the current regulations, the program does not apply to land within a municipality having an official plan approved under the *Planning Act*. Outside such municipalities, it also does not apply where the parcel is under five acres, has less than 165 feet of shore frontage, or approval has already been granted for development of the entire parcel.

A corollary to the 'identification' process in the regulations, is a 'de-identification' process, whereby owners of 'identified' properties can apply to Executive Council (vetted by the Department of Land and Environment) for de-identification of some or all of the property. Amendments effective January 1, 2015, following recommendations of the Carver Report, provide that identification conditions under new or existing approvals expire automatically ten years from their original date.

As the data shows 152,300 acres will de-identify over the next ten years (Figure 16). It is reasonably estimated that a similar land area has already automatically been de-identified in the past ten years.

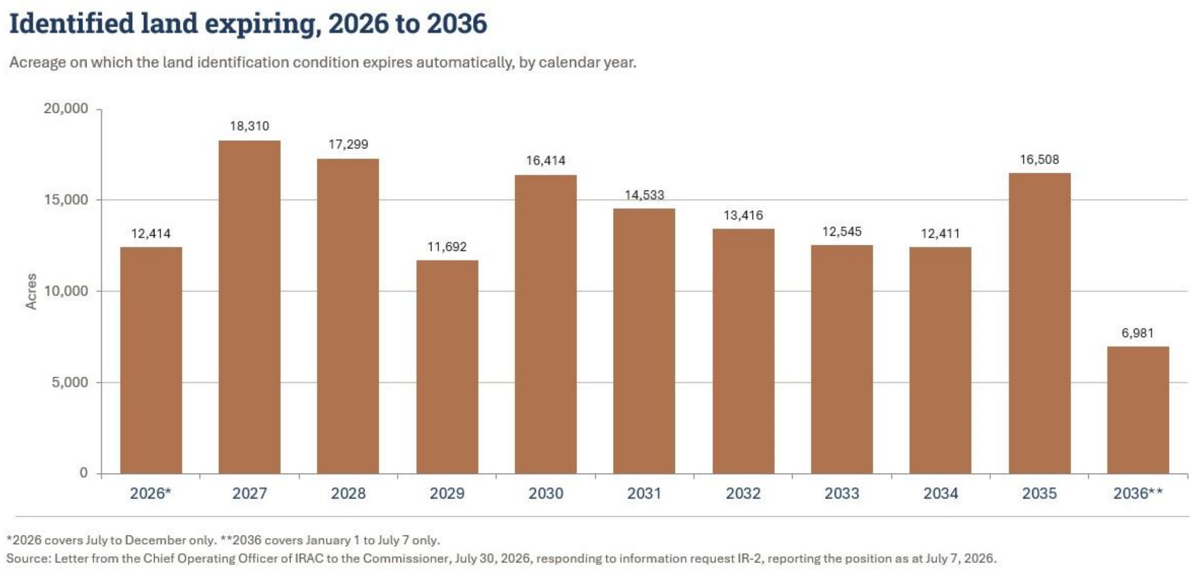


Figure 16. Land identification expiring by year 2026 to 2036.

An average of 21 applications for de-identification has been received annually over the past five years. These are applications for full or partial de-identification **in advance of the 10-year requirement** under the regulation.

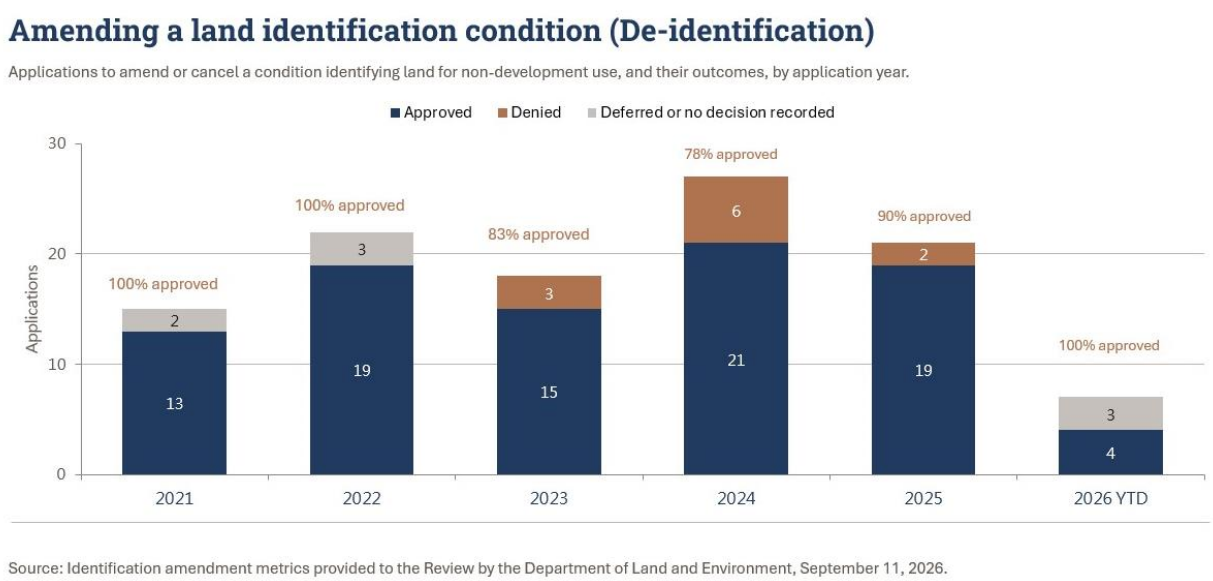


Figure 17. Outcomes of Land Protection Act applications by category.

The data above (Figure 17) shows that of 105 de-identification applications received over the past five years, only 11 were denied. Figure 18 demonstrates that the Department of Land and Environment recommendations matched Executive Council final decisions 96% of the time.

It is clear that the Land Identification Program is no longer a land use control mechanism. It is better characterized as a temporary land-use restraint associated with an acquisition approval. It is a merry-go-round of bureaucratic process with no long-term benefit to the province. Worse, it provides citizens a false sense of security regarding the conditions of approval of non-resident land purchases.

> *This is again strong evidence of the need for a Provincial Land Use Plan, in this case as an essential partner to an effective 'Lands Protection Act'.*

In an interesting twist, although the Regulations assign IRAC the responsibility for advice to Executive Council for de-identification applications, through mutual agreement, this responsibility has been passed over to staff of the Department of Land and Environment. No regulatory amendment has been made to formalize this.

The rationale correctly has been that the advice required is about appropriate land use, not land ownership. That notwithstanding, it is at minimum sloppy administration that the regulation was never amended to validate the current process.

One more comment on the awkwardness of the administration of de-identification that is again largely the consequence of a land ownership tool (the LPA) being used as a land use regulatory tool, for which it was never intended.

Applicants for de-identification tend to be in a catch-22 situation. An application for de-identification will not be accepted by IRAC unless the applicant has presented their land use proposal to the Planning Division within the Department of Land and Environment for approval. The Planning Division would prefer not to put the applicant's proposal through a detailed subdivision development or change of use assessment, for example, if the land is not going to be de-identified.

However, it has happened that approval of de-identification by Executive Council is interpreted by the applicant as approval of whatever development plan the proponent had noted on the application. This is another example of the awkward interplay that occurs in the absence of a Provincial Land Use Plan that would have clarified in advance the potential land use options available to the owner upon de-identification.

7.1.1 Enforcement of the *Lands Protection Act*

Current Findings

The enforcement of the *Lands Protection Act* (LPA) is solely the responsibility of IRAC. The provincial government is not involved except where it exercises its authority to order IRAC to carry out investigations.

IRAC's enforcement role has largely pertained to individual and corporate land holdings and the limits of ownership. IRAC has developed a robust tracking system for land ownership as it relates to the Act. Individuals and corporations within 75% of maximum allowable holdings must file a disclosure of their holdings and annually, any changes in the past year. As of December 31, 2024, there were 122 individuals and 28 corporations that are above the 75% reporting threshold for land ownership. The 2021 amendments to the *Lands Protection Act* (proclaimed April, 2022) to allow IRAC to better track beneficial ownership have improved verification and enforcement.

Publicly available data shows that between 2002-2015, 157 enforcement decisions and orders were made by IRAC, or about 11 per year. Annual reporting of this statistic stopped in 2016. At that time what was being tracked by IRAC moved from small monetary penalties for administrative matters such as late filings, to focus on situations where a formal file was opened and fact finding that might lead to an investigation was carried out.

It is clear that IRAC takes its enforcement role within the *Lands Protection Act* seriously. However, every ship is seaworthy when the seas are calm. Enforcement of this Act has proven to involve very detailed and resource-intensive efforts to build the fact base for enforcement decisions. Concerns of citizens that businesses or individuals are operating in violation of the Act can and have become politicized, with IRAC in the crosshairs.

The Review is cautious in commenting on the 2016 investigation into landholdings of the Great Enlightenment Buddhist Institute Society and the Great Wisdom Buddhist Institute, which exist under the umbrella of Bliss and Wisdom organization in PEI. An active investigation, ordered by the provincial government is underway.

In assessing IRAC's ability to enforce the Act, the Review examined Commission Investigation Rule 98-1, the procedures established under section 15 of the Lands Protection Act. The Rule allowed an investigation involving substantial expenditure, outside counsel and expert work to end without any publicly identifiable decision, findings or reasons.

Assuming all appropriate enforcement steps were followed (a matter outside the Review's mandate), this points to a weakness in the design of the enforcement system that should be corrected.

Directions for Change

- IRAC should engage external counsel to examine Rule 98-1 in terms of IRAC's responsibilities under this section, its authority to vary the rule, the documentation and rationale for any variance, as well as its responsibility for public reporting.

Due consideration should be given to balancing the need for transparency of IRAC proceedings with the privacy and confidentiality rights of the party under investigation. The report on this examination should be made public.

7.1.2 Corporate Purchases under the *Lands Protection Act*

Current Findings

In reviewing IRAC workload trends, the Review considered the purpose and value to the public of various processes, in this case, under the *Lands Protection Act*.

As noted previously, the *Lands Protection Act* requires corporations, both resident-controlled and non-resident controlled, to obtain Executive Council permission to purchase land if the purchase results in their land holdings exceed five acres or shorefront in excess of 165 ft. Over the past five years, a staggering of 63% (averaging 317 per year) of all applications to IRAC are in the Resident-Controlled Corporation Land Purchases category.

What is not clear is the original intent of setting the threshold of resident-controlled corporate holding requirements at such a low level of five acres, given that the mandatory reporting limit for corporations is 2250 acres. It is even less logical given that a resident individual can purchase say 50 or even 500 acres, if below the 1000-acre limit for an individual, without Executive Council approval. This is presumably because there is no policy intention for the *Lands Protection Act* to apply to such purchases.

Given the intent of the Lands Protection Act in limiting corporate land ownership, it is understandable that IRAC track resident and non-resident corporate land holdings.

What isn't clear is why a five-acre application threshold for resident controlled corporations is required. As shown in Figure 18 there were only two of 978 applications for resident corporate land purchases denied over the past three years.

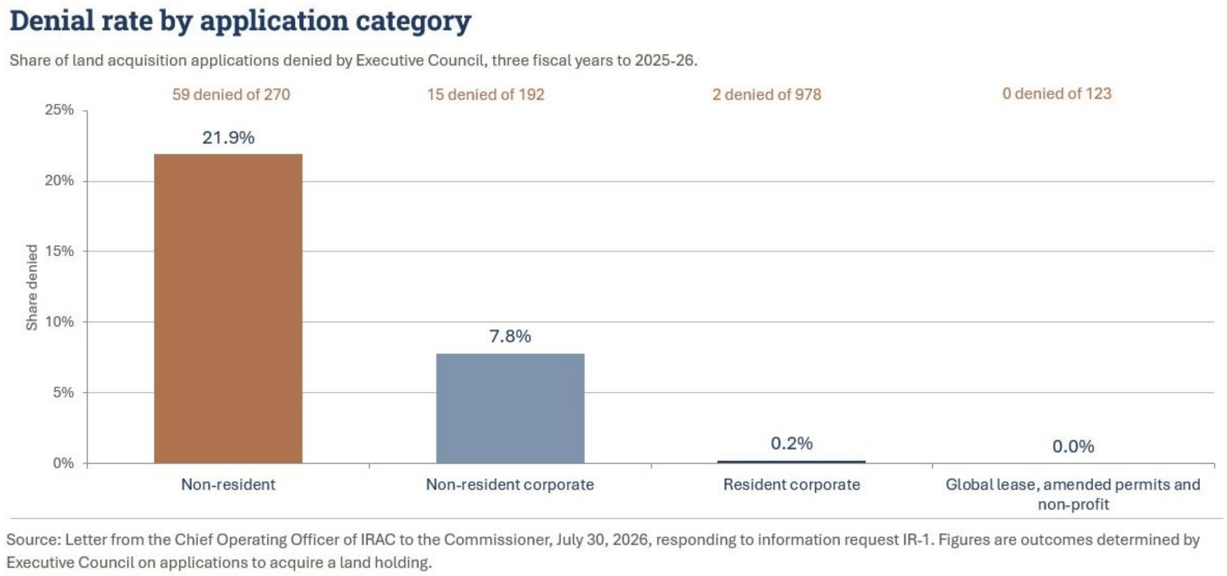


Figure 18. Application denial rates by category.

This would seem to put this process in the category of a 'rubber stamp'. Was the intention of this provision to allow such purchases to be subject to the land use control of the Land Identification Program? Again, if a resident individual buying that property doesn't trigger identification, why should a resident-controlled corporation? As explained above, 'identification' seems, at best, a temporary attempt at land use control.

In summary, the application of the *Lands Protection Action* to resident-controlled business purchases of land would seem to represent a needless imposition of a regulatory process on the business community of this province, with the accompanying waste of their time and money. Add to that the time and resources by IRAC, the Executive Council Office staff, the Policy and Priorities Committee of Executive Council that reviews all applications, and Executive Council itself.

Directions for Change

- In the absence of public policy rationale for this provision, the provincial government should increase the threshold for *Lands Protection Act* application to resident-controlled corporations to an aggregate of 2,250 acres, the mandatory reporting threshold for corporations within the Act.

7.1.3 Application of the Land Identification Program

Current Findings

The provincial government has never provided guidance to IRAC regarding the criteria for determining when a property should be 'identified'. A 1994 request to the provincial government from IRAC received no response. IRAC was left to its own devices to develop 'factors to be considered' with priority to coastal land, agricultural land, speculative land transactions, and subdivision of land. That said, the very high degree of Executive Council concurrence with IRAC recommendations (both for and against approvals) would suggest that successive provincial governments are satisfied with the criteria being used in the absence of a Provincial Land Use Plan.

However, this would seem a moot point. The Land Identification Program, as elucidated in Section 7.1 above has become, at best, a temporary land use constraint that has created the false impression of land use control on non-resident and corporate purchases of land when in fact these are a ten-year (or less) mirage.

Directions for Change

- ➢ The provincial government should assess the present value and impact of the Land Identification Program against the costs of its administration and the false sense of security its application is providing to citizens in terms of the temporary nature of its control on land use.
- ➢ The provincial government should continue to move forward with the development of a Provincial Land Use Plan.

The *Lands Protection Act* (and the Land Identification Program) has created a false impression among Island residents that some degree of land use planning in rural areas has been in place, with emphasis on protection of agricultural land, other resource lands, subdivision control. The *Lands Protection Act* is a land ownership control mechanism, not designed to control land use.

7.1.4 Applications for Non-Resident Ownership

Current Findings

Most applications from non-residents to purchase property in Prince Edward Island are for seasonal residences. As indicated on IRAC's web site, a lengthy list of factors to be considered in IRAC's advice to Executive Council include the concentration of non-resident ownership within the community of the property being purchased.

For the purpose of assessing applications, IRAC has developed a set of property maps based on 'old school district' boundaries that attempt to track non-resident land ownership across the province. Most data are obtained from property tax records and while not perfect, is as close to accurate as practically possible.

IRAC has also adopted (in the absence of specific direction from the provincial government) a 'rule of thumb' that where non-resident property ownership, or shoreline ownership, exceeds 30%, within the school district in question, a non-resident application for land purchase is likely to be denied.

Although the "30% rule" is not published, it is well known to real estate agents and lawyers involved in land transactions. The maps referred to above are also not public.

Given the interests of real estate agents, lawyers, current landowners, and buyers to see transactions proceed, this can put significant pressure on local MLAs and Cabinet Ministers.

Directions for Change

- IRAC should request Executive Council approval to add the 30% guideline (or as directed) to guidance available publicly to non-resident applicants and other stakeholders, with the caveat that public consultation may be appropriate regarding adoption of this guideline.
- IRAC should make the Non-Resident Land Ownership Maps available publicly as general guidance to applicants.
- The provincial government should amend the *Lands Protection Act* to require government to publicly proclaim old school districts closed to additional non-resident purchases of land once the 30% guideline is reached. Exemptions might be permitted for transactions between non-resident owners.

7.2 *Municipal Government Act*

Under the *Municipal Government Act*, IRAC advises the Minister responsible on proposals to establish, restructure or dissolve a municipality. Restructuring includes amalgamation and annexation, whether of another municipality or of an unincorporated area.

How a proposal proceeds

A proposal may be initiated by the Minister, by the council of a municipality, or, for a new municipality, by petition of at least thirty per cent of the persons who would be its electors. It is filed with IRAC and must contain prescribed information.

Within forty-five days, IRAC must notify the Minister, adjoining municipalities, any other municipality or First Nation it considers affected, and the Federation of Prince Edward Island Municipalities, and must publish and post notice in the affected area. Any person may respond within thirty days.

Where an objection is filed, IRAC may hold a public hearing, and must do so where the Minister has determined there is significant public interest. Where one municipality objects to another's proposal, IRAC must appoint a mediator, and a public hearing follows if the objection remains unresolved. The costs of publication, mediation and any hearing are borne by the parties rather than by IRAC.

The report

IRAC must then provide the Minister with a written report containing its findings, its recommendations and the reasons for them, within forty-five days of the hearing or of the close of the objection period. In deciding what to recommend, IRAC must consider the proposal against the Act, against the population and assessment criteria and the Principles, Standards and Criteria Regulations, and against the evidence and submissions received.

Unlike its recommendations under the *Lands Protection Act*, IRAC's report here is not confidential. Copies go to the proponent, adjoining municipalities, nearby First Nations and the Federation of Prince Edward Island Municipalities, and published on IRAC's website. The Minister then recommends to the Executive Council that the recommendations be accepted, accepted with modifications, or rejected, and the Executive Council makes the order.

Volume

This work arises rarely. IRAC's published reports over the past five years concern the dissolution of the Municipality of St. Louis in 2021, the dissolution of the Municipality of Hampshire in 2022, and four restructuring proposals in 2023. These were the Rural Municipality of Kinkora, a single parcel annexation at the Rural Municipality of Crapaud, the Rural Municipality of Miscouche, and the Town of O'Leary. There are no current applications before IRAC.

Current Findings

The Review received no submissions and heard no presentations raising concerns about IRAC's role under the *Municipal Government Act*.

The work arises rarely, the statute sets out what a proposal must contain, what IRAC must do with it and by when, and what IRAC must consider in reporting, and the decision rests with the Minister and the Executive Council. Nothing came before the Review to suggest that this role is not being carried out as the Act dictates.

Directions for Change

The Review makes no directions for change in respect of IRAC's role under the *Municipal Government Act*.

8.0 Conclusions and Transition

This review process has identified a substantial agenda for change. Its central conclusion is not that IRAC has failed, but that the institutional model created in 1991 has been overtaken by the breadth, complexity and specialization of the responsibilities now assigned to it.

IRAC remains a relatively small organization carrying a very broad mandate, and the Review has found its staff to be professional, hard-working and committed to public service. The challenge is to build a structure that better equips those people, and their successors, to perform increasingly complex regulatory, appellate and administrative functions.

The Interim Report contains approximately **65 recommendations**, reflecting the breadth of change considered necessary across PEI's regulatory and appeals system. Of these, **35 are directed to the provincial government, 17 to IRAC or its successor organizations,** and **13 to other bodies, including the Residential Tenancy Office**.

This distribution is important. Many of the issues identified by the Review cannot be resolved by IRAC acting alone: they arise from legislation, government policy, the allocation of statutory responsibilities, institutional structure, and the actions of other participants in the system.

The recommendations should therefore be understood not as a catalogue of shortcomings attributable to IRAC, but as a **shared agenda for modernization**. The provincial government carries the largest responsibility for enabling structural and legislative change, while IRAC and its successors will be responsible for translating that new framework into improved procedures, performance and service to Island residents.

The most significant proposed change is the replacement of the IRAC's present single structure with two specialized decision-making bodies: a PEI Energy and Utilities Board and a PEI Land and Appeals Board, supported by a common administrative tribunal. The purpose is to separate functions that require different decision-making expertise while retaining shared administrative capacity where duplication would add cost without improving outcomes.

Reorganization on this scale cannot, however, be treated simply as an organizational restructuring exercise. IRAC continues every day to make decisions affecting utilities, land, municipalities, businesses, landlords, tenants and individual Islander residents. Applications and appeals already underway must continue to be processed, statutory deadlines must continue to be met, regulatory oversight must continue, and parties appearing before IRAC must not be disadvantaged because the provincial government is changing the machinery through which these responsibilities are delivered. This is especially important where delays and backlogs already exist.

Transition

How this change is carried out will matter as much as what is changed, and the Review offers the following principles to guide it.

Continuity of service should be a governing principle of implementation. The new structure should not come into force until the legislation, appointments, staffing, financial arrangements, delegations, information systems, procedural rules and administrative supports necessary for it to operate are in place.

Existing IRAC staff represent considerable institutional knowledge and should, wherever practicable, form the operational foundation of the successor organizations. Transition should strengthen capacity rather than temporarily diminish it.

The provincial government should establish a Transition Implementation Team with senior representation from IRAC and the provincial government and appropriate legal, human-resource and organizational expertise. Its first responsibility should be to prepare a detailed transition plan identifying every statutory responsibility, active proceeding, staff position, contract, financial obligation, information system and administrative function that must move to the successor structure.

Particular attention should be given to transitional legislation confirming that existing applications, appeals, orders, licences, approvals and proceedings remain valid and continue without the need to restart or refile them.

Implementation should be phased rather than abrupt. Recommendations that can improve IRAC's present operations without prejudging the new structure should proceed now; indeed, the Interim Report expressly contemplates that many operational improvements can and should be implemented before structural transition occurs.

Structural and legislative changes should follow once the necessary enabling legislation and transition arrangements are ready. The final transfer of authority should occur on a clearly established date only when both new Boards and their common administrative support structure are operationally prepared.

The transition plan should also be communicated clearly to staff, regulated entities, municipalities, the legal community and the public. For most Island residents, the test of successful implementation will be straightforward: services continue, files continue to move, decisions continue to be made, and it remains clear where to go and who is responsible.

No active matter should be delayed, restarted or prejudiced solely as a consequence of the restructuring. Organizational change should not become an additional burden for the people the system exists to serve.

Implementation should be subject to accountability. The provincial government and the successor organizations should report publicly on progress against the implementation plan, including the disposition of the recommendations in the final report. An early post-implementation review should assess whether the new structure is functioning as intended, followed by the regular independent external review proposed elsewhere in this report.

The objective is not merely to create new organizations, but to establish a regulatory and appeals system that is more specialized, timely, accessible, accountable and trusted — while preserving the continuity, institutional knowledge and public service that already work well within IRAC.

The value and necessity of a well-functioning, independent regulatory and appeals tribunal system to civil society in Prince Edward Island cannot be overstated. The public engagement, submissions and advice received have reinforced that Island residents want such institutions to work well and to command their confidence. The purpose of the changes proposed in this Interim Report is not to diminish these essential functions, but to strengthen and modernize them so they can better serve Prince Edward Island into the future.

We invite your feedback on the findings and proposed directions in this Interim Report as the Review moves into its final stage.

Appendix A: Proposed legislative responsibilities

The structure recommended in section 4.1, showing which statute each body would administer.

<table>
<tr><th colspan="2">PEI Energy and Utilities Board</th></tr>
<tr><td colspan="2">ECONOMIC REGULATION
Rate setting, price setting, licensing and supervision. 5 Acts.</td></tr>
<tr><td>Electric Power Act</td><td>Rates, capital budgets, utility regulation</td></tr>
<tr><td>Petroleum Products Act</td><td>Price setting, margins, licensing</td></tr>
<tr><td>Water and Sewerage Act</td><td>Rates, construction permits, supervision</td></tr>
<tr><td>Insurance Act</td><td>Automobile insurance rate supervision</td></tr>
<tr><td>Environmental Protection Act</td><td>Waste management fee regulation</td></tr>
</table>

<table>
<tr><th colspan="3">PEI Land and Appeals Board</th></tr>
<tr><td colspan="3">APPELLATE FUNCTION
Appeals from decisions of municipalities, ministers, registrars, superintendents and directors. 25 Acts.</td></tr>
<tr><td colspan="2">Existing appellate jurisdiction</td><td>Added March 30, 2026</td></tr>
<tr><td>Planning Act</td><td>Archaeology Act</td><td>Business Practices Act</td></tr>
<tr><td>Residential Tenancy Act</td><td>Emergency 911 Act</td><td>Collection Agencies Act</td></tr>
<tr><td>Real Property Assessment Act</td><td>Water Act</td><td>Consumer Protection Act</td></tr>
<tr><td>Real Property Tax Act</td><td>Charitable Lotteries Act</td><td>Consumer Reporting Act</td></tr>
<tr><td>Revenue Administration Act</td><td>Environmental Protection Act</td><td>Direct Sellers Act</td></tr>
<tr><td>Roads Act</td><td>Climate Leadership Act</td><td>Insurance Act</td></tr>
<tr><td>Unsightly Property Act</td><td>Renewable Energy Act</td><td>Payday Loans Act</td></tr>
<tr><td>Heritage Places Protection Act</td><td></td><td>Real Estate Trading Act</td></tr>
<tr><td></td><td></td><td>Securities Act</td></tr>
<tr><td></td><td></td><td>Trust and Fiduciary Companies Act</td></tr>
<tr><td colspan="3">ADMINISTRATION AND ENFORCEMENT
Applications and recommendations to the provincial government, disclosure, investigation and enforcement. 2 Acts</td></tr>
<tr><td>Lands Protection Act</td><td colspan="2">Applications, recommendations to Executive Council, disclosure, investigation and enforcement</td></tr>
<tr><td>Municipal Government Act</td><td colspan="2">Restructuring proposals, hearings, reports and recommendations to the Minister</td></tr>
</table>

Appendix B: The Review team

The Independent Review of the Island Regulatory and Appeals Commission was led by Commissioner Rory Francis, appointed by the Government of Prince Edward Island in May 2026.

The Commissioner was supported by the following team members, who contributed research, engagement, analysis and advice across the areas the Review examined.

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