



HOUSING INDUSTRY ASSOCIATION



Housing Australians



Reforming Building & Planning Laws

Submission to the
New South Wales Productivity Commission

**Productivity Commission Green Paper
Continuing the Productivity Conversation**

18 September 2020



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ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. Our members are involved in delivering more than 170,000 new homes each year through the construction of new housing estates, detached homes, low & medium-density housing developments, apartment buildings and completing renovations on Australia's 9 million existing homes.

HIA members comprise a diverse mix of companies, including volume builders delivering thousands of new homes a year through to small and medium home builders delivering one or more custom built homes a year. From sole traders to multi-nationals, HIA members construct over 85 per cent of the nation's new building stock.

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into the manufacturing, supply and retail sectors.

Contributing over \$100 billion per annum and accounting for 5.8 per cent of Gross Domestic Product, the residential building industry employs over one million people, representing tens of thousands of small businesses and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

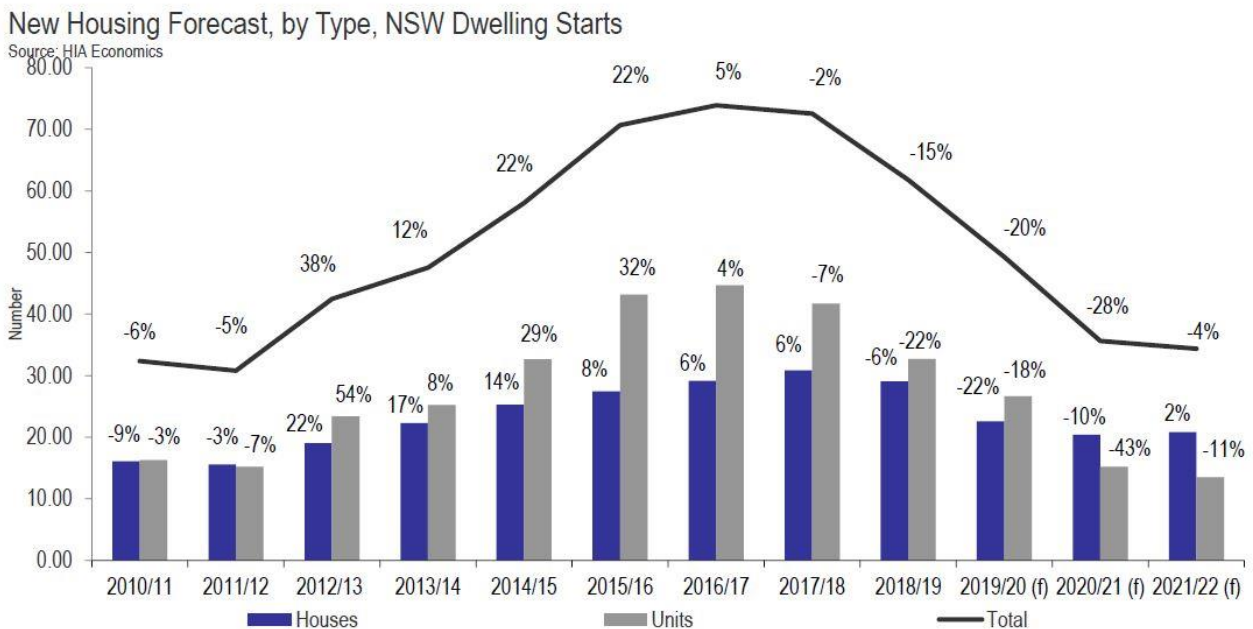
Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 22 centres around the nation providing a wide range of advocacy, business support services and products for members, including legal, technical, planning, workplace health and safety and business compliance advice, along with training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.

1. INTRODUCTION

The Housing Industry Association (HIA) has welcomed the opportunity to review and comment on the *NSW Productivity Commission’s Green Paper – Continuing the Productivity Conversation* (the Green Paper). The comments that we make in this submission follow our earlier response to the Commission on the *Kickstarting the Productivity Conversation Paper* (the Kickstarting Paper) in November 2019.

It is clear however, that the housing industry is now operating in a different economic climate than in late-2019, due to the global COVID-19 pandemic. As with other sectors of the economy, the pandemic has had a serious impact on the nation’s housing industry, with for example, HIA forecasting detached dwelling starts to decline by 9.6 percent in 2020/21, while a more substantial shock will be felt by the multi-unit market, down by 42.9 percent. Overall, total housing starts in NSW are expected to decline by 27.7 percent in 2020/21 to 35,898, down from their 2016/17 peak of 73,923, as shown in the graph below.



New South Wales was already in a vulnerable position prior to the pandemic, with the housing market cooling over the last few years. However, the further shock to housing demand, across home ownership and private rental sectors, from the loss of foreign students, tourists and migrants is a significant concern.

This submission is structured to address the issues raised in the Green Paper and is drafted against the backdrop of the current economic situation. However, as outlined previously, HIA continues to welcome a thorough analysis of the costs of delivering housing in NSW; the adoption of solutions to reduce timeframes; the streamlining of systems and processes; and a reduction in the ever increasing costs of ‘red-tape’.

Further information on this submission is available from [REDACTED]

2. HIA'S RESPONSE TO ISSUES RAISED IN THE PAPER

2.1 PRODUCTIVITY DRIVES PROSPERITY

HIA notes from the Green Paper that the NSW Productivity Commission has been tasked by the NSW Treasurer to focus on four targets:

- making it easier to do business
- making it easier to move to NSW
- making housing more affordable
- lowering the cost of living

Each one of these targets can be aligned with the aims and objectives of HIA in terms of working with governments to make business easier for our members, delivering a supply of affordable housing to meet demand and providing cost-effective energy-efficient new home options for customers.

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis. This submission demonstrates an example of HIA working with governments to make business easier for our members and other examples of recent submissions and advocacy work are referred to in the following sections.

2.2 BEST-PRACTICE TEACHING TO LIFT SCHOOL RESULTS

Recommendation 2.1 Design and implement faster and more flexible pathways into teaching to broaden the supply of quality teachers and address workforce gaps.

Recommendation 2.2 Improve the ways we evaluate teachers so school leaders can better identify and address teachers' development needs.

Recommendation 2.3 Develop an 'instructional lead' career pathway for highly effective teachers as an alternative to an administrative career.

Recommendation 2.4 Create a culture of continuous improvement that drives best-practice teaching in every classroom. Embed strategies, resources and support that are tailored to individual school needs. Make schools accountable in implementing evidence-based best practice.

While HIA does not dispute that these measure may be appropriate, the Green Paper lacks an acknowledgment of the importance of Vocational Education and Training in Schools (VETes).

Training for a wide range of skill sets and occupations needs to begin within the NSW school education system. There needs to be greater flexibility within this system to provide senior secondary school students with an environment where their 'career' options are broader, effectively conveyed by teaching staff, more transparent and readily available.

There needs to be a specific policy developed to encourage and nurture the considerable number of youths who want to take up an opportunity to embrace a career outside the school education system without completing years 11 and 12 in the traditional sense which is embedded in the existing teaching system. In terms of the residential building industry, gifted year 10 students who have the aptitude and appetite to pursue a career in a skilled trade do not need to, nor do they have any interest in, attending years 11 and 12.

An effective school education system, one successful in creating the foundations for building NSW's human capital, needs to ensure a consistent state-wide and system-wide approach to assist in guiding the Government in its decisions as to how to effectively and efficiently deliver and fund VETes.

Pursuing VET at school develops competencies that position young people to effectively participate in the NSW workforce, contributing to building the quality and size of the state's human capital.

HIA sees that there are a number of gaps in the provision of career information and advice to students regarding VET options including that:

- There is a need for greater education regarding the benefits of pursuing a skilled trade as a career option; and
- There is a need to pay more attention to the pre-apprentice and junior apprentice levels of the training sector.

These matters are elaborated on in the next section.

The opportunities and diversity available through a skilled trade career pathway are under-recognised and under-emphasised.

In its role as a Group Training Organisation (GTO), HIA has a strong focus on education, inspiration and pastoral care. HIA apprentice teams in each region attend career information evenings which encourage parent as well as student participation. School-based career days have been found to be less effective as the students tend to walk round in 'a pack' and ask relatively few questions. That having been said it would be appropriate to see a greater recognition (on behalf of the schools themselves) of the benefits of following a career pathway in the residential building industry, and many other vocational careers, at school-based career days.

HIA also attends pre-apprenticeship courses and talks to students about the GTO option. HIA works each year to gain an audience with school students to outline the career pathways available in the residential building industry.

Such programs are obviously resource-intensive and outcomes can be slow to materialise. This is an area of huge potential and much more could be achieved with greater government recognition and resourcing.

HIA recommends that a greater focus be placed on educating school students about the benefits of pursuing a career pathway through the VET sector. At the end of the day the overriding benefit of the VET sector, including VETes, is the skills, education, training and life experience that a career pathway in this sector can provide, meaning that NSW's pool of human capital grows and develops.

2.3 A MODERN VET SYSTEM TO DELIVER THE SKILLS WE NEED

Recommendations 3.1 Respond to the COVID-19 skills challenge with an ‘earn or learn’ strategy, focusing on the skills needed for the post-pandemic economy.

HIA supports this recommendation and agrees with the observations in the Green Paper that the VET system must become more flexible and adaptable.

Notwithstanding that the VET sector has already been the subject of a plethora of reviews, which, overwhelmingly recommended the need for change, the impact on the Coronavirus (COVID-19) Pandemic has brought to bear some of the key issues that plague the VET sector.

History tells us that during periods of economic volatility the risks associated with, for example, apprentice employment become evident. Workers with less work experience, primarily younger workers, are more likely to have insecure employment arrangements when compared with older more experienced workers. The disruption to the labour market during the COVID-19 crisis provides evidence of the challenges that younger workers face and highlights that the apprenticeship system can be a very precarious path. This is particularly the case in the residential building industry which is strongly influenced by the ebb and flow of housing activity which in turns influences the employment of apprentices in construction trades.

The NSW Government should follow the lead taken by the Federal Government. The national focus on supporting the VET sector through this pandemic, as the first measure announced in March 2020, further shines a light on the need for establish a skills and workforce development framework that can offer stability, certainty and a future career.

The Supporting Apprentices and Trainees (SAT) wage subsidy, which saw \$1.3 billion targeted at apprentices and trainees employed by small business to limit the risks of redundancy for apprentices during COVID-19, along with the announcement to extend this wage subsidy through to March 2021, in conjunction with an expansion to include medium sized businesses with less than 200 employees, signals the critical need to support the apprentice system.

The additional announcements of a new JobTrainer fund to provide free, or low cost, training for up to 340,000 may also provide a practical option for many people. Whether that’s reskilling or upskilling, looking at the opportunity to take on a building apprenticeship now offers a chance for workers to enter new careers and be paid while they learn.

The co-dependence between state and federal arrangements in the VET sector amplifies the need for all involved to work together to achieve mutually beneficial outcomes.

Recommendation 3.2 Introduce new pathways to trade qualifications aimed at HSC graduates and mature-aged workers. New pathways should allow students to complete the institutional requirements of a qualification before gaining on-the-job experience.

Incentivise registered training organisations to develop more flexible modes of course delivery, including after-hours learning and short intensive periods of full time study.

Establish a Training and Skills Recognition Centre to implement the new training pathways, starting in the construction sector.

Regulate to allow employment of unqualified juniors (below 21 years of age) in a recognised trade vocation outside an apprenticeship, provided they have completed or are enrolled in the relevant trades qualification.

Endorse a marketing campaign to raise the profile and awareness of new trades pathways.

HIA supports these recommendation. HIA have long held the view that greater flexibility in relation to course structure and delivery is needed, including in relation to how apprentices can be engaged. The need to raise the profile and awareness of trades as a legitimate career option must also be a focus of the NSW Government.

HIA would also welcome the opportunity to further discuss the pilot Training and Skills Recognition Centre.

Also critical is the proposal to allow the employment of unqualified juniors in a recognised trade vocation outside an apprenticeship, provided they have completed, or are enrolled in the relevant trade qualification. The take up and success of this approach however heavily depends on the approach to VET in schools discussed above and the operation of the industrial relations framework.

In the construction industry, under the *Building and Construction General Onsite Award 2010* there is no ability to provide junior rates of pay to un-apprenticed juniors.

A discounted rate for the engagement of junior labour would arguably however provide young people with a transition from school to the workforce and provide them with greater opportunity to develop the workforce skills and experience required for them to secure and maintain ongoing employment to support their future.

The predominance of independent contracting in the residential building industry also provides a unique opportunity for the VET sector. HIA estimates that more than 80 per cent of the work completed on residential buildings are performed by independent contractors.

Independent contracting underpins the flexibility, efficiency and productivity of the residential building industry and provides the economy with small business entrepreneurial drive and creates much needed jobs for others.

In light of this a constant source of frustration is the dependence of an apprenticeship on an employment relationship. This arrangement does not fit with the subcontracting arrangements that dominate the sector. Also problematic is the inherent complexity that accompanies the overlay of the employment relationship and the training arrangements.

HIA recognises that there are some obvious barriers to using the subcontracting model as a basis for an apprenticeship.

Necessarily an apprentice or trainee will be working under a high degree of supervision and subject to the employer's control and direction.

On the other hand, a contractor is responsible for their own work, is paid for output and results and is running their own business.

Again whilst HIA should support flexible training pathways, it is difficult, if not impossible under this legal framework for a legitimate independent contractor to be engaged as an apprentice. To enter an apprenticeship would almost certainly mean that the person would become an employee at law of the independent qualified person, with all the legal consequences that ensued. Even if the NSW Government were to amend the law of the state to prevent this, Commonwealth regulators like the Australian Tax Office would not be bound by this law and would be likely to treat them as an employee for tax purposes.

HIA does however see value in further work focusing on how independent contracting arrangements can be used to support the VET sector.

HIA would however couch the above commentary within the context of the success, by and large of the traditional apprenticeship model, specifically the unique combination of both on and off the job training carried out simultaneously (whether that be facilitated through employment or some other mechanism) is still the best available way to develop skilled trades. Further, the ability to earn a wage while undertaking such training (effectively a 'training wage') also offers advantages over other forms of further education.

Any change must be considered through the lens of the employability of an individual who undertakes a VET qualification in the construction industry through a pathway that does not incorporate this traditional approach.

Measures aimed at promoting trades as a career must also be a priority. HIA would commend the following recommendation of the Apprentice Expert Panel to the Productivity Commission:

Implement a strategy to raise the status of apprenticeships and traineeships including promotion as a valued career choice for both males and females.¹

For residential building the VET 'pathway' continues to be the number one entry point for most industry occupations and is necessary if individuals are to attain occupational licenses under all current state licensing regimes.

In this regard there needs to be appropriate resourcing, promoting and support of the skilled labour required to construct homes now and into the future. There seems to be a failure by governments to recognise the integral role residential building plays in the economy when it comes to the vocational education framework and funding. University cannot and should not be seen as the only way to develop a career, engaging in a trade must be promoted and supported as a legitimate career path. The support for this ideal outlined in the Green Paper is a welcome shift but much more is needed on the ground to support parents, students and businesses to showcase the opportunity that VET training offers as a genuine option.

¹ Expert Report - A shared responsibility - Apprenticeships for the 21st Century at p.15

Recommendation 3.3 Target Smart and Skilled subsidies more effectively by refining the NSW Skills List. Funding should be targeted at skills shortages and emerging business needs.

HIA supports a framework for VET funding that places high priority on industries that rely on VET qualifications as the primary means of verifying critical skills and competencies for business and occupational licensing, have a high demand for skilled labour to support productivity, provide career pathways and jobs for thousands each year, and provide a significant contribution to the economy.

In principle, HIA accepts the observations outlined in the Green Paper regarding the problematic nature of determining a 'skill shortage'. It is a complex issue that demands attention given the flow on effect such a characterisation has on funding and other arrangements.

HIA suggests that in the residential building industry, such matters are not so obtuse. We know that the two most significant challenges to growing the labour force in the residential building industry are the large cohort of workers approaching retirement, and the high rate of attrition amongst new apprentices.

HIA has also observed that there is a robust inverse relationship between changes in the number of dwelling commencements and changes in the rate of apprentice attrition (apprentices discontinuing their training). When there is an increase in the number of new homes commencing the apprentice attrition rate declines, vice-versa when the number of dwelling commencements decline.

It is also interesting to note the relationship between changes in the volume of engineering construction activity and changes in the apprentice attrition rate. It is intuitive that an increase in the volume of construction activity should generate an environment that was conducive to apprentices successfully completing their training, although the data does not support this for all sectors. An annual increase in the volume of engineering construction activity has tended to coincide with an increase in construction apprentice attrition.

The current methods also fail to take an approach which expressly considers some form of 'future proofing', for example, in compiling the latest draft skills forecasts through the Construction, Plumbing and Services IRC, a process that has taken more than 2 years, there is really no future-orientated assessment. Equally, given the lagged nature of the exercise the data could also be outdated.

Notwithstanding this, even if there was an accurate and robust way of determining skill shortages, the current VET system is not flexible enough to react quickly to meet the identified gaps. Further this task is not as simple as concluding that, for example, 'we need more builders'. Necessary skills often emerge as a subset of the encompassing qualification, making it difficult to target.

To really hone in and get a better picture of skill shortages, funding, support and actions that expedite the units needed to meet the emerging skills is necessary. This would avoid wild swings into the "qualification of the moment" and stabilise the offerings but with the more flexible units within the qualifications to meet the shortages.

**Recommendation 3.4 Promote the development and recognition of micro-credentials.
Prioritise their funding in line with business needs.**

HIA sees value in exploring the value that ‘micro-credentials’ can add to the VET sector. However in engaging in any further developments future ‘employability’ of those undertaking such course must be paramount. Further, there must be certainty that the employment market will recognize a qualification that is *‘compiled from a combination of VET, higher education and workplace-learning-based micro credentials, potentially from multiple providers, to build the precise skillset an employee needs’*; there is a sense that there may be too much specificity in such an approach.

What is clear is that choice is imperative.

An adjunct to this recommendation is to develop skill sets that are specifically tailored to the needs of the residential building industry. This approach would also address the needs of different segments within the residential building industry, some of which adopt a more modular approach to construction, while others desire trades proficient across a broad variety of skills. Skill Sets are not an unfamiliar concept and are defined by the Training Package Development Handbook defines Skill Sets as:

single units of competency, or combinations of units of competency from an endorsed training package, which link to a licence or regulatory requirement, or defined industry need.

The investigation and development of Skill Sets maybe a starting point for the development of micro credentials.

2.4 FORWARD-LOOKING REGULATION SUPPORTS COMPETITION AND INNOVATION

Draft recommendation 4.1 Extend the operation of temporary COVID-19 regulatory changes for 12 months while we evaluate their success. Keep them in place where we see a net public benefit.

HIA supports this draft recommendation. Relevantly for HIA's membership, the NSW Government, as part of the COVID-19 pandemic initiative, has permitted construction sites to operate on weekends and public holidays in an effort to keep more people in jobs and keep productivity up. This initiative should continue for as long as the pandemic is with us.

Allowing construction work to operate on weekends and public holidays has enabled builders to progress projects that might have otherwise been delayed because of the requirement to comply with COVID-19 health and hygiene requirements.

HIA has developed a set of industry guidelines to help members manage their residential building work sites and the risks from COVID-19. HIA has made these guidelines freely available on its website and also published them in a number of community languages. They have been downloaded thousands of times and are being adhered to by industry participants.

Draft recommendation 4.2 Retain the temporary adjustments to regulatory and legal formalities, including digital solutions to replace paper-based reporting, physical witnessing and attestation of documents and various other in-person requirements for compliance. Explore opportunities to similarly update other outdated regulatory requirements.

HIA supports this draft recommendation and the recommendation arising out of Case Study 4.1 to post notices solely on the web. The 85 sections of regulation that have been identified requiring the publication of written notices is antiquated and should be updated to reflect present day practices and technologies.

HIA would also urge the Commission to look into improvements that Fair Trading could make to its administrative practices. For instance, there should be a means, such as through an online portal, to apply for a trade contractor or builders licence online rather than having to physically attend a NSW service centre.

Despite the fact that there is a temporary regulation made under section 17 of the *Electronic Transactions Act 2000*, which allows for the witnessing of legal documents such as wills, powers of attorney and statutory declarations, an interstate builder still has to physically attend a NSW service centre to make an application for a mutually recognised licence. HIA is aware of a number of Victorian members who have been prevented in recent weeks from making an application for a NSW licence because the making of such an application is not considered an authorised permitted purpose under the Public Health (COVID-19 Border Control) Order 2020 and as a consequence they have been prevented from entering NSW.

Such a situation is scarcely credible in the current climate. A NSW builder is able to make an application to the Victorian Building Authority by filling in a mutual recognition application form and

simply posting it to a GPO Box. Providing a similar means for making applications in NSW is something that could be implemented immediately and could remain in place until, or alongside an electronically delivery system, which would take some time to establish.

Draft recommendation 4.3 Pursue automatic mutual recognition, or if that is not possible, unilaterally recognise occupational licences from other jurisdictions to help overcome skills shortages in New South Wales.

HIA strongly supports this draft recommendation.

The Green Paper outlines the two options available under the *Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014*, namely Automatic Mutual Recognition (AMR), or unilateral recognition. HIA submits that AMR is preferable to unilateral recognition but recognises that unilateral recognition can be utilised and would nevertheless be more beneficial than the status quo remaining.

The Green Paper mentions the Productivity Commission 2015, Mutual Recognition Schemes, Research Report, Canberra (the PC Report 2015). That Report contained the following comment, 'The fact that AMR can be made to work during emergencies is prima facie an argument supporting its adoption on an ongoing basis.' It is disappointing that five years have passed since the PC Report 2015 and none of its recommendations have been adopted.

Recently, HIA made a submission to Fair Trading in its Review of The Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014. The purpose of that Review was 'to ensure that it is still fit for purpose and achieving its intended policy objectives.'

In that submission HIA observed that although there are a number of practical impediments facing the implementation and running of an AMR Scheme, those impediments are not insurmountable.

Further, HIA argued that NSW should be working with the other states and territories to automatically mutually recognise licences for both occupations and businesses.

HIA recognised that AMR is limited to occupational licences and not business or contractual licences. A 'person' is defined in the Act as being an individual and does not extend to corporations or partnerships and that this definition would need to be amended in the Act or an additional provision would need to be inserted.

HIA agrees with the view expressed in the Green Paper² that a start could be made with the building and construction industries.

Draft recommendation 4.4 Reform mandatory Continuing Professional Development by removing requirements where costs exceed benefits.

HIA agrees with this recommendation but is of the view that it should be accompanied with a recommendation to establish a consultation process to discuss findings and proposals with interested parties on the various Continuing Professional Development (CPD) schemes.

² Page 93

As outlined in response to the *Kickstarting the Productivity Discussion* paper HIA pointed out that since 2005 builders have been required to undertake 12 points of CPD activity every year by doing courses or learning activities that are delivered by training providers and industry experts. Builders can earn 1 point per hour for activities which include attending seminars, workshops or conferences, or two points per hour for activities which provide formal assessed learning from a relevant Australian Training Package delivered by a registered training organisation or university.

It is a requirement of the *Home Building Act* that CPD must be completed before an application for renewal or restoration of a licence or certificate will be approved.

As previously noted, HIA supports an industry culture of continuous improvement that promotes quality in construction of the built form, in compliance, professionalism and customer support.

The Green Paper quotes HIA's observation, that 'there is no evidence that mandatory CPD raises on-site building standards or delivers a significant net public benefit with those states operating mandatory CPD schemes still encountering a similar level of building disputes and defects.'

HIA agrees with the observation in the Green Paper³ that complying with annual CPD requirements 'takes time away from more productive activities, imposes a cost on businesses and offers little community benefit.'

As the Green Paper recognises the Independent Pricing and Regulatory Tribunal (IPART) in 2014 concluded that CPD neither guarantees that learning takes place nor does it guarantee that these 'learnings' will be translated into changes that improve practice within the industry.

Further, allowing CPD to be voluntary encourages licence holders to take initiative and direct their own learning. And voluntary initiatives enable the market participants to differentiate themselves from others.

HIA is prepared to participate in any round of consultations that may be established to review the Home Building CPD scheme.

Draft recommendation 4.19 Create a best-practice regulatory policy framework, with Regulatory Stewardship as the cornerstone, that promotes rigorous and transparent impact assessments and improves regulator performance.

HIA supports this draft recommendation. There are many reforms that can be made to improve the quality of regulation and the regulatory policy framework. As highlighted in the Green Paper, the conducting of regulatory impact analysis needs to be improved. This is something that HIA has long argued should occur.

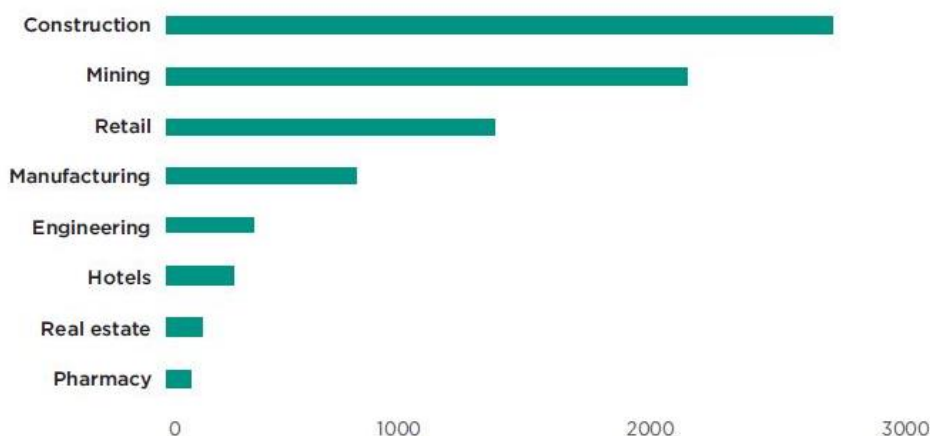
The text and Figure 4 below were taken from NSW Treasury's recently released report *Regulating for NSW's Future*. It is a timely release and compliments the Green Paper, in particular section 4.3 *Build a higher-performance regulatory framework*. It clearly shows that the construction industry is

³ Page 95

extremely heavily regulated and very likely will provide wide benefits both to industry participants and the wider community where efficiencies are introduced to the regulatory policy framework.

Understanding where the volume of regulation is highest: This can help us strike that balance. It allows regulators to consider the extent to which regulation is protecting public interest, while simultaneously allowing businesses to flourish. For example, there are 2,596 sections in NSW regulation relating to the construction industry (see Figure 4). In addition, in the NSW Business Chamber’s Red Tape Survey, construction workers reported their industry as being the third most regulated industry, behind utilities and financial services.

FIGURE 4: NUMBER OF SECTIONS IN NSW REGULATION FOR A SELECTION OF INDUSTRIES/PROFESSIONS.



Source: RegExplorer (May 2020)

Source: RegExplorer (May 2020)

The report states that:

Even small improvements to our regulatory framework have the potential to drive significant economic benefits. A saving of just 5 per cent of compliance costs in New South Wales could result in a net benefit between \$0.6 billion and \$4 billion.

This range in resultant benefit is based on estimates from Deloitte (2014), *Building the Lucky Country* and NSW Business Chamber (2016), *Red Tape Survey*.

The Green Paper outlines four guidelines, which if introduced, it is argued, will improve the practical effectiveness of regulatory impact analysis.

The first is *Assess regulatory proposals early and rigorously*. HIA supports this. The NSW Treasury *Guide to Better Regulation* at present only suggests that agencies ‘should consider engaging with the Regulatory Improvement Branch as early as possible during the policy cycle, to discuss the Better Regulation requirements.’ The proposal in the Green Paper to make it a requirement for agencies to engage the Regulatory Improvement Branch as early as possible will inevitably bring improvements and efficiencies.

The second guideline is to *Have an independent body transparently review RISs*. HIA supports this guideline. As noted in the Green Paper, 'regular public reporting is an important mechanism to improve agency accountability and engagement with affected stakeholders.' It is also noted that the Commonwealth Office of Best Practice Regulation and the states of Victoria and Queensland have bodies that publish certifications or letters of adequacy regarding RISs to enhance the quality of analysis and promote transparency.

The third guideline is to *Apply a common and proportionate standard to regulatory impact analysis*. This standard will be based on the significance of the anticipated impact rather than any specific regulatory instrument. HIA supports this approach.

The fourth guideline is to *Make the best use of stakeholder engagement* as a key component of regulatory impact analysis. HIA is pleased to support this proposed guideline. It has all too often been the case that stakeholder engagement in past processes has been too little too late and has led to unforeseen consequences that could easily have been avoided if stakeholder engagement had occurred earlier in the process.

HIA submits that if the proposed reforms of regulatory impact analysis are put into practice, and if the new tools mentioned in the same section to improve regulator performance and reduce administrative burdens are adopted there will be immense productivity gains as a result.

2.5 MEET THE CHALLENGE OF RELIABLE, WELL-PRICED WATER AND ENERGY

The *Green Paper* makes fourteen recommendations for providing reliable, well-priced water and energy for NSW. HIA supports these recommendations in principle, and provides some additional comments on energy and water below.

2.5.1 Energy

HIA's submission on the *Kickstarting the Conversation Paper* outlined the importance of providing affordable energy to encourage investment in Australia by Australian building product manufacturers. It is therefore, disappointing that the *Green Paper* seems to skim over this issue with the focus of energy costs largely limited to the impacts on household expenditure.

Australian building product manufacturers employ thousands of people in NSW, but have endured costs increases in energy in the tens of millions of dollars over recent years, putting these jobs at even greater risk. Therefore, it is imperative that the NSW Government explore options for providing affordable energy for building product manufacturers so that they can continue retain their workforces and continue to employ thousands of people.

2.5.2 Water

The *Green Paper* recommends that BASIX water targets be reviewed to ensure that they are meeting both economic and environmental objectives. HIA submits that any review should focus on how the targets are achieved rather than just the overall numeric targets themselves. HIA supports the *Green Paper's* position that providing water tanks to new dwellings is an overly costly requirement that provides very little, if any, benefit.

It is currently very difficult to satisfy the water targets for new dwellings without providing a water tank, even on small lots of 250-350 square meters. This often leads to the tank having to be buried underground or built into the concrete slab, which can cost an additional \$10,000. Water tanks and the associated pumps require regular maintenance for the full benefit to be realised, but more often than not home owners and, in particular investors, do not carry out this maintenance, instead preferring to simply disconnect or 'turn off' the pump. This means a significant upfront investment is often wasted, despite there being more affordable options for water saving measures.

HIA would welcome the opportunity to engage with the NSW Government on alternative and more flexible options for meeting BASIX water targets

2.6 SMARTER INFRASTRUCTURE WILL SUPPORT JOBS AND COMMUNITIES

The Green Paper makes six recommendations relating to smarter infrastructure, covering planning for growth, infrastructure spending, smarter use of infrastructure and the opal fare structure.

HIA supports the general intent of the recommendations and in particular the recommendation to better integrate land release for housing and employment with infrastructure planning. This is covered in part by draft recommendation 6, as follows:

Draft recommendation 6.1 Change planning controls to enable more housing and business activity within reasonable walking distance of transport hubs on underutilised corridors

The discussion provided in the *Green Paper* about land release for housing and employment however, is much broader than transport hubs as it also addresses the work being undertaken by the Greater Sydney Commission (GSC) in relation to Place-based Infrastructure Compacts (PIC).

The GSC has led work on the development of PICs to coordinate planning and delivery of new jobs and housing supply and to ensure that the required infrastructure is delivered as needed. This infrastructure is for water and energy utility supply as well as for roads, rail and public transport.

HIA is already working with the GSC in relation to the Western City Parkland PICs, which includes the Western Sydney Aerotropolis.

2.7 PLANNING FOR THE HOUSING WE WANT AND THE JOBS WE NEED

The *Green Paper* makes eight recommendations relating to the role the planning system plays in the delivery of productivity growth. HIA has noted all draft recommendations and offers comments on the draft recommendations relevant to the housing industry, as set out below.

Draft recommendation 7.1 Require councils to analyse housing supply capacity and show that planning controls are consistent with the dwelling needs identified by Greater Sydney's 20-year strategic plans for 5-year, 10-year and 20-year windows.

Where a lack of capacity is identified, ensure councils revise their Local Housing Strategies and Local Strategic Planning Statements to reflect the objectives identified in the Greater Sydney strategic plans.

Ensure councils immediately update relevant planning instruments to meet 6-to-10-year housing targets and report housing completions by Local Government Areas every six months.

Publish annual 10-year forecasts for State-led/partnered precincts.

Monitor housing forecasts and projections on a six-monthly basis. Where housing shortfalls arise, require councils to revise housing strategies and Local Strategic Planning Statements to indicate how the shortfalls will be remedied.

HIA strongly supports a land supply mechanism that is transparent, timely and provides sufficient land to meet demand for new housing and agrees with the intent of the recommendations in this section of the *Green paper*, as follows:

The changes proposed in this section are designed to reduce the time and costs that the housing industry faces in navigating the planning system. These changes will help the industry to deliver adequate development supply—particularly housing—to meet the demands of a growing population. They will also allow the system to continue meeting the needs of communities.

It is important that the Government maintains an adequate supply of land for housing in NSW and to this end, provides housing targets and mechanisms to deliver land to meet those targets.

HIA has estimated that around 50,000 new dwellings are needed on average each year for the next 20 years to meet housing demand across the state. This target is based on population growth forecasts and is consistent with the data provided for projected housing demand in the *NSW Housing Strategy Fact Pack*. This forecasts a best estimate of around 40,000 new dwellings needed each year for the next 20 years, for the Sydney metropolitan area (excluding regional NSW).

Recent events have demonstrated the need for housing policy to be 'dynamic' as unforeseen situations can change projections. For example, the COVID-19 pandemic is having an impact on demand for home ownership and on rental markets due to economic instability and lower immigration rates.

The Green Paper notes the role that the Local Strategic Planning Statements (LSPS) and Local Housing Strategies (LHS) prepared by local councils will play in identifying the land to meet housing targets. In this regard, it is important that the LSPS and LHS are regularly reviewed and evaluated to ensure that they continue to be aligned with population projections and reflect a true picture of land available for development.

It would also be helpful to industry for the Government to establish an online resource for industry to show which councils have prepared an LHS and the status of that document. A similar type of online resource already exists for LSPS on the Government's Planning Portal

Constraints affecting the supply of housing are sometimes applied by governments after the land has been rezoned for housing, and this can restrict the potential for that land to be fully developed consistent with its zoning. Developers and home builders can face a range of barriers to building on land zoned for residential development that can be applied at any stage of the planning process. These barriers may relate to changes in the biodiversity value of the land or as a result of archaeological surveys. This matter is discussed in more detail in HIA's Policy on *Truth in Zoning* and a copy of this policy is attached.

Draft recommendation 7.2 Review and revise SEPP 65, aiming to minimise prescriptions so as to ensure maximum flexibility for housing that matches consumer choice while maintaining minimum basic quality.

Review the Guide to Traffic Generating Developments by the end of 2021 to ensure it reflects current travel behaviour and the best approach to traffic management.

Review parking controls within strategic centres and areas with good public transport accessibility. Reduce car parking requirements within 800 metres of public transport nodes by the end of 2021.

HIA supports the draft recommendation to review and revise SEPP 65 and we are aware that the NSW Government Architect has already commenced work on a new *Design and Place SEPP* that will incorporate SEPP 65 - *Design Quality of Residential Apartment Development* and the *Apartment Design Guide* (ADG).

In NSW the market price of an apartment is influenced by the minimum apartment size set-out in the ADG. The minimum apartment sizes in the ADG, are set for councils by SEPP 65.

Clause 6A of SEPP 65 specifies that Development control plans cannot be inconsistent with the ADG and that *if a development control plan contains provisions that "...specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect"*.

The minimum size for a 2-bedroom apartment in the ADG is 70 square metres. This is higher than for the equivalent Victorian standard, which defines minimum room size, rather than the overall apartment size. The *Kickstarting the productivity conversation paper* included an example demonstrating that it is possible to design a 65 metre square, two-bedroom, two-bathroom apartment, within the Victorian standard. This is a saving of 5 square metres over the ADG minimum size.

With the average price for a new apartment in Sydney around \$10,000 per square metre, every increment of 5 square metres would add \$50,000 to the price. This amount would fluctuate depending local amenity and address. Therefore, an amendment to the ADG to parallel the Victorian standards would provide the opportunity to bring smaller, more affordable apartments to the market.

A reduction in the size of apartments would not necessarily impact the ability of homeowners to secure loans from financial institutions. While the exact requirements for apartment loans are determined by the lender's willingness to accept risk, the general guide is that the apartment should be a minimum of 40 to 50 square metres (excluding the balcony and any car spaces).

In view of the above, HIA is supportive of the following comment made in the *Green Paper* (refer page237):

Amendments to SEPP 65 should give consent authorities flexibility to vary design guidelines where alternative measures can result in similar or better outcomes to existing minimum sizes. This will enable delivery of innovative dwelling types that can be produced at more affordable prices.

HIA also support measures to improve affordable housing options by reducing car parking requirements for apartments in close proximity to a train station or light rail stop. The NSW Government is currently looking at reduced car parking requirements for new housing types in the new Housing Diversity SEPP. These housing types include boarding houses (newly defined), build-to-rent, co-living and purpose built student housing.

Draft recommendation 7.6 Continue to implement measures to reduce red tape and complexity in the planning system. Bring NSW approval assessment times into line with other jurisdictions' times by the end of 2023.

HIA supports this draft recommendation that is seeking to address steps the Government can take to reduce red tape and complexity in the NSW planning system, and to speed up approval time frames.

The largest contributor to the red tape costs are associated with bringing land to market and the inefficiencies of the planning system in NSW, with these costs are ultimately borne by the new home buyer.

In 2018, HIA commissioned the Centre for International Economics (CIE) to undertake research to find out the regulatory costs of bringing land for housing to the market. The research found that that the regulatory costs, including delays and uncertainty created by the NSW planning system, amount to some \$222,000 per block of land in Greater Sydney.

The findings of the CIE research was that for Sydney around 50 per cent of the cost of a new house and land package is incurred through red tape, taxes and charges. In comparison in Melbourne the figure is 37 per cent and Brisbane is 32 per cent. The CIE report, also revealed that for an apartment home in Sydney, 'red tape' and tax accounted for 37 percent of the purchase price.

HIA supports the extensive work currently being undertaken by the NSW Government to adopt measures to fast-track assessments and speed-up approval times for both major projects and smaller scale council-assessed development applications. This work includes the recent improvements to the planning system during the COVID-19 pandemic with the introduction of the Planning System Acceleration Program and the Planning Delivery Unit, as well as the longer-term commitment to e-Planning.

It is also imperative that the Government continue to support the use of the exempt and complying development planning pathways for fast-tracked assessments. HIA members rely on complying development for fast-track assessment of straightforward proposals.

Draft recommendation 7.7 Develop a consistent approach to measuring benefits to community welfare from the provision of open and green space to help inform government business cases involving development.

Develop better options for taking into account green infrastructure and public space in strategic land use planning.

The Government is currently undertaking a substantial body of work on green infrastructure and public space, including the *Draft Greener Places Design Guide*. HIA made a submission to the draft *Design Guide* which was on public exhibition from 25 June 2020 to 28 August 2020.

HIA's main area of comment relating to the *Design Guide* was about strategies to increase tree canopy on private land as this has the potential to reduce development feasibility for the housing industry, particularly on smaller blocks.

If the deep soil area requirements on development sites, are increased, the land remaining for the building footprint will be reduced and this will lead to an increase in the development of two-storey homes. The result of this is an increase in the cost of building per square metre for those homes, along with a reduction in the capacity to build homes that are accessible.

Therefore, any policies to increase deep soil and urban tree canopy on residential sites may impact development feasibility and also conflict with other policy objectives to stimulate housing affordability and adaptable housing. Policy should therefore be directed towards planning for pocket parks and green buffers in greenfield developments and by investing in more street trees on verges in new and existing suburbs. These types of green spaces are often included in local infrastructure contributions plans and funded by development contributions.

Draft recommendation 7.8 Progress reforms to the infrastructure contributions system after the Productivity Commissioner's current review, to deliver a principles-based, transparent and certain system.

HIA agrees with this draft recommendation and has contributed to the Productivity Commissioner's current review of the state's infrastructure contributions system.

Our general position on infrastructure contributions is that governments have a responsibility to implement infrastructure programs to support growth in a manner that ensures the investment cost is shared equitably across the whole community and this appears to be the intent of the statement made on page 251 of the *Green Paper*, as follows:

Infrastructure contributions can ensure developers are charged appropriately for the additional demand their projects place on the community. At the same time, if we are to improve living standards, we must maintain adequate housing supply to accommodate a growing population. This means infrastructure contributions cannot place an undue burden on new development, at least in cases where service improvements are more appropriately paid for by users and the wider community.

Furthermore, the Green Paper (refer page 252) acknowledges the following:

The contributions system is inherently constrained, as contributions are a charge levied only on new development; the system is not intended to cover the cost of infrastructure needed as the population grows.

The equitable sharing of infrastructure costs across the community however, is not the case in NSW, with development contributions now so high that they are impacting the rate of building and the affordability of new homes for buyers. We are aware of cases in Western Sydney of combined State and local infrastructure contributions being upwards of \$90,000 per lot. These direct and upfront levies to fund community infrastructure are passed on to the end consumer (the home buyer) having a significant impact on housing affordability and potentially make residential development unfeasible.

HIA made the following key comments on the Productivity Commission's recent *Review of Infrastructure Contributions Issues Paper*:

- The Paper focusses on fixes to the existing infrastructure contributions system. This however, is at odds with the Minister's terms of appointment for the review, which was for a bold, holistic review of the State's infrastructure contributions system and to provide recommendations for a new system. When announcing the appointment earlier this year, the Minister said that "*contributions reform has been stuck in the too-hard basket for too long, but we are committed to working with industry to deliver true change*". However, page 57 of the Issues Paper indicates that the way forward for the review will be the further exploration of existing components of the system, rather than the delivery of "*true change*".
- The Paper fails to adequately factor in the downturn in the economy from the COVID-19 crisis. Reference is made to the 2008-2009 Global Financial Crisis (page 52) and the recovery of the housing market in 2012, but there is limited assessment of the impact of COVID-19 on the industry.

HIA looks forward to reading the Productivity Commission's final report on the review of infrastructure contributions later this year.

2.8 A BETTER MIX OF STATE AND LOCAL TAXES CAN ENCOURAGE GROWTH

Draft recommendation 8.1 Replace inefficient taxes with more efficient ones. Start by replacing transfer duty with a broad-based land tax. Before proceeding, identify how various designs will improve the economy and the state budget, and how adverse impacts on various groups can be minimised.

Propose, for consideration by the Board of Treasurers, the establishment of a single interjurisdictional body to coordinate the adoption of a consistent approach to the administration of payroll tax systems in all states and territories.

2.8.1 Transfer Duty

As noted in the Green Paper, property transfer duty accounted for 22% of state revenue in 2018-2019, the second highest source after payroll tax. It is, as the Green Paper recognises an inefficient, volatile tax that penalises individuals and hinders the ability of homeowners to move dwellings.

HIA supports the intent of draft recommendation 8.1. Replacing transfer duty with a broad-based land tax is a sensible measure, however this alone is not enough.

In its *Kickstarting the Productivity Discussion* submission HIA made the point that while HIA supports the move to a broad-based tax HIA also supported a 'restructuring of the GST so that (effectively) new housing construction is exempt and that the application of GST to new housing construction and existing housing is similar.' HIA submits that this proposal should be explored.

There is a glaring absence in the Green Paper of any recommendations or discussion about the interaction between NSW taxes and those of the Commonwealth. For example, the only mention of GST in the Green Paper comes at the end under 8.4 *The transition is the biggest obstacle* and only to make the comment that in supporting state tax reform, 'the Commonwealth should ensure that states are not penalised with a lower Goods and Services Tax (GST) share as a result of undertaking productivity-enhancing tax reforms.'

Draft recommendation 6 of the *NSW Review of Federal Financial Relations Draft Report* (FFR Draft Report) relevantly states:

State governments, in consultation with the Commonwealth, should assess and agree options for lifting the GST rate and/or expanding the base over the medium to longer-term to offset base erosion and move away from more harmful taxes.

The Green Paper makes numerous references to the FFR Draft Report but is silent in respect of the GST draft recommendation, which is rather concerning as this would appear to be an ideal opportunity to canvas opinion on such an important issue. This may be a missed opportunity.

2.8.2 Payroll Tax

HIA supports the proposal to establish a single interjurisdictional body, if that is what is required to assure a consistent approach to the administration of payroll tax systems in all the states and territories.

The proposal and recommendation do not go far enough.

It is recognised in the Green Paper that the differences in thresholds creates inefficiencies and wastes resources but does not go the next logical step and recommend their harmonisation, only the harmonisation of their administration.

By having a single threshold firms would be disincentivised to move to another jurisdiction to avoid a greater payroll tax liability.

HIA understands the logic of the observation made in the Green Paper that reducing the threshold of payroll tax would remove the distortions created when firms decide not to employ additional staff so to avoid being tipped over the threshold. However, HIA has real concerns that such an expansion would create yet more red tape and compliance costs on thousands of businesses who currently are unburdened with complying with this tax.

Newly captured businesses would also have to wrestle with the complex payroll tax legislation covering contractors. Due to the definition of 'wages' and who is an 'employee' for payroll tax purposes payments made to independent contractors are often liable for payroll tax. HIA opposes the existing definitions of 'employee' and 'wages' under the harmonised payroll tax laws. HIA supports a definition of contractor that exempts businesses that satisfy the results test and alienation of personal services income (APSI) rules under the Commonwealth income tax laws.

Payments made to contractors can be excluded, but only if a convoluted set of exemptions based around days worked can be met. Separating out the labour component from, amongst other things, the cost of the supply of materials when presented with a contractor's invoice is not a simple task and can represent a real challenge in terms of time spent in such administration.

Capturing thousands more businesses and requiring thousands more to pay the tax and comply with the rules of the scheme will not increase productivity.

2.8.3 Foreign Investor Surcharge

From 2016 foreign persons acquiring residential property in NSW have been liable to pay a surcharge purchaser duty (Stamp Duty Surcharge) in addition to the usual duty paid on purchase. A land tax surcharge (Land Tax Surcharge) was also introduced and commenced in 2017. On its commencement, the surcharge duty was an additional 4 per cent, while the land tax required the payment of an additional 0.75 percent. Since then the surcharge duty has doubled to 8 per cent Stamp Duty Surcharge while the Land Tax Surcharge has increased to 2 percent.

On its introduction, the measures led to an unintended consequence in that they applied to existing and long standing NSW-based home builders that had a degree of foreign ownership.

Under the 2016 reforms these businesses were required to pay the surcharge when purchasing land for the purpose of building new homes for the NSW market, which is their core business. It is important to note that in Victoria and Queensland this outcome was avoided by the introduction of a concession in relation to the payment of the additional duties where the residential construction company is an Australian-based company whose commercial activities involve significant development by adding to the supply of housing stock and where such development is primarily residential.

To redress this issue measures were adopted in the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017* (2017 Act) that provided surcharge concessions to Australian-based developers who are foreign persons.

Under sections 104ZJA of the *Duties Act 1997* or 5C of the *Land Tax Act 1956*, there are two forms of concession:

- A. An exemption from Stamp Duty Surcharge or Land Tax Surcharge if NSW Revenue is satisfied that the foreign person will use land, in respect of which the person would otherwise incur liability for surcharge, for the following purposes:
 - o construction and sale of new homes, or
 - o subdivision and sale for new home construction.

Revenue NSW may apply the exemption to a surcharge liability arising before the exemption was granted, thereby entitling the foreign person to a refund of surcharge payments already made.

- B. A refund of Stamp Duty Surcharge or Land Tax Surcharge where the foreign person has not been granted an exemption from surcharge, but has used land in respect of which surcharge has been paid for either of the purposes specified under the first concession.

While revenue ruling G013⁴ addresses item A above, HIA is aware that no exemptions have been granted. Instead, HIA understands that Revenue NSW simply rely on the Australian based developer applying for a refund available under the second limb outlined above.

In HIA's view this is simply another form of unnecessary red tape that not only sits at odds with the 2017 Act to ensure that those Australian based developers are not impacted by arrangements that were never intended to affect them but also takes away from the Government's commitment to resolve the '*competitive disadvantage faced by foreign-owned residential property developers relative to Australian-owned developers*' that was outlined in the 2017 Budget Papers.

HIA again asks that the arrangements provide a full, ongoing and upfront exemption from both the Stamp Duty and Land Tax surcharges and that those affected businesses be encouraged to apply for this exemption. This is a sensible approach both administratively and in terms of 'business on the ground'.

⁴ <https://www.revenue.nsw.gov.au/help-centre/resources-library/g013>

Draft recommendation 8.2 Use the Review of Infrastructure Contributions to find ways to deliver a more sustainable system of rates and infrastructure contributions, so that councils can provide the infrastructure and services required to accompany development and growth.

Evaluate reforms within three years and if reforms do not provide sufficient funds to deliver services, councils should hold a plebiscite of ratepayers to test support for abolishing the rate peg.

HIA supports this draft recommendation. Having an evaluation within three years of whether or not the reforms provide a sufficiency of funds to deliver services is appropriate.

Further detail about the form of plebiscite would have been useful. For example, is it being proposed that a plebiscite occurs at the individual council level? This could lead to very disparate outcomes for local residents depending on what side of a council boundary they live.

After briefly outlining the two different categories of development contributions, namely Development Specific Infrastructure and the Community, Social and Regional Infrastructure, HIA submitted that the levies and charges applied to development to cover infrastructure which falls within the Community, Social and Regional Infrastructure category, significantly affect new housing affordability and in effect act as a tax on new homebuyers.

It is HIA's overall position that governments have a responsibility to implement infrastructure programs to support growth in a manner that ensures the investment cost is shared equitably across the whole community.

Delivering a more sustainable system of rates and infrastructure contributions accords with HIA's broad policy position in that any charges for social and regional infrastructure should be borne by the whole community and funded from general rate revenue, borrowings or alternative funding mechanisms.

Funding for this infrastructure should not be charged to the development industry through planning agreements as presently happens. The imposition of up-front levies on development is passed on to the new homebuyer, this is inequitable and erodes housing affordability and potentially impacts the feasibility of projects.

The Green Paper notes that on 18 June 2020, the Minister for Local Government announced the Government's response to IPART's Review of the Local Government Rating System. As part of that response the Government is going to change the rate peg to account for growth in population and the increasing concomitant demands that makes on services. HIA welcomes this announcement. Once implemented it should lead to less dependency on development contributions and improve housing affordability for new homes for the consumer.

As part of that announcement the Government stated it 'will focus on ensuring that councils can align income growth with population growth. This will be complementary to reforms to reduce the cost of infrastructure contributions currently being considered by the NSW Productivity Commissioner.'

HIA is participating in this extensive review of the State's infrastructure contributions system. Indeed, HIA provided its first submission in mid-June. It is appropriate that HIA is providing greater detail and argument about infrastructure contributions in that review.

HIA agrees with the observation⁵ contained in the Green Paper that the transition to a more efficient, fairer broader based tax will probably be a long process and will be a major obstacle. This does not mean that reforming the current situation of narrowly based transaction taxes towards a broad land tax base should not be embarked upon. Challenges will inevitably present themselves, but with the right approach and broad consensus they will not be insurmountable.

⁵ Page 264



Truth in Zoning

Policy Background

- The supply of land for housing development is influenced by zoning, subdivision approvals and the development approval process.
- Developers and builders face a range of barriers to building on residentially zoned land that can be applied at any stage of the land and housing supply pipeline.
- Many constraints affecting the supply of land for housing:
 - emerge in planning scheme requirements after land has been zoned for residential purposes;
 - have a layered approach and a cumulative effect on the development that can ultimately take place on a single parcel of land;
 - can quarantine or sterilise land from development at any stage of the process, despite being zoned for residential purposes;
 - can relate to the risk of natural hazards or to broader social or environmental concerns that are not specific to a single parcel of land; and
 - are being applied to zoned land retrospectively.
- Some constraints relate to mapping of natural threats such as anticipated threat of bushfire or sea level rise/inundation, threatened species identification.
- Others can be non-environmental and can include heritage matters, presence of easements and other design and development related requirements.
- While each is a potentially valid claim for land to be preserved or development to be managed in a specific way, in many cases the request by authorities to address these constraint is made at an inappropriate stage of the development process resulting in significant delays and additional costs.
- In some cases, this can result in highly valued residential land being removed from the land supply pipeline as no longer appropriate for development.
- The outcome is that despite land being residentially zoned the heightened level of uncertainty results in financial risk, additional costs, delays and ultimately a restriction on the supply of build ready land.
- Governments need to be responsible for providing greater certainty over when constraints are applied to land through the zoning, subdivision and development approval processes to ensure that land owners are aware of all potential matters that may affect the future use of that land for residential purposes at the earliest possible time.

HIA's Policy Position on Truth in Zoning

1. Governments (being all governments or relevant authorities) should provide certainty in the application of planning controls on residential land.
2. In applying planning and environmental controls to land, Governments should firstly verify and then disclose all known constraints which they intend to apply and at which stages of the development process.

3. The key stages at which known constraints should be declared and applied by governments are:
 - a. Designation for urban development;
 - b. Zoned for urban development;
 - c. Subdivision planning approval; and
 - d. Registration of title and sale or redevelopment of lots.
4. The known constraints should only be applied by Governments at the designated stage in the development assessment process. (as set out in Attachment A)
5. If a constraint is missed, or unknown, by a government at an earlier stage of development, it cannot be retrospectively applied unless appropriate compensation is provided to the property owner for the reduced development rights.
6. All major constraints on land should be accounted for by the build stage (that is prior to stage 4: registration of title) leaving builders, and home buyers, to only account for site layout, setback matters and known environmental constraints as outlined in council planning schemes.
7. Requests from councils to apply constraints that have no foundation in state planning schemes or documents incorporated within planning schemes should be rejected outright.

ATTACHMENT A – Constraints on Land and their Application by Authorities

This attachment seeks to provide a list of constraints that are typically applied in the zoning, subdivision and planning approval processes and nominates the preferred stages in the land supply pipeline that HIA considers they should be identified or applied (if they are to be included at all).

The changing planning environment means that this is an indicative list that remains live and able to be adjusted over time. HIA policy position sets out the nature of the problem and industry's preferred approach. The stages are intended to mirror the six stages of land development identified by the National Housing Supply Council (2010). For the purposes of this Policy they have been combined where appropriate.

Stage 1 Designation of Land for Urban Development Zone

The constraints listed below should be identified prior to designation of land of urban development zone.

Constraints to be identified when land is Designation for Urban Development	
Open space	Open space allocation including major regional open space parks already operational includes State and National Parks
Airports	Location of airports and environs, includes any future airfields
Roads	Freight and major road links
Major Infrastructure	Pipelines for utilities including gas and electricity
Facilities for renewable energy	Any area set aside for wind farms or similar.

Stage 2 Zoned for Urban Development

The constraints listed below should be identified prior to rezoning any land from a general Urban Growth/Future Urban zone or rural zonings to a specific purpose zone, e.g. residential, public land, special purpose zonings.

Also at this stage planning scheme overlays or structure plans may be prepared which might also seek to apply a constraint on land e.g. identification of flood prone land, heritage areas, site coverage (density), slip, slope, subsidence and so forth. These constraints should also be declared at this stage to increase certainty for land owners.

Constraints to be Identified when land is Zoned for Urban Development	
Environment and landscape overlays	Could include environmental significance overlay Vegetation protection overlay Significant landscape overlay
Heritage and built form overlays	Heritage overlay Design and development overlay Incorporated plan overlay Development plan overlay Neighbourhood character overlay

Constraints to be Identified when land is Zoned for Urban Development	
Land management overlays	Erosion management overlay Salinity management overlay Floodway overlay Land subject to inundation overlay Special building overlay Bushfire management overlay State resource overlay
Other overlays	Public acquisition overlay Airport environs overlay Environmental audit overlay Road closure overlay Restructure overlay Development contributions plan overlay Toll Road overlay Parking overlay
Alpine areas	Framework for planning alpine resorts Sustainable development in alpine areas
Biodiversity	Protection of habitat Location of threatened species Native vegetation management
Sea level rise/coastal issues	Protection of coastal areas threat of coastal inundation and erosion
Bushfire	Bushfire planning strategies and principles

Stage 3 Subdivision Planning Approval

The constraints listed below should be identified prior to the subdivision planning approval for lot designs. These constraints are normally addressed through the subdivision application process, whereby relevant studies are undertaken before the issue of a subdivision planning approval, and potentially, relevant actions are required to be carried out before the completion of a subdivision to confirm or address the impact of these constraints on land.

Constraints to be identified by Subdivision Planning Approval	
Soil degradation	Use of contaminated and potentially contaminated land Erosion and landslip Salinity
Noise and air	Noise abatement, air quality
Water	Wetlands and storm water planning.
Heritage	Heritage conservation Aboriginal cultural heritage

Constraints to be identified by Subdivision Planning Approval	
Layout of built environment	Neighbourhood subdivision site and context description and design response Lot design location and design of residential development Access and mobility management Integrated water management Utilities location Any design requirements for safety Cycling networks
Location of commercial centres/public transport networks	Principal Public Transport Network Road system Waste and resource recovery
Community infrastructure	Health facilities Education facilities Day Care facilities Recreation facilities
Bushfire	Bushfire prone areas

Where the 'subdivision planning approval' occurs after the civil works construction approval (and the required civil works are completed), the constraints in the table above should be identified during stage 2 (Rezoning).

Stage 4 Registration of Title

Once lots are registered and sold any constraints that continue to apply to future development of the site should only be those related to the individual lot. These constraints should be clearly specified in relevant publicly available planning information available to the owner of that site. The following matters may be identified as the remaining issues for consideration in the design of a new building:

Constraints that are considered acceptable if applied to an individual lot (or group of lots)	
Planning requirements relating to the individual allotment may include:	<ul style="list-style-type: none"> • Site layout and building massing • On-site amenity and location of facilities/utilities • Detailed design factors • Neighbourhood character considerations • Single tree removal requirements • Restrictive covenants • Any common property type infrastructure required as a result of creating more than one allotment including utilities and creation of common property • Minimum floor levels (for construction in flood prone areas) • Bushfire rating levels (for construction in bushfire prone areas)