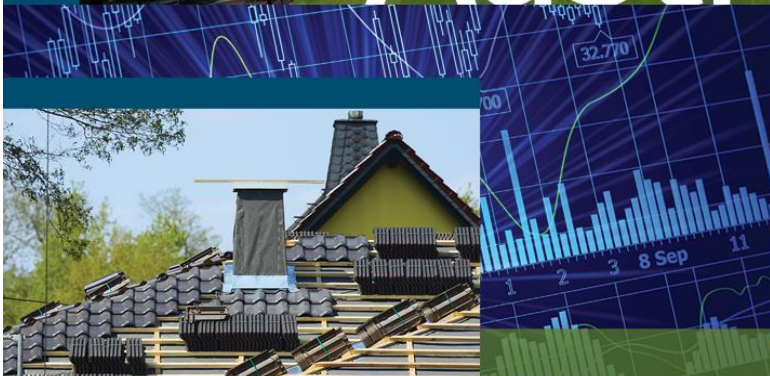




HOUSING INDUSTRY ASSOCIATION



# Housing Australians



Submission to the  
New South Wales Productivity Commission

## Kickstarting the Productivity Conversation

29 November 2019



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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, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the industry, HIA represents some 60,000 member businesses throughout Australia. The residential building industry includes land development, detached home construction, home renovations, low/medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

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."*

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 manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over \$150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

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 23 centres around the nation providing a wide range of advocacy, business support including services and products to members, technical and compliance advice, training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.



# 1. EXECUTIVE SUMMARY

In October 2019 the NSW Productivity Commission released the *Kickstarting the Productivity Conversation* - discussion paper (DiscussionPaper).

HIA provides this initial submission to the Discussion Paper and hopes to contribute further as work progresses towards the Commission making formal recommendations to the NSW Government.

The Discussion Paper seeks feedback on a wide range of issues related to the Productivity Commissioner's reform agenda for NSW and is focused on six core themes:

- Building human capital for a modern and evolving economy
- Reliable, sustainable and productive use of our water and energy
- Smart ways to get more out of our infrastructure
- Modernising our tax system to help our economy grow
- Planning for the housing we want and jobs we need, and
- Forward-looking regulation that supports innovation and competition.

The NSW planning system and the way housing delivery intersects with taxation policy is a key issue which impacts productivity and housing affordability.

## **NSW needs to move away from its heavy reliance on housing taxation**

Housing is one of the most heavily taxed items in the economy behind the 'vice taxes' applied to tobacco, gambling and alcohol. The housing sector, via land tax, municipal rates, other taxes on immovable property and stamp duties, directly contributes around \$51 billion in taxation revenue each year to state and local governments in Australia (about 10 per cent of the total revenue collected by all tiers of government).

New homes and existing homes are substitute products. Any statutory taxes or regulatory costs that are imposed on new houses will also cause the price of existing housing to rise.

In Sydney 50 per cent of the cost of a new house and land package is incurred through red tape, taxes and charges. In comparison Melbourne is 37 per cent and Brisbane is 32 per cent.

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

In 2018 HIA commissioned the Centre for International Economics (CIE) to inquire into these tax imposts. The potential to address the affordability challenge in NSW, as well as stimulate economic activity can be advanced by addressing the inefficient taxation of housing.

For example, the majority of local infrastructure is now funded through development taxes which includes Section 94 contributions and Special Infrastructure Contributions (SIC). These taxes fund broad community based infrastructure such as health services, schools and public transport which service the whole community, not solely new home buyers. In the absence of a SIC, Voluntary Planning Agreements (VPA) have increasingly been used to fund the delivery of local and regional infrastructure above that fundamental to the delivery of new housing. In Western Sydney there are numerous examples where the Section 94 and SIC combine to a total of \$90,000 - \$100,000 per home. 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 threatens to make many housing developments unfeasible.

A significant contributors to the increasing in housing supply in NSW in the last decade was the decision by the State government to cap these two taxes providing greater certainty to developers and home buyers. Whilst HIA does not support the application of these two taxes on new home buyers, the current cap has been an important factor in increasing productivity in the housing sector. Broad based community infrastructure should be funded through general revenue channels, providing a service for all residents, with costs shared by all residents.

HIA also supports the removal of inefficient and inequitable taxes such as stamp duty on new housing construction and the replacement of stamp duty with broad based community taxes. In addition, at the federal level HIA



supports 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.

It is important that this review take into consideration the imposts imposed through Federal taxation arrangements. The compounding nature of Federal and state taxation arrangements can cause a 'cascading effect' and exacerbate the adverse impacts of taxation. The taxation of land and housing in Sydney is a perfect example of how taxes can be applied on top of other government taxes.

From a housing market perspective, taxation can play a major role in terms of efficiency and affordability. Given that housing is already a highly-taxed commodity, and given the potential for taxation policy approaches and recommendations to introduce distortions in housing investment and the housing market, it will be important that the Review carefully considers the implications of taxation changes as they relate to housing.

### **The cost of planning delays**

The CIE report found that regulatory costs including delays and uncertainty created by the NSW planning system costs approximately \$222,000 per block of land in Greater Sydney.

HIA supports the work the NSW Government is undertaking to adopt measures to speed up approval times through the use of e-Planning. For this work to be effective all DAs (and Complying Development Certificates) should be required to be lodged via the e-Planning portal so that an accurate data base can be relied upon to keep approval and concurrence authorities accountable for the time they take to make decisions.

It is also imperative that the NSW Government expand the use of Complying Development. The continued delays to the implementation of the low-rise medium density housing code is an example of inefficiency creating further unnecessary delays and uncertainty for the housing industry for a housing type that is so critically underrepresented in the NSW market and clearly needed to address affordability and community needs

HIA provides the following comments in response to the issues and questions raised in the Discussion Paper and would welcome a thorough analysis of the cost of delivering new housing in NSW in an attempt to reduce timeframes, streamline systems and processes and address the ever increasing costs of red tape.



## 2. HIA'S RESPONSES TO ISSUES RAISED IN THE PAPER

### 2.1 PROVIDING EFFECTIVE TRAINING FOR CURRENT AND FUTURE NEEDS

Growing and developing a strong and effective base of human capital is essential to ensuring that the the NSW economy in the decades to come is modern, efficient, dynamic, flexible and able to constantly evolve. Building this human capital base starts at school, but has at its core the Vocational Education and Training (VET) system, in addition to the university sector.

The VET system underpins the skills capacity of the residential building industry in NSW, providing the competencies and qualifications for individuals to become skilled and licensed to build and renovate the homes of hundreds of thousands of NSW residents every year. HIA has a strong interest in ensuring affordable and easy access to training for all persons wanting to pursue a career in the residential building industry.

HIA supports a VET funding framework that places high priority on industries that rely on VET qualifications as a means of: verifying critical skills and competencies for business and occupational licensing prerequisites; that have a high demand for skilled labour to ensure productivity gains; that provide career paths and jobs for thousands of NSW residents each year; and that provide a significant contribution to the NSW economy.

From an economic perspective, a healthy VET sector is integral to the economic and social success of NSW. Through attracting students who have high potential yet no appetite to pursue tertiary education, the VET sector has the capacity to boost the state's productivity growth. By focusing on the ability of the VET framework to partner hosts/employers together with trainees/apprentices who are learning on the job, the economic growth rate of NSW is enhanced.

#### ***VETes – Vocational Education and Training in Schools***

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 accessed.

The range of core competencies in a modern NSW school system need to reflect the three elements of a future NSW economy: the continued reliance on certain foundational skills; the constant evolution of emerging skill sets; and the skill sets that will be required in the future stemming from technological advancement and digitalisation, for jobs we presently have little or no detail about.

In other words there needs to be a breadth and flexibility to what can still quite appropriately be called – 'core competencies'.

An essential element to success in this regard is Vocational Education and Training in Schools (VETes).

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 embedded in the existing education 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 their 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 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.

VETes is one sub-component of the wider VET sector. The benefits – individually and collectively – of pursuing a career pathway through VET have been identified above and apply to all components of the VET sector.

### ***Improving Vocational Education and Training***

VET is a complex system, one which has become highly inefficient along the way. The problem in the past has been that the complexity and large number of moving parts to the VET sector have ultimately derailed any prospect of meaningful reform. As with any sector, the growth of vested interests can also, unintentionally perhaps, lead to paralysis of the very thing people are seeking to reform.

The VET sector has largely been characterised by widespread agreement on the concept – providing a skilled workforce to match the employment needs of the nation. This is recognised by the NSW Government. What has always been missing has been an agreement on how to attain that goal, due largely to contestability between the two relevant levels of government.

There is a renewed focus on reforming Australia's VET sector under the umbrella of the federally commissioned Joyce Review. Participation by the NSW Government in this process, including through the COAG Skills Council, has the capacity to assist in removing unnecessary duplication and consequently complexity in the VET system. The NSW Government can no doubt investigate its own avenues for improvement, but there is a window of opportunity to consider a holistic and cooperative approach to VET reform in 2020 and 2021. Any form of successful outcome would lead to productivity gains in the VET sector in NSW. That would ultimately be a good outcome in approaching years for the skilled labour force of NSW and the broader state economy.

As with VETes, there will need to be a constant focus on growing an overall VET sector which encompasses skilled labour requirements stemming from foundational, emerging and future skilled occupations.

Providing better education regarding the benefits of pursuing a career path through the VET sector is also important. In terms of the residential building industry, there is a widely held (and justified) view that for some time now there has been a 'stigma' attached to young people entering a trade apprenticeship. Research has identified an inherent bias towards secondary school students pursuing a university education. This stigma extends to a strongly held adverse perception of vocational training compared to a university education among parents and teachers, as well as school leavers and young adults. The research also found that within the private and public school systems there has in recent decades been an inherent bias towards encouraging students to pursue a university education, at the expense of pursuing a skilled trade within the VET sector.

NSW should consider its own strategies for addressing this conspicuous bias, while the instigation of a National Careers Institute should, in time, provide considerable assistance from a federal level. Active engagement by the NSW Government with industry would assist in developing a strategy for raising the profile of the VET sector in NSW and in affecting a shift in the cultural 'bias' against the VET sector inherent in governments, communities and the school education system and curriculum.

A useful starting point in this regard is COAG's vision for VET:

*VET and higher education are equal and integral parts of Australia's post-secondary education system.*

Finally, it needs to be recognised that the VET sector in Australia and NSW is under-funded and has been for a considerable time now. VET is the only element of Australia's entire education system that has experienced a reduction in government funding (at both a federal and state/territory level) over recent years.

Since the 1980's VET programs have increased by 500 per cent, compared to an increase in university enrolments of 250 per cent. Yet there continues to be a policy and funding bias towards university-based tertiary education.

Funding for the VET sector in NSW is inadequate. Both the level and composition of resources directed to the VET sector is lower than is justifiable relative to that afforded the state's tertiary education sector (and schools sector, VETes notwithstanding). NSW's workforce into the future will fail to meet economic and community demands unless this asymmetry is addressed.



## 2.2 LABOR MARKET REGULATION, OCCUPATIONAL LICENSING AND MUTUAL RECOGNITION

### **General Comments**

In NSW a licence is required for general building work, other building work, such as kitchen and bathroom renovations and swimming pools, specialist work such as electrical and plumbing, and for 23 other trades including bricklaying, carpentry, waterproofing and wet plastering. Licences are also required for minor trades such as ducting, paving and bench installation.

HIA recognises that labour market regulation can protect consumers and minimise risk. Requirements that are overly stringent can, however, reduce market competition and consumer choice.

Although there are benefits in licensing, licensing also constrains the market's ability to provide services. By restricting entry, license holders maintain an entrenched market position thus reducing competition.

In this regard, the need for licensing of any particular trade or occupational activity should be assessed against the risk involved. If licensing is justified according to the risk, an important task is to identify those risks that require regulation. HIA supports occupational licensing of trade (sub) contractors who undertake high risk work.

HIA has a long held position in relation to business licensing for the residential building industry which includes those who hold an occupational licence where required.

HIA supports business licensing for builders undertaking domestic building work, including multi-residential building work, with domestic, multi-residential and high rise licenses being separate categories. HIA also supports business licensing for builders undertaking commercial and other building work although non-residential licences should be a separate category from a residential builder's license.

HIA also supports business licensing for trade contractors engaged (contracting) directly with consumers (subject to a monetary threshold) and those engaged (contracting) directly with 'commercial' consumers.

However HIA does not support licensing of trade (sub)contractors who work exclusively for builder/principal contractors whilst recognising that (sub)contractors should be accountable for the quality and compliance of their work.

Residential building industry licence holders in NSW are currently required to renew a licence either annually or every three years. From 1 July 2020 there will be an option to renew every five years as well.

HIA recommends that consideration be given to providing licence holders the option of an ongoing licence or a licence of lifetime duration.

This approach would result in the greatest reduction of administrative burden and costs for businesses. Consumer protection would be unaffected as the *'Commissioner for Fair Trading already has extensive powers to require licensees to provide her with information. This means she can audit a licensee to check their continuing fitness and propriety, and maintain an appropriate level of industry oversight.'*<sup>1</sup>

### **Mutual Recognition**

Despite the existence of a national training framework, the number of years of experience required and the level of training qualifications required to be licensed varies from state to state. Hence there is no uniformity in the levels and skills and knowledge provided by different courses, which range from diploma and degree courses to Certificate IV in Building. Likewise, there can be a significant variation in the experience levels of recently licensed builders in gaining a new license.

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<sup>1</sup> Page 8 Easy and Transparent Trading Consultation Paper July 2018





HIA agrees with the observation in the Discussion Paper that the principles behind the *Commonwealth Mutual Recognition Act 1992* remain sound,<sup>2</sup> but that there are flaws with the existing administrative arrangements and the practice of Ministerial Declarations in particular.

The 2009 Productivity Commission review into mutual recognition schemes considered the benefits that full labour mobility could deliver to the Australian economy, estimating that the removal of restrictions could lead to a 0.3 per cent increase in real GDP.

More effective automatic mutual recognition (of occupational licences in particular) would also help overcome some of the barriers state based licensing systems provide when interstate trades attempt to temporarily work in regions affected by natural disasters, such as the bushfires in Victoria in 2009 and floods in Queensland in 2011. At the moment, the only way such occupations can lawfully work in such situations is through special permissions and exemptions.

Importantly for HIA members, the majority of whom are first and foremost operating building or trade contracting businesses within their own distinct jurisdictional borders, the focus of any nationally coordinated approach should be to improve and simplify conditions (not increasing or altering the stringency) for licensees.

Business most commonly incur red tape that cuts across parallel regulators rather than across state borders. For residential building a focus on this aspect is more likely to lead to a reduction in red tape than steps to have the same license requirements across borders. Mutual recognition can then be used to support the limited number of businesses that do seek to operate across borders.

Schedule 1 Deemed local licences of the *Mutual Recognition (Automatic Licensed Occupations Recognition) Regulation 2014* [NSW] automatically recognises electrical licences issued in the ACT, Queensland and Victoria as equivalent to a supervisor certificate under the *Home Building Act 1989* authorising a person to do electrical wiring work without supervision. No other occupational licences have yet been deemed to be local licences for the purposes of the *Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014*.

HIA notes that the automatic mutual recognition is limited to occupational licences and not business or contractual licences. HIA submits that NSW should be working with the other states and territories to mutually recognise licences for both occupations and businesses.

### **2.3 CONTINUING PROFESSIONAL DEVELOPMENT (CPD)**

Although in NSW there are over 30 trades in the residential building industry that require a licence, only builders and swimming pool builders are required under the *Home Building Act 1989* to undertake compulsory Continuing Professional Development (CPD) as a condition of licence renewal.

Builders and pool builders are 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.

There are eight topic areas that the Regulator deems to be relevant for CPD activity purposes. They are Business management, Communication, Compliance, Contracts, Dispute resolution, Safety, Sustainability and Technical issues.

HIA supports an industry culture of continuous improvement that promotes quality in construction of the built form, in compliance, professionalism and customer support. HIA promotes and provides professional development services and advice to the industry and encourages industry participants to keep up to date with industry developments.

However, HIA notes 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.

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<sup>2</sup> Page 49 of the Discussion Paper



In the Final Report *Reforming licensing in NSW* it was estimated that an \$8 million net benefit per year would be made 'from removing the mandatory continuing professional development requirement for the Home Building Licences and certificate holders (and allowing for the development of voluntary programs).'<sup>3</sup> This was recommendation 9 contained in the Final Report.

This proposal has some history. In May 2014 the then NSW Fair Trading Minister, Matthew Mason Cox introduced legislation (the *Mutual Recognition (Automatic Licensed Occupations Recognition) Bill 2014*) into Parliament proposing to remove CPD obligations.

Ultimately, the Bill was passed with an amendment that was pressed by the Opposition which had the effect of maintaining mandatory CPD on the basis that 'it plays a useful and vital role in ensuring public safety and consumer protection and in maintaining that those working in the industry keep abreast of the latest developments.'

The Government had opposed the amendment, continuing to argue in the words of the Minister that, "*The CPD requirement is an expensive and unnecessary cost burden on all businesses. It is an inflexible requirement without any proven benefits.*"

HIA does not oppose requiring industry license holders undertaking mandatory professional development where it is imposed on individuals by the licensing authority as an alternative for those who would otherwise have their builder licence cancelled or suspended as a result of disciplinary proceedings.

## 2.4 SUSTAINABLE USE OF WATER

The Discussion Paper outlines that within the Sydney Water area customers use on average 42L per day more than the average daily water use per person in Victoria. BASIX water targets are raised as a possible lever for lowering household water use in NSW.

The housing industry acknowledges the need to build environmentally responsible housing and land developments through reducing demand for water and where appropriate, identify alternative water sources to potable water.

Before recommending any changes to BASIX water targets the Commission should consider a comparison between actual usage and the current regulations for water saving in residential buildings across NSW and Victoria. Although BASIX is seemingly less prescriptive than the Victorian regulation the target score of '40' which must be achieved within the BASIX tool means that the common water saving devices which must be installed in new dwellings are essentially the same. The additional inclusions required to achieve the '40' target address other factors such as alternative water supply and garden areas.

A table to compare the NSW and VIC water saving regulation is below:

State	New dwellings	Alterations and additions to existing dwellings
NSW	BASIX – 3 star + toilets, tapware, showers. Alternate water supply – tank or reticulation Note: All minimums in BASIX are optional. An overall score of '40' must be achieved. It is difficult to pass without 3 star fixtures fittings and a tank, but these can all be traded. For example 5 star toilets and 4 star tapware on a small block of land with low water use landscaping will usually mean no rainwater tank is required.	BASIX – 3 star toilets, tapware and showers (where being replaced) Note: All minimums in BASIX are optional. An overall score of '40' must be achieved. It is difficult to pass without 3 star fixtures fittings and a tank, but these can all be traded. For example 5 star toilets and 4 star tapware on a small block of land with low water use landscaping will usually mean no rainwater tank is required.
Victoria	Plumbing Regulation - 3 star toilets, tapware and shower heads and either a rainwater tank or solar hot water service	Plumbing Regulation - 3 star toilets (where being replaced)

Since the basic water saving inclusions for new residential buildings is largely the same across NSW and Victoria, HIA is of the opinion that the difference in water use mentioned at the outset of this part is not related to BASIX water targets and therefore other mechanisms should come into consideration.

<sup>3</sup> Page 5 Reforming licensing in NSW IPART.



Sydney Water usage rates drastically increased in line with IPART's decision in 2016 to decrease water prices with only a single flat rate charged in NSW, whereas in Victoria water usage charges incrementally increase depending on how much water is used by a household.

The NSW Government should do more to encourage the voluntary uptake of market-based solutions before contemplating regulation as a more effective means of generating innovation and new practises in water efficient housing and land developments.

The Commission should also consider what water savings measures could be implemented in existing housing stock built prior to BASIX being introduced. The NSW Government should also consider incentivising voluntary uptake of community based water saving measures and infrastructure which can be installed as part of subdivision works (For example reductions in local and state infrastructure contributions and/or greater floor space ratios for infill development).

## **2.5 RELIABLE AND AFFORDABLE ENERGY**

The rapid increase in energy prices over the past decade have adversely impacted the competitiveness of NSW as an investment destination. Large manufacturing businesses, especially those that make building products, seek investment locations based on a variety of parameters including the cost of production.

Australia has low tariff imposts which allows manufacturing of products for the Australian market to be based either in Australia or amongst other trading partners. The increase in energy prices not only deters new investment but has made it more difficult to attract investment to update or modernise existing manufacturing businesses and is a major factor in increasing product costs. The cost of energy is a significant factor in the decision making process for manufacturing businesses and this is likely to remain a barrier to NSW attracting investment over the next decade if not addressed.

The major building products manufacturers operating in NSW such as CSR, BlueScope Steel and Brickworks have endured increases in energy costs in the tens of millions of dollars over recent years. Investment decisions, such as the last two acquisitions in the US by Brickworks, are testament to investment by Australian companies moving offshore. Overseas competitors and regions have much lower energy costs in the main to those faced by Australian building products manufacturers. It is imperative that our local manufacturers remain competitive globally and able to continue to provide thousands of NSW jobs.

## **2.6 TRANSFER DUTY**

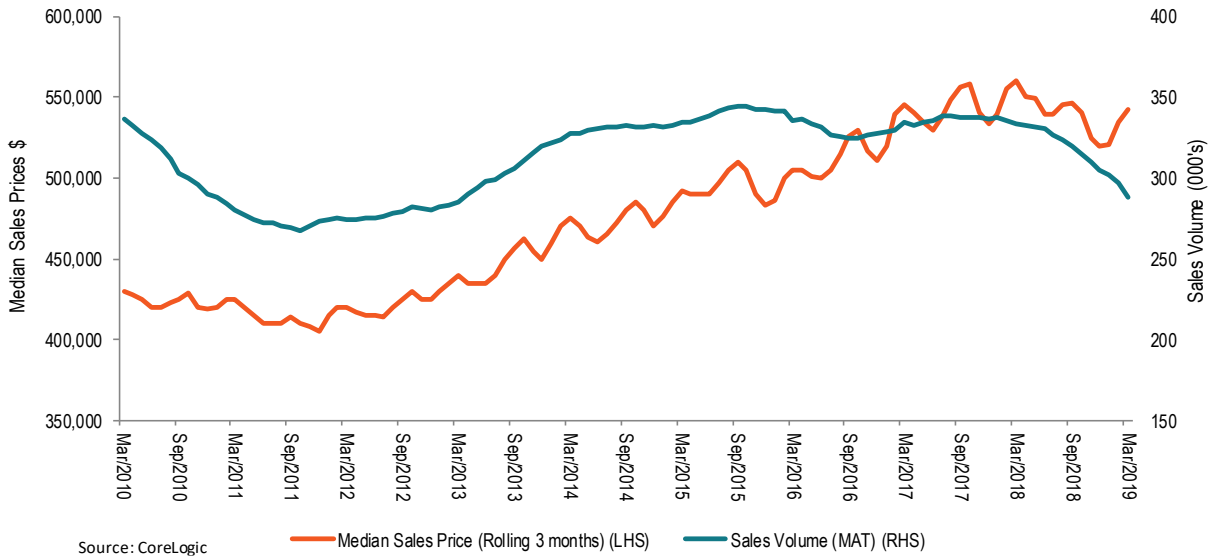
Stamp duty revenues depend on two main factors, dwelling prices and the number of transactions occurring in the market. When the market is going well, house prices are going up, there are lots of people buying and selling property and as a result, stamp duty revenues increase. Until recently it appeared that house prices could only go up with prices rising strongly since 2012. Even state governments seem to have forgotten the age-old saying that what goes up must come down, pricing these trends into their revenue forecasts. House prices are now in decline. Sydney prices have declined by 16.2 per cent and NSW by 7.6 per cent since their peak in 2017. Consequently, stamp duty revenues in NSW are now in decline.

The chart below highlights that house prices and sales volumes often move in tandem. Falling house prices tend to cause people to become more reluctant to sell their house in the hopes that they will get a better price if they hold off. Buyers are also disinclined to purchase a dwelling in case they have misjudged the bottom of the market and house prices fall further.

Over the past two months, the states and territories have revealed their budgets for the 2019/20 financial year. The majority of states have had to severely downgrade their stamp duty revenue forecasts compared to previous budgets. Revenue from stamp duty across Australia in 2018/19 is estimated to exceed \$18.9 billion. While this is down from \$21.3 billion in 2017/18, the revenue raised is still more than double what it was in 2008/09.



## House Prices and Sales Volume Australia



The majority of the increase in stamp duty revenue over the past two decades has been due to increases in dwelling prices forcing purchasers into a higher stamp duty bracket.

In NSW, for example, the brackets have remained relatively unchanged since 1986 despite rapid increases in property prices. As shown in the chart below, the median dwelling price in NSW in 1986 was \$75,000, which would have been in the third lowest price bracket for stamp duty. The current median dwelling price in NSW is \$630,000, which places it in the second highest price bracket.

NSW Standard Transfer Duty Rates 1986 – 30/06/2019	
Property Value	Transfer Duty Rate
\$0 to \$14,000	\$1.25 for every \$100 (the minimum is \$10)
\$14,001 to \$30,000	\$175 plus \$1.50 for every \$100 over \$14,000
\$30,001 to \$80,000	\$415 plus \$1.75 for every \$100 over \$30,000
\$80,001 to \$300,000	\$1,290 plus \$3.50 for every \$100 over \$80,000
\$300,001 to \$1 million	\$8,990 plus \$4.50 for every \$100 over \$300,000
Over \$1 million	\$40,490 plus \$5.50 for every \$100 over \$1 million

The downturn in the property market is estimated to cost approximately \$10.6 billion over the forward estimates in lost revenue. Similarly in Victoria where the decline in house prices has been more modest, revenue from stamp duty has been revised downwards by \$5.2 billion. This sharp drop in revenues underscores the unreliability of stamp duty as a source of revenue.

### Stamp duties in the NSW need to be removed or significantly reduced

Conveyances are the NSW’s second highest grossing tax, and are forecast to account for around 25 per cent of own-source revenue in 2022/23.

Stamp duty is one of the more inefficient taxes, and accordingly stamp duties should be removed, with all possible alternatives canvassed and debated.

HIA notes that stamp duties are a very inefficient tax as they: impede the efficient use of the existing housing stock; add to upfront house purchasing costs; and make it more difficult for home buyers to secure credit.



Stamp duty also penalizes individuals at a time when they maybe facing other personal stress such as through divorce, death or disability. It restricts the ability of the workforce to relocate in pursuit of employment or to undertake studies. It also restricts elderly people from relocating out of areas close to employment centers, to those which meet their needs for access to health care and social activities.

The Commission should examine an option of reducing or significantly decreasing stamp duty on new properties in NSW.

As part of considering reforms to stamp duty in NSW, it would be appropriate to investigate the cascading impact of taxes on new housing and identify alternative methodologies to calculate these taxes which remove the duplication and remove the cross taxation of stamp duty on GST and vice versa.

## 2.7 PAYROLL TAX

HIA recognises that payroll tax can be an efficient tax, but differences between states and territories and the application of thresholds reduce its efficiency.

Payroll tax is a state tax on wages paid to employees and is a major cost impost on those businesses liable to pay the tax. Over the past decade there have been changes to the definition of 'wages' and who is an 'employee' for payroll tax purposes. As a result of these changes, payments made to independent contractors are liable for payroll tax.

The legislation covering contractors and payroll tax is extremely complex. Payments made to contractors can be excluded, but only if a convoluted set of exemptions based around days worked can be met. These exemptions do not reflect industry practice in the residential construction industry where contractors are engaged and paid on a 'results' basis and days taken by a contractor to perform a task are irrelevant.

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.

HIA recognises that in New South Wales significant changes were contained in the May 2018 budget, especially in regard to the payroll tax threshold. For the 2018-2019 financial year, the threshold rose to \$850,000 and will further increase to \$900,000 in 2019-20, to \$950,000 in 2020-21 and then to \$1 million in the 2021-22 financial year.

Consideration should be given to further raising of the thresholds beyond the 2021-22 financial year. At the very least there should be a CPI indexation increase to the \$1 million dollar threshold of the 2021-22 financial year. This would encourage businesses to expand and avoid the risk of providing businesses with an incentive to remain small as observed in the Discussion Paper.<sup>4</sup>

NSW also conducted an enquiry into the administration of payroll tax. The enquiry made 12 recommendations all of which the government has agreed to implement. Notable recommendations, which HIA supports, included:

- To shift Revenue NSW's regulatory model and effort towards a greater emphasis on early engagement, education and support.
- A penalty reduction program to encourage early compliance.
- A tiered compliance model that provides for less frequent payment calculations and/or lodgement of payroll tax returns.
- Clarification on which contractor arrangements are captured under payroll tax definitions including providing examples by sector.
- That an appropriate independent body investigate better aligning the different definitions of employee and contractor with those of other relevant government entities including:
  - In the short term, engage with the State Insurance Regulatory Authority to more closely align employee and contractor definitions where applicable.
  - In the longer term, work with other jurisdictions to explore opportunities to further align payroll tax definitions across jurisdictions, including employee and contractor definitions.

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<sup>4</sup> Page 100 in the Discussion Paper



HIA opposes the extension of payroll tax to income earned by independent contractors and the deeming of independent contractors as employees for payroll tax purposes.

It is generally very difficult for 'employers' administering their payroll tax obligations to determine the labour component of payments made to contractors in calculating their payroll tax liability. 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.

## 2.8 COUNCIL RATES

The Discussion Paper raises that rate pegging limits local governments ability to raise sufficient revenue to provide the services and infrastructure growing communities need, and therefore acts as a disincentive for councils to accept growth.

In September 2019 HIA responded to the IPART *Final Report into Local Government Rating Systems*. That report recommended that the *Local Government Act 1993* should be amended to mandate Capital Improved Value (CIV) as the basis for setting ad valorem rates in the metropolitan council areas as defined by IPART, and that the *Local Government Act 1993* should be amended to allow non-metropolitan councils to choose between the CIV and Unimproved Value (UV) methods, as the basis for setting ad valorem rates at the rating category level.

HIA did not support the proposed changes because there was no recommendation in the IPART report for local councils to reduce the amount of up-front developer contributions, as part of the proposal to change rate calculations. Should councils be given access to additional rates funding, this should inherently mean that they no longer need to rely on infrastructure taxes such as section 94 charges to fund community based infrastructure.

HIA also did not support the introduction of a vacant land subcategory allowing metropolitan councils to charge higher rates for vacant sites as this could have significant cost implications for the residential construction industry.

HIA would consider supporting changes in assessing ad valorem rates from UV to CIV so long as any change was directly linked to a reduction in infrastructure contributions (see section 2.13).

### HIA's alternative to changing method of rate assessments

HIA recommends that removing rate pegging, would help to improve the current revenue framework within NSW local government and assist in reversing the impact of damaging developer contributions levied by councils on housing affordability.

Each year, IPART determines the maximum percentage by which a council may increase its general income in the coming year, known as the rate peg. This percentage is based on the estimated annual change in a council's costs, adjusted for any improvement in productivity. The total amount of general income collected from rates revenue is typically called the rating burden. Councils then set their rates for each rating category so that their annual general income does not increase in percentage terms by more than the rate peg for that year.

The practice of rate pegging has existed for over two decades in NSW. It has exacerbated the problem of capital works funding and maintenance of infrastructure facilities for local government. Over the years, councils have experienced serious budgetary constraints, particularly in an environment where more and more services are being transferred from federal and state governments to the local councils.

Rate pegging in NSW restricts the ability of councils to increase rates and has led to a greater dependence on raising income from development contributions. The result of this is that development levies have spiralled and this is impacting the affordability of new homes for consumers.

This rapid increase in the amount of development contributions levied, highlights the extent of revenue transfer - from broad based community-wide rates to targeted development costs, which are in effect, charged against families purchasing new homes. This practise does not occur in other jurisdictions where rate pegging does not operate. In those jurisdiction where development contributions do apply, they are significantly lower than in NSW.

## 2.9 SIMPLIFYING THE NSW ZONING SYSTEM

The Discussion Paper highlights issues with overly prescriptive employment zones which act as a barrier to business and innovation. HIA supports that the planning system should be flexible to support changing market



trends, innovation and design and technology. Permissible uses within zones should include both performance objectives and prescriptive standards to provide both certainty and flexibility.

Although not directly mentioned in the Discussion Paper issues with employment zones overlap with issues related to residential zones and the impact on business and employment opportunity that results from a lack of certainty in the zoning system.

## Truth in Zoning

Within the NSW Standard Instrument Local Environmental Plan there are five zones for urban development (R1-R5) in which the majority of housing is located. Housing is often also permitted in several other zones including mixed use business zones and environmental conservation zones.

Despite these urban development zones there is a lack of certainty and consistency surrounding whether or not it is feasible for land zoned for urban development to actually have housing built on it. Due to a mix of planning layers and regulatory constraints developers and land owners are often not certain that it will be feasible to develop land already zoned for urban development.

Currently land is often re-zoned for urban development with the least possible studies and investigations carried out to determine what environmental conditions exist and hence what constraints should be imposed on the land. This includes constraints such as bushfire prone areas, biodiversity protection of habitat, local and native threatened species, protection of coastal areas, protection of significant landscape areas, future infrastructure corridors and public and open space.

Most of these constraints could be mapped at the zoning stage to ensure that the only land zoned for urban development is land where no or few constraints exist, thereby giving certainty that development can be carried out on the land. HIA has seen instances where biodiversity offsets, bushfire constraints and infrastructure contributions have combined to mean that certain developments were no longer feasible. This in turn impacts land supply further straining housing affordability and impacts productivity with missed employment opportunity that would have resulted if the development had proceeded.

The NSW planning system must be based on the principle of truth in zoning. Where land has been zoned for a particular set of land uses, those uses should be readily undertaken subject to design controls. Matters which affect where a use can occur should always be addressed in the zoning and subdivision approval processes and not left to be managed at an individual allotment level.

## 2.10 IMPROVING RESIDENTIAL DEVELOPMENT REGULATIONS

HIA supports any steps the NSW Government can take to improve regulations and guidelines to allow a long term supply of housing to meet consumer demand for owner occupy and rental accommodation.

The CIE report, commissioned by HIA, revealed that for an apartment home in Sydney, 'red tape' and tax accounted for 37 percent of the purchase price. The CIE report concluded that most of the burden of these costs is borne by consumers.

As identified by the Productivity Commission, house prices within the apartment market are currently influenced by the minimum apartment sizes set-out in the Apartment Design Guide (ADG).

The minimum apartment sizes in the ADG, are set for councils by *State Environmental Planning Policy no 65 – Design Quality of Residential Apartment Development*.

Clause 6A of the SEPP specifies that:

*Development control plans cannot be inconsistent with Apartment Design Guide*

*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 m<sup>2</sup>. This is higher than for the equivalent Victorian standard, which defines minimum room size, rather than the overall apartment size. The Discussion Paper



includes an example demonstrating that it is possible to design a 65 m<sup>2</sup>, two-bedroom, two-bathroom apartment, within the Victorian standard. This is a saving of 5m<sup>2</sup> over the ADG minimum size.

With the average price for a new apartment in Sydney around \$10,000/m<sup>2</sup>, every increment of 5m<sup>2</sup> would add \$50,000 to the price. This amount would fluctuate depending on location and amenity of the locality. 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 m<sup>2</sup> (excluding the balcony and any car spaces).

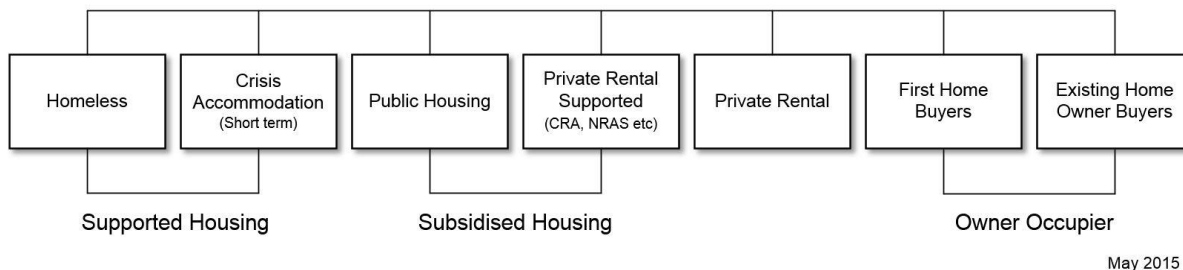
HIA also support measures to improve affordable housing options by reducing car parking requirements for apartments in close proximity to a train station or light rail stop. The concept of reduced car parking was initially used by the government to facilitate the revival of ‘new age’ boarding house developments. However, recent changes in car parking requirements for boarding houses have increased costs and made them a less attractive proposition for developers, further restricting affordable housing options for consumers.

HIA recommends that the government continually reviews planning regulations and guidelines relating to residential development in consultation with industry, to ensure that a supply of housing is maintained for all tenure types at affordable prices. This engagement could be facilitated by regular ‘round table’ government and stakeholder meetings.

## 2.11 BUILD TO RENT

HIA’s Housing Continuum created in 2015 as part of HIA’s Housing Affordability Policy identifies private rental and subsidised private rental housing as key types of housing supply in Australia.

### The HIA Housing Continuum



Compared to other countries, large scale ownership of private rental of housing has not been a major feature of the Australian market. Private rental ownership has primarily been the realm of ‘mum and dad’ investors who supply scattered housing across Australia at the market rate.

Commonwealth and State Government funding of public and subsidised affordable housing is not keeping up with community needs. Governments are increasingly shifting the burden of funding new affordable housing to the private sector rather than confronting the challenges of supply as a broader community issue requiring funding from general rates and taxes.

Build to Rent refers to developments specifically designed and built for longer term renters, whether in the private market or the subsidised rental market. The developer or major investor, who may be a community housing provider, maintains ownership of all the properties rather than selling them to individual buyers.

Build-to-rent properties are not sold to individual owners or investors after the development is complete. Rather, developers or groups of investors with interests in the building maintain an ongoing interest in the property and later manage the rental of the residences either themselves or in the not-for profit sector, through a community housing provider.

The aim of the build-to-rent system is to provide a more secure tenure option for those in the rental market through offering longer-term leases. Also attractive to prospective tenants is the offer of centralised building maintenance





services on site (rather than having to call the real estate or landlord), and potentially greater flexibility for tenants to redecorate and feel more at home. In some cases more affordable options are also on offer.

The professional, large scale institutions now focussing on this new investment asset class are looking to build and construct, keeping these dwellings for the long term, and harvesting the income from rents. This can operate in an identical way to commercial property construction and management that these same companies already undertake.

In the USA rental yields, taking into account all costs, are typically about 4.5-5 per cent. In Australia the predictions are that yields will be lower at about 2.5 per cent and herein lies the challenge. Without additional government incentives, and operating in parallel with private market rental supported by current tax arrangements, many predict the Australian market may be too difficult to gain meaningful traction in.

The creation of the National Housing Finance and Investment Corporation (NHFIC) recognises that community housing providers in Australia are increasing filling the void left by reduced public housing expenditure. These housing providers supply a large proportion of private rental properties to tenants that receive commonwealth or state rental housing assistance, along with managing public housing properties on behalf of state governments.

Announced in 2017, NHFIC is now operational and the second round of bonds have recently been issued. Initial activity appears to show that for the not-for profit build-to-rent sector, this mechanism is offering a practical support to the supply of 'subsidised affordable housing'. Any actions the NSW government could take to additional support the delivery of adequate numbers of 'subsidised affordable housing' would be supported.

## **2.12 AFFORDABLE HOUSING CONTRIBUTIONS**

Changes were made this year to *State Environmental Planning Policy Affordable Housing 2009* to permit local councils to request approval to apply development contributions for affordable housing. This option has been limited for many decades on the basis that there were insufficient controls around how these contributions should be applied, how properties should be managed and the broader implication such levies have on housing affordability for all parts of the housing continuum.

This recent decision to amend the SEPP now addresses some of these issues, however it is critical that the limitations of the arrangements are well understood. Such approaches need to be limited to rental housing if they are to be effectively managed. If they are permitted to incorporate homes for private sale careful restrictions on title must be incorporated to limit profiteering and ensure that the policy outcome is what was intended. Currently HIA does not see such limits being applied to the application of affordable housing levies and quotas.

HIA would prefer to see the NSW government support the following options for developers and builders to deliver affordable housing on a voluntary basis to increase the supply of affordable housing units for rent:

### ***1. Increasing land supply and development rights for affordable housing***

All governments should proactively enable land supply for affordable housing by auditing their own surplus land supply and selling it for the purpose of industry delivering the desired quota of affordable housing. Authorities should also issue suitable development rights over that land to a social housing authority, private community housing provider or industry member for the purposes of building and supplying affordable housing.

### ***2. Voluntary supply of affordable housing in a development in exchange for agreed or negotiated development bonuses which are relevant to the particular site and location***

Any development bonuses granted to assist with the supply of affordable housing must be nominated by, and agreed to by, the developer. It is industry's experience that many current development bonuses offered do not allow for a product that can be reasonably offered to a target market in a given area. Incentives for developers could include bonuses on heights, plot ratio and density requirements, car parking, a faster planning process or other planning scheme concessions, all of which should be guaranteed through relevant project specific planning provisions after a developer agrees to undertake a project, to ensure the project is financially viable and can proceed to be built.



### **3. Innovative funding mechanisms to ensure greater government buy in on private development**

Government agencies should subsidise the housing product for low income earners. The homebuyer would finance part of the mortgage (perhaps 70 per cent) with the 'equity authority' being state or local government financing the remainder. Deferment on the payment on the full market value at the time of purchase assists with increasing the supply of affordable housing and the housing industry is the deliverer of the product on the ground.

### **4. Increasing the opportunity for 'joint venture' partnerships**

Local or state government can partner with a willing private developer to build and manage a project where there is a component of affordable housing that must be made available with strict arrangements around the management of homes into the future to avoid profiteering. Industry is the deliverer of product on the ground.

### **5. Provision of Tax and Levy Concessions for Developers**

Tax concessions should be offered to developers willing to agree and provide an affordable housing component to their development. Relevant tax concessions could be provided in the form of stamp duty or other concessions such as sale price on the land or an exemption from state based infrastructure contributions and other relevant property taxes.

## **2.13 DEVELOPMENT CONTRIBUTIONS**

The Paper raises barriers to efficient and equitable funding of infrastructure. The Paper uses the term 'developer contributions' to describe the fees paid towards the funding of local and state infrastructure. That term is misleading as it leads the reader to presume these costs are borne by the developer when in reality it is a cost which is passed on to the end consumer. The term development contribution would be more appropriate and remains the term used in the *Environmental Planning & Assessment Act 1979* to describe these taxes.

Development contributions broadly fit within two main categories:

1. *Development specific infrastructure* – being items which are directly attributable to new development, defined as those items that are necessary to create the allotment without which the development could not proceed, for example: local roads, drainage, stormwater, utilities provision, land for local open space, and direct costs of connecting to local water, sewerage and power supplies.
2. *Community, Social and Regional Infrastructure* – being items of broader physical, community and social infrastructure which are ancillary to the direct provision of housing in a new development and support residents outside that development, for example: headworks for water, sewerage and power supplies which may be part of a specific contributions plan, community facilities such as schools, libraries, child care facilities, medical centres and retail facilities, district and regional improvements such as parks, open space and capital repairs, social improvements such as library books, public transport capital improvements, district and regional road improvements, employment services, subsidised housing; and conservation of natural resources.

HIA maintains that 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 they are in effect a tax on new homebuyers.

With the progressive lifting of Section 94 contributions and the introduction of various Special Infrastructure Contributions there are numerous examples across Greater Sydney where the total infrastructure contributions per block of land are in excess of \$100,000. Fees of this size are unsustainable, and have the very real possibility of making certain developments un-feasible.

Funding for infrastructure that falls within category two should be provided by general rate revenue (see section 2.8) or by other means.

## **2.14 PLANNING APPROVAL DELAYS**

The Discussion Paper highlights issues with the performance of the planning system with a focus on delays in the Development Approval (DA) process.



Timely decision making is a fundamental principle of a good planning system and HIA supports the work the NSW Government is undertaking to speed up approval times through the use of e-Planning. For this work to be effective all DAs (and Complying Development Certificates) should be required to be lodged via the e-Planning portal so that an accurate data base can be relied upon to keep approval and concurrence authorities accountable for the time they take to make decisions.

The CIE report found that regulatory costs including delays and uncertainty in the planning system add approximately \$222,000 to an average house and land package in Greater Sydney and \$91,000 to the cost of an apartment.

HIA members often raise that delays in obtaining a DA is one the biggest strains on their business. The Paper states that obtaining a DA takes approximately twice as long in NSW compared to Victoria, QLD and WA. It is understood that the accuracy of these timeframes is subject to some debate as the point in the process at which various states 'start the clock' on DA times varies. However according to HIA members, councils across NSW are using pre-DA meetings as a mechanism to slow down the approval process. It has been reported that many councils will instruct applicants that the DA process will much smoother if they first engage with the council through a pre DA process. Based on this advice the applicant will engage with council staff for 6-12 months before officially lodging the DA application. Once the DA is lodged they are often rejected for things which could have been raised earlier, however council is not accountable for any advice given through the pre-DA process meaning the official application process commences from square one despite much time being invested in the pre-DA stage.

For an accurate understanding of how long the average DA takes, pre-DA meetings must form part of the time frames considered and the NSW Government should issue mandatory guidelines to councils on the appropriate use of the pre-DA process. The same policy could also apply to concurrence authorities who utilise pre DA meetings such as the NSW RFS.

If Councils are not in a position to provide meaningful advice prior to the lodgement of a full DA, then arguably pre-DA meetings become worthless for all parties and should not be permitted. Similarly, if councils believe that there should be a payment for services such as this, then the advice given should be accurate, timely and able to be relied upon by the applicant in all subsequent dealings.

### **Minor planning disputes**

The Discussion Paper raises issues with the NSW Planning appeals process and the possibility of a tribunal to handle minor planning disputes and appeals.

There is merit in exploring options for resolving minor planning disputes in a timely manner. Whether this should be done via a tribunal, written submissions such as is used in the UK or expanding the provisions of Section 34 Conciliation Conferences should all be considered. HIA proposes that that an industry reference group should be established to workshop what would be the best way to proceed with this proposal.

One key element of the NSW appeals process which must remain untouched is that third parties must not be permitted to appeal against planning decisions.

### **Expanding exempt and complying development**

HIA supports the Discussion Paper's recommendation that exempt and complying development approval pathways should be expanded.

HIA is currently part of the Exempt and Complying Development Expert Panel which is chaired by representatives of the Department of Planning Industry and Environment. Currently the Panel is used by the Department as a mechanism to inform industry as to what the Department is doing. Feedback on what the department should look to include as exempt and complying development is rarely ever sought. For such forums to be effective and to support the expansion of exempt and complying development stakeholders must be encouraged to put forward proposals for change and these should be given due consideration.

## **2.15 FORWARD LOOKING REGULATION**

New technologies and products create challenges to the prescriptive approach to regulation. This can lead to regulation that impedes opportunities for new investments.



While the use of technology and digitisation can assist with compliance, simply shifting compliance obligations 'online' without any real consideration of the value of such an approach should be avoided and the use of data in the regulatory framework must be approached with caution. In every case, the policy of 'open data' must be balanced against the costs and benefits of releasing and using such data, so too should the adoption of technological means of compliance be balanced against the need for industry participants to obtain circumstance specific information and feedback.

HIA is open to further consultation on ways that data and technology can be used to assist compliance with the aim of reducing red tape and creating a culture of self-regulation.

In section 9 of the Discussion Paper there are frequent references to the Independent Review of the NSW Regulatory Policy Framework – Final Report. An observation made in that Final Report is apposite:

*Governments have in the past commonly taken a top-down approach to designing regulation, prescribing with specificity how a regulated entity must act. As often happens during times of technological change, there is a tendency to apply the rules from the previous era to any new technology. In today's information based society this approach risks becoming increasingly outdated, increasing barriers to entry, reducing competition, and hampering scope for business experimentation and entrepreneurship.*

HIA observes that this is what is currently happening. The move to Regulation 2.0 and 'RegTech' are mere buzz words at the moment; there have been no substantive changes in the way in which building industry participants are regulated. Despite the recommendations in a number of reports and the suggestions contained in the Discussion Paper, Government is slow in embracing technological change and virtually myopic in terms of how technology can be leveraged to produce more bespoke services and outcomes.

Take the example of the licensing of builders. Agility of the Regulator here is entirely absent. It makes no difference what size the builder is, or what structure and internal systems that are in place, all building companies are required to have a nominated supervisor who needs to earn 12 CPD every year for three years before applying for a licence renewal.

The application and renewal processes for a NSW Builder's Licence has been changed overtime by NSW Fair Trading with no consultation with industry. Additionally, when changes have been made industry were not advised of the changes in a directed or timely way. While HIA does directly engage with NSW Fair Trading on matters such as this, an assessment of the checks and balances on the exercise of these forms of administration powers should also be considered.

In HIA's experience the approach taken by the NSW Government to assessing the impact of regulation is at odds with the characteristics for Regulatory Impact Assessments outlined by the OECD. Regulatory agencies often do not appropriately consider the costs and benefits of regulation. This is particularly the case when determining the costs associated with any reform. A Regulatory Impact Statement (RIS) will often be drafted in generalised terms and claim an inability to capture appropriate data in order to provide useful, reliable and accurate information about cost impacts.

Throughout a number of regulatory reviews that HIA has been involved in, a RIS has been issued at the same time as the regulation is released for public comment. This is often well after legislation implementing the reforms has passed through Parliament. Such an approach greatly undermines the utility of such 'assessments' and stands in stark contrast to the OECD's view that regulatory impact assessments should be 'undertaken at an early state of the policy making process'.

This approach is also at odds with a 2006 recommendation of the NSW Independent Pricing and Regulatory Tribunal which recommended that:

*'In the case of Bills, the RIS should be made publicly available with any exposure draft and when the Bill is introduced in Parliament.'*

Concern was also reflected in the Red Tape Reduction Report:

*'In the sample of regulatory proposals we assessed regulatory impact assessments developed by the NSW Government departments did not represent a genuine regulatory inquiry.'*



...

*In a number of proposals we assessed, it appeared that a full account of the likely regulatory impact would not have added value because a policy decision had been made that regulation needed to proceed regardless.'*

## **2.16 CUMULATIVE REGULATORY IMPACT**

A further matter that fails to draw the attention of government departments is the cumulative effect of reforms. Examples of such reforms include further changes to security of payment laws, new strata requirements that impose mandatory inspections and a 2% 'defects' bond on developers and changes to warranty insurance coverage.

Most recently the NSW Government introduced the currently stalled *Design and Building Practitioners Bill 2019* without undertaking a RIS. Much of the substance of the Bill was to be contained in its unreleased regulation. The Government also introduced, without any consultation, its own last minute amendments to the Bill which would have had a seriously deleterious impact on the residential building industry.

There needs to be a cultural shift within the Government itself to the point that a RIS is viewed as a useful and positive tool and an integral part of the consultation process that Government should be having with industry participants. This should not be considered best practice or aspirational, it should simply be a routine part of the process when any reform is being considered. It is hoped that the Productivity's Conversation will be an aid to that cultural shift.

