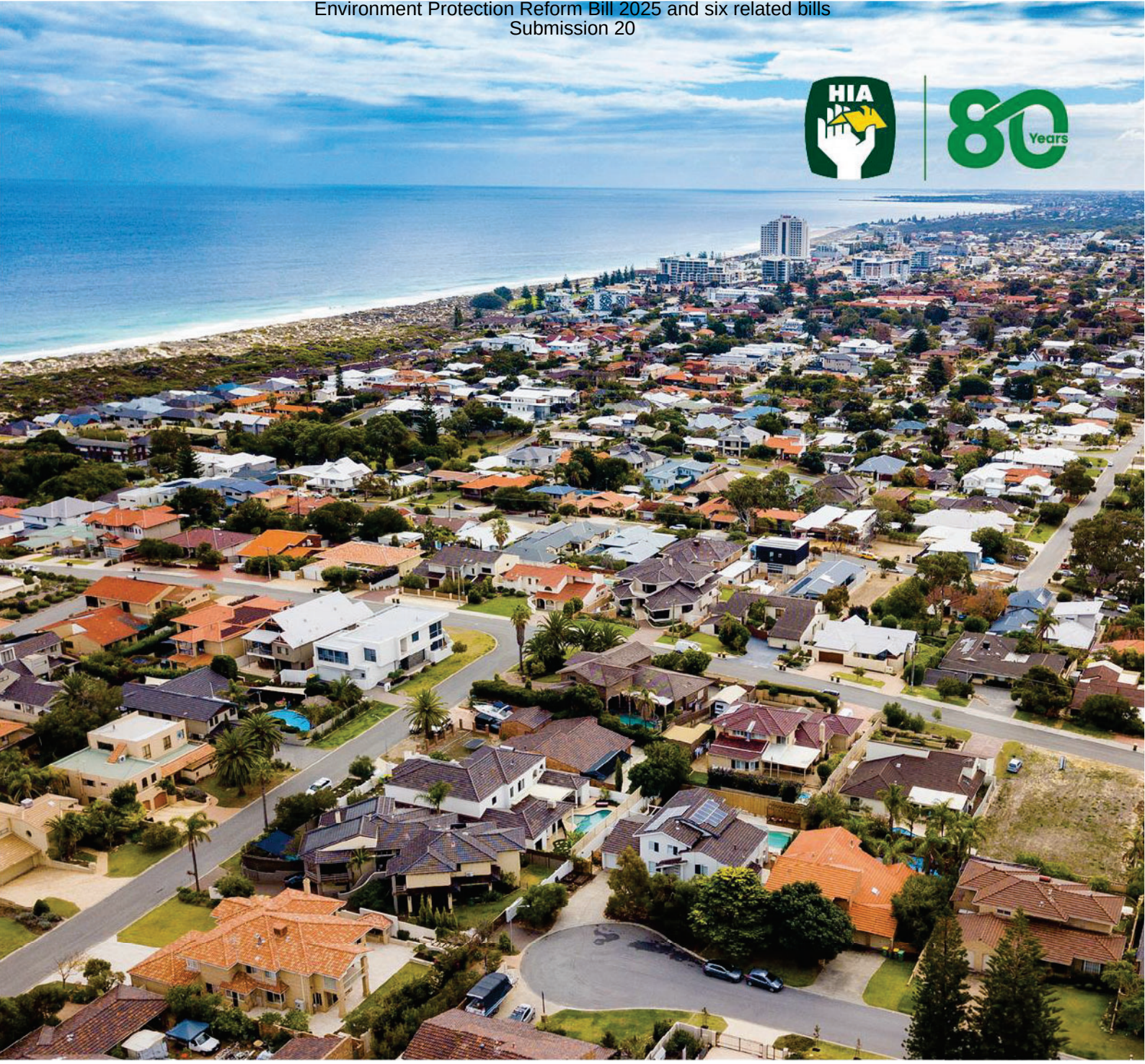

HIA Submission

Environment Protection Reform Bill 2025 and six related bills

Environment and Communications Legislation Committee

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Simon Croft
Chief Executive Industry & Policy
Housing Industry Association
79 Constitution Avenue
Campbell ACT 2612
Phone: 02 6245 1300

About HIA

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 and medium-density housing developments, apartment buildings and completing renovations on Australia's over 11 million existing homes.

HIA members comprise a diverse mix of businesses, 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 GDP, 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, advocate 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 stationery, industry awards for excellence, and member only discounts on goods and services.

Reforming the long overdue EPBC Act

The Australian Government are proposing changes to reform Australia's long overdue and much discussed national environmental laws, including the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

The proposed reforms follow the recommendations of the 2020 Independent Review of the EPBC Act (the Samuel Review).

It is widely accepted that the EPBC Act is outdated and requires a major reset and modernising.

The current Act is acting as a barrier to more holistic environmental management alongside stalling business investment and delivery of critical new housing, infrastructure and renewable energy projects.

Given the importance of getting these settings right, it is essential the EPBC Act and related instruments are fit for purpose in 2025 and beyond.

The resounding message HIA continually receives is that the current EPBC Act is not delivering for the environment, for business or for the community.

The EPBC Act lacks a clearly defined outline on its intended outcomes and has suffered from two decades of failing to continuously improve the law and its implementation.

Business has also suffered. The Act is complex and cumbersome, and it results in duplication with state and territory development approval processes. This adds costs to business, often with little benefit to the environment.

It is widely accepted that the EPBC Act requires fundamental reform, how best this is achieved and delivered though, is where differences in opinion lie across the political divide.

For business and the community, they want and expect action and not further delays.

The proposed EPBC Act (and supporting instruments) while not perfect, provide a sensible pathway of change forward to achieve improvements across the core principles and recommendations as identified in the 2020 Samuel Review.

These changes should be made immediately to avoid further delays and to deliver real and meaningful improvements. By doing so it would modernise the laws and let business get on with business and deliver tangible improvements to environmental outcomes.

Equally a sustained commitment to change is required from all stakeholders going forward. Legislative reform should not be a once-in-a-decade opportunity, but rather part of a sensible process of continuous improvement.

The current limbo that the Act and proposed reforms has been in since 2020 is stalling projects and productivity.

HIA estimates an excess of 26,000 housing projects alone are stuck in the backlog – some projects as far back as 2017. Other figures indicate the number could be as high as 40,000.

We are in a national housing crisis, and all stops must be pulled out to fast track the delivery of these housing projects. Alongside this to support the delivery of critical infrastructure and other priority government projects to which the current EPBC Act is placing a hand break on.

At a principle level, the EPBC Act should not be about stopping all development, nor should it be about permitting all development.

The Act should deliver better outcomes for the environment, whilst allowing a sensible and sustainable approach to meeting Australia's future development needs.

The reforms currently tabled, based largely on the Samuel Review, support a sensible and fundamental shift, from a transaction-based approach to one centred on effective and adaptive planning.

While HIA supports the principles underpinning this Bill, our submission details further recommendations to improve the functionality of the EPBC Act, some sensible changes to clarify its application and removal of additional duplication, particularly associated with the proposed new emissions reporting requirements.

We are also calling on the need for the reforms to be supported by a widespread education and change management campaigns. Alongside a commitment for a two year post implementation assessment review to ensure the reforms are being implemented as intended with opportunities for further improvements identified and acted on.

Current EPBC Act impact on housing and productivity

HIA remains a strong supporter of reforming the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) which represents a key opportunity to increase the productivity of the housing sector and in turn improve housing affordability and availability.

There has been extensive commentary over the past few years regarding the significant undersupply of housing in Australia, a reality which has led to demand consistently exceeding supply and causing a significant decline in housing affordability.

Considering the immense housing challenge, HIA is of the view that policy makers must explore all initiatives to enhance the productivity of the housing sector and put downward pressure on housing costs, with the key being reforming and modernising the EPBC Act.

As previously noted by the Australian Government's Productivity Commission, the approval process for housing is complex and protracted involving multiple tiers of government. Crucially, the time expended on securing regulatory approvals significantly outweighs the time required for physical construction.

HIA members consistently report the process for securing environmental approvals, including those mandated under the EPBC Act, imposes substantial time and cost burdens.

It is not uncommon for a new housing project to be subject to an extended two-to-four-year assessment timeframe under the Act's provisions.

These regulatory delays exacerbate the critical shortage of shovel-ready residential land, which remains a core issue for the industry and a key contributor to rising housing costs. This issue is emphasised by the fact land prices have escalated at a rate more than double that of the ABS Consumer Price Index (CPI) and five times faster than the growth in the cost of home building materials [(1)].

Key features for reform

HIA have been advocating for several key reforms to the EPBC Act, including:

- Streamlining new housing projects approvals through use of strategic assessments, bilateral agreements and regional plans;
- Removing excessive duplication between federal, state and local governments environmental and planning approvals;
- Prioritising housing project approvals with a dedicated 'housing strike team'; and
- Overhauling the approach to 'offsets' under the Act which can add significant costs and uncertainty to approvals and establish an offsets system that can see payments made at time of approval rather than upfront.

We are therefore supportive of measures directly related to these core principles. We have also identified further measures to address and improve the operation of these matters as listed in this submission.

[1] HIA & CoreLogic, *HIA-CoreLogic Residential Land Report (September Quarter 2024)*, as cited in "Land price growth outpaces CPI and home building costs" – 23 January 2025.

HIA recommendations for further reforms to the EPBC Act

Whilst HIA is generally supportive of the passage of the Bills, we additionally recommend that further reforms and adjustments be made across the following matters.

Legislative complexity

The EPBC Act is complex, its construction is dated, and it does not meet best practice for modern regulation.

Complex legislation makes it difficult, time-consuming and expensive for people to understand their legal rights and obligations.

This leads to confusion and inconsistent decision-making, which creates unnecessary regulatory burdens for business.

The way different areas of the Act work together to deliver environmental outcomes is not always clear, and many areas operate in a siloed way.

The Act also interacts with a wide range of other Commonwealth and state and territory environment, planning and heritage legislation. These interactions include inconsistency and conflict, which lead to complexity and uncertainty when applying the Act.

Convoluted processes are made more complex by key terminology being poorly defined or not defined at all.

The reforms as tabled to the EPBC Act and supporting documents, address some of this complexity in streamlining and consolidating approval pathways but it remains that the nature of the policy areas covered by the EPBC Act are inherently complex.

This is compounded by the fact that proponent's interaction with the EPBC Act is inconsistent and often a single instance for a project, rather than a continuous process of interaction. This adds to the uncertainty and inconsistency in application.

It is expected that going beyond 2025, more matters will be referred to EPBC assessments due to the nature and scale of large government priority projects and the environment and climate changing.

This reinforces the need to have a modern, fit for purpose and well understood regulatory environment or was this to say EPBC.

Recommendations on addressing legislative complexity

- Whilst some of this complexity has been targeted in the proposed reforms and amendments to the Bills, a broader body of work is needed to support a wide scale simplification of the Act and supporting National Standards.
- This should be underpinned by a widescale and targeted education and implementation plan to support all who interact with the EPBC laws.
- This subsequent body of work should also consider how to improve the interactions within the Act and with other Commonwealth and state/territory legislation.
- A 2 year post implementation review should be committed to with key stakeholders to monitor its implementation and application.

Trust in decision making and better & more transparent data

The EPBC Act is not currently trusted by industry. They generally view it as cumbersome, pointing to duplication, slow decision-making, and legal challenges being used as a tool to delay projects and increase

costs for business.

An underlying theme of industry distrust in the EPBC Act relates to the length of time it takes to receive an approval and the perceived duplication with state/territory processes for little additional environmental benefit.

On average, projects can take over two years. This is too long.

For business, time is money. Delays, regardless of when they occur, can result in significant additional costs, particularly on large projects.

A commonly raised concern with the current assessment process is the industry's view of over reliance on 'stop clock' mechanism which pauses any statutory timeframes.

A key opportunity of this reform is to increase certainty for industry by legislating a maximum number of days a 'stop clock' can be utilised during a single assessment. Similar time restrictions are placed on 'stop clock' provisions in planning frameworks such as Queensland which is limited to 130 business days.

Notably there are also no limitations on the requests for information that can be issued by the Department. Without legislating strict statutory timeframes for assessments, a great degree of uncertainty will still be associated with the EPBC Act.

Another key issue is the transparency and visibility of tracking approvals.

High-quality accessible data and information is needed to improve transparency in the application and operation of the Act and supporting National Standards.

Better data and information are needed to set clear outcomes, effectively plan and invest in a way that delivers, and to efficiently regulate development.

Recommendations on addressing on trust and delays in decision making

- HIA strongly advocates on the need for setting statutory time limits for Commonwealth and state/territory approval bodies and these to be publicly reported quarterly.

  To accurately measure the true efficiency of the EPBC Act, the current quarterly performance report should be improved by including key metrics such as:

  - The average number of information requests issued for an application;
  - The total time elapsed since lodgement of the application;
  - The average timeframe for proponent responses to information requests; and
  - The average number of 'stop clock' days alongside the specific reasons to effectively identify procedural issues.
- Set a target of clearing the backlog of any project that has been stuck in the approvals process for more than a year, to have a final decision by end of 2026.
- Create an 'approvals dashboard' enabling transparent reporting that proponents can track their approval progress through assessment. This could be modelled off the South Australian Governments land supply dashboard https://plan.sa.gov.au/state_snapshot/better-housing-future/land-supply-dashboard .

Interactions with state/territory laws – bilateral agreements

A key criticism of the EPBC Act is it duplicates state/territory regulatory processes for development assessment and approval.

The Samuel Review identified, consistent with HIA member feedback, that there are examples where the

Act has led to demonstrably different environmental outcomes than those arising from State and Territory processes.

The EPBC Act requires environmental offsets only be applied for the protected matter the approval relates to – that is, they must be 'like for like'. This policy may not be perfect, but it exceeds requirements in some jurisdictions.

This results in additional or different conditions placed on projects that have better outcomes than under State or Territory laws alone. Under the current arrangements, the same environmental outcomes cannot be consistently replicated even though the process is duplicative.

Despite efforts to streamline these processes, significant overlap remains. A continuation of the piecemeal approach is a barrier to improving effectiveness and efficiency. Past attempts to accredit States and Territories to make approval decisions that are consistent with the EPBC Act have been unsuccessful, due to the lack of defined outcomes and concerns these decisions would be inconsistent with the national interest.

There should be no barriers to accreditation where a state or territory can demonstrate they can meet the proposed National Environmental Standards.

HIA supports coordinated approach to environmental legislation and the delegation/accreditation of state/territory governments through bilateral agreements, particularly given State/Territory and local governments are often already completing detailed environmental assessments for proposed developments.

For a State/Territory framework to be accredited, it must satisfy, or be capable of satisfying, three critical tests. The Minister must be satisfied that:

- “Not Inconsistent with Standards” Test: The state/territory framework is not inconsistent with any prescribed National Environmental Standards (NES).
- “No Unacceptable Impacts” Test: Actions approved under the framework will avoid “unacceptable impacts.”
- "Net Gain" Test: Any significant impacts that remain (residual impacts) would pass the "net gain test," ensuring an environmental benefit.

Additionally, the Minister must receive formal undertakings from State/Territory government that their decision-makers will follow the accredited framework and any approvals granted under it will meet the required criteria.

It is not expected that most states/territories will likely finalise these bilateral agreements in the short to medium term. This means the true gains in efficiency and reduction in duplicated approvals for many proponents may still be way off.

Recommendations on bilateral agreements and reducing state/territory duplication

- Greater clarity and certainty are needed on the definitions of "Not Inconsistent with Standards" Test, “No Unacceptable Impacts" Test and “Net Gain" Test.
- A 2-year review period upon passage of the Bills needs commitment for the effectiveness of states/territories to likely finalise these bilateral agreements and getting accredited.
- Worked examples and templates are needed to ensure consistency in application and interpretation.
- Given the reported difficulties in coordinating approvals with several levels of government, significant resources should be allocated to establishing bilateral agreements and accrediting state/territory governments to complete assessments.

National and landscape scale plans – strategic assessments

Planning at the national and regional (landscape) scale is needed to action where it matters most and support adaptive management.

The amended EPBC Act will enable adaptive regional planning approaches.

These amendments, together with a commitment to make and implement plans, is necessary to support a fundamental shift in focus – from project-by-project development transactions, to effectively planning at the right scale for a sustainable environment and future development.

Strategic plans for big-ticket items can:

- provide a national framework to guide a national response;
- direct research (for example, feral animal control methods);
- support prioritisation of investment (public and private);
- enable shared goals and implementation across jurisdictions.

A greater focus on regional planning

The amended EPBC Act should enable adaptive regional planning approaches that reflect National Environmental Standards.

Regional plans should support the management of threats at the right scale, provide a sound basis for regulatory decision-making, and set clear rules to manage competing land uses.

The benefits of a regional planning approach include:

- the ability to take pre-emptive actions to address declines before species become eligible for listing;
- implementing priorities of strategic national plans to contribute achieving national environmental outcomes;
- certainty where prospective development could occur and, more importantly, should not occur;
- more efficient environmental research and monitoring of habitat recovery to support threatened species and ecological communities;
- contributing and ensuring ownership of environmental outcomes where communities are involved in the regional plan development and implementation;
- directing investment to where required to achieve environmental outcomes such as restoration.

Landscape approvals

A fundamental challenge and source of inefficiency for the residential construction industry is the poor coordination among all levels of government during the designation of land for residential development.

State/territory and local governments frequently designate land for residential development through zoning and other strategic planning instruments. In response, the housing industry forms substantial upfront investments based on the presumption that these areas are viable for construction.

Problems arise where zoned locations are subsequently found, often late in the process, to contain significant ecological features preventing development or necessitate complex and time-consuming Commonwealth approval under the EPBC Act. This late discovery effectively nullifies prior state/territory and local government approvals and private investment.

Recommendations on landscape plans, bioregional plans and strategic assessments

- HIA supports greater use of landscape approvals to creäte certainty and streamline approval processes in locations zoned for residential development.
- In HIA's view, bioregional plans should seek to ensure land zoned for residential purposes is declared as a 'go-zone.' It is important to emphasise that state/territory and local governments have assumed certain densities of housing can be achieved on residential land to meet housing targets.
- Future landscape plans, bioregional plans, strategic assessments, etc. must be mapped to population data to ensure they are responsive to housing supply needs and urban and regional population growth in a proactive manner.

New Approach to Offsets: Shifting to 'Net Gain'

The current EPBC Act environmental offsets policy has major shortcomings in both its design and implementation.

The 'avoid, mitigate, offset' hierarchy is a stated intent of the policy, however, an offset has become an expected condition of approval, rather than an exception.

There is limited transparency of the location, quality or quantity of offsets. There is no publicly available dataset or mapping associated with offset sites, and in the absence of such a tool, the same area of land may be 'protected' more than once.

The Samuel Review concluded the EPBC Act environmental offsets policy requires fundamental change.

There is concern the proposed new approach to offsets will create greater uncertainty and add costs and complexity.

The proposed Reform Bills will shift environmental obligations from a "no net loss" standard to a more demanding "net gain" for protected matters.

This new "net gain test" requires that every residual significant impact be compensated, ensuring the environment is left, in theory, better off than before the action.

Proponents can meet this test either through traditional offsets or by paying a restoration contribution charge. The legislation also introduces the use of Nature Repair Market biodiversity certificates as an offsetting mechanism.

A significant barrier exists in the current process relating to finding suitable offset locations. Allowing developers to provide a financial contribution to the Restorations Contribution Account could be a practical alternative in some circumstances.

While HIA recognises the environmental challenges and the difficulty of finding suitable offset arrangements under the current framework, we remain cautious to the introduction of new financial burdens. HIA notes that housing is already one of the most heavily taxed commodities in the economy.

A greater use of strategic assessments will improve environmental restoration outcomes by balancing impacts and delivering offsets in a coordinated way across multiple projects in a region. However, major shortcomings in the EPBC Act environmental offsets policy need to be addressed prior to widespread adoption in strategic assessments.

Common assessment methods for threatened species listing

Governments have been working to harmonise and streamline the listing of threatened species and ecological communities through a common assessment method. HIA supports this work and the Commonwealth maintaining this list on behalf of all jurisdictions.

Any jurisdiction can currently undertake a national assessment using the common assessment method. The outcome may be adopted by other jurisdictions where that species occurs (under their laws), as well as the Commonwealth (under the EPBC Act). This will be supported by the new National Offsets Standard.

Currently species can be assessed numerous times, adding significant costs and uncertainty. HIA supports the ability to have species considered once and listed in the same threatened category across all relevant jurisdictions, which leads to corresponding improvements in efficiency.

To date over 100 species listing decisions have been made under the EPBC Act based on state and territory-led assessments.

The Commonwealth should pursue opportunities for greater streamlining by moving to a single list of nationally protected matters and maintain the list on behalf of all jurisdictions.

Clarifying key definitions including 'unacceptable impacts'

Projects that cause an unacceptable impact on Matters of National Environmental Significance (MNES) cannot be approved under the EPBC Act. This level of impact must be avoided or mitigated; it cannot be offset or compensated for.

An "unacceptable impact" is defined for each MNES. For example, for a threatened species, it means an impact that "seriously impairs" the species' "viability" (survival and recovery), or one that seriously damages "irreplaceable" critical habitat necessary for its survival.

The definitions utilised are complex but also open to interpretation.

There is a significant risk that the threshold for an "unacceptable impact" may be lower than intended, HIA suggests that this definition may require further review to prevent unintended consequences in project approvals.

Recommendations on reforming approach to offsets

- An offset banking system should be investigated to allow developers to progress as the government is less time sensitive to coordinating offsets.
- Greater flexibility is needed at the point in time when offsets payments can be paid, particularly focussed at the time of approval as opposed to the time of application or progress payments linked to assessment periods.
- The offsetting process is complex as it requires significant assessment by industry, including research funding to target conservation and protection measures for a specific species.
- Greater clarity and certainty are needed on the definitions of "unacceptable impact", and other critical definitions in the National Offsets Standard.
- HIA supports further work to harmonise and streamline the listing of threatened species and ecological communities through a common assessment method.
- HIA strongly supports the ability to have species considered once and listed in the same threatened species category across all relevant jurisdictions, which would lead to corresponding improvements in efficiency.
- Limitations shall be put in place to ensure species are not added to a project through the assessment process for greater certainty and transparency. This could be a component of the recommended approvals dashboard HIA has suggested.
- Upon passage of the EPBC Bills a broader body of work is undertaken in conjunction with an industry reference group on the approach to offsets specific to key sectors who interact with the EPBC laws.

Other key matters

Housing Strike Team should be permanent

HIA supports the new streamlined assessment pathway and any attempts to reduce the timeframe for assessment. The dedicated 'housing strike team' established, post the recent Treasurer's Economic Reform Roundtable, is making significant inroads in clearing some 26,000-40,000 housing projects stuck awaiting approvals.

HIA is strongly advocating that the 'Housing Strike Team' should become a permanent feature of the new EPA or associated Department, noting the acute shortage of homes across the nation and home building targets.

Housing projects are unique, often repeatable and differ from other types of projects requiring EPBC approvals, such as mining, infrastructure, forestry or large scale renewables.

Recommendation

- The housing strike team become a permanent feature of the new EPA or associated Department.

Emissions reporting

The proposed requirement on 'Scope 1 and 2' emissions reporting is considered an overreach.

This would create duplication and overlap with requirements for emissions reporting already prescribed on industry through other reporting requirements, including ESG reporting, Safeguard Mechanism, climate financial reporting and at a housing project level through NCC or BASIX energy efficiency provisions.

HIA recommends this requirement be removed from the legislation or an exemption included that the reporting of Scope 1 and 2 emissions only occurs where it would not otherwise be required by another legislative requirement on a project.

Another core concern with this aspect is the reporting requirement on Scope 1 and 2 being inconsistent across the different legislative mechanisms, meaning industry could be preparing numerous different reports rather than a single source of truth.

For housing and building products Scope 1 and 2 emissions reporting, if required at the environmental project approval time, it would be an ineffective mechanism. Whereas it would be far more relevant and effective at the time of the actual home building in determining the embodied emissions of material inputs into the building of the dwelling and hence better placed in other building or energy efficiency related building codes and standards.

Recommendation

- Remove the requirement for Scope 1 and 2 reporting from the legislation or include exemption that the of Scope 1 and 2 emissions reporting only occurs where it would not otherwise be required by another legislative requirement on a project.

Environmental Protection Orders – equitable processes

The drafting of new regulations introduces Environmental Protection Orders (EPOs), which are intended for circumstances where a breach presents an imminent risk of serious damage. These EPOs can include a broad range of orders, specifically the power to issue a "stop work" requirement.

HIA notes the Bill purposely excludes EPOs from hearings. All compliance and regulatory processes should be transparent and equitable.

Recommendations

- The legislation should introduce a ‘show cause’ procedure prior to the issuing of ‘stop work’ notices which comes with a significant imposition on proponents.
- Furthermore, proponents should also be afforded a ‘right of appeal’ or a hearing in relation to the decision of the Department.

Transitional projects

Upon passage of the EPBC reforms, transitional arrangements are needed to assist in shifting from the current national environmental laws, including the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), to the updated laws.

Existing projects that have not received a final decision when the laws take effect would still need to be assessed under the current (existing) EPBC Act. This includes projects under states and territories current agreements.

New projects that haven’t been referred yet, will need to comply under the new laws.

HIA are aware some proponents may likely pull their existing projects awaiting approval to the new laws as it will be far simpler and quicker.

Recommendations

- Projects that are in the queue awaiting approval under the 1999 laws, should have a pathway and choice to transition to the new laws, without the need to re-submit a new approval for assessment.
- Set a target of clearing the backlog of any project already stuck in the approvals process for more than a year, to be finalised within next 12 months.