



THE VOICE OF **LEADERSHIP**

Inquiry into streamlining environmental regulation, 'green tape' and one stop shops

Standing Committee on the Environment

Property Council of Australia
Property Council of Australia House
Level 1, 11 Barrack Street
Sydney NSW 2000

P: +61 (2) 9033 1900
F: +61 (2) 9033 1966
ABN 13 008 474 422

E: info@propertyoz.com.au
www.propertyoz.com.au

About the Property Council

The Property Council represents the \$670 billion property investment industry in Australia.

The Property Council's 2,000 member firms and 55,000 active industry professionals span the entire spectrum of the property and construction industry.

Our members operate across all property asset classes - including office, shopping centres, residential development, industrial, tourism, leisure, aged care, retirement villages and infrastructure.

The property and construction industry by numbers

- 11.5 percent of Australia's GDP;
- \$34 billion p.a. paid in property-specific taxes;
- \$340 billion in investment grade assets under management;
- 1.3 million jobs (12.8 percent of the total workforce);
- \$148 billion in direct economic activity generated.

Executive Summary

- The property industry has been increasingly impacted by federal environmental laws and schemes that duplicate other federal initiatives, or those of state and territory governments.
- The Property Council welcomes the scrutiny of the House Environment Committee to identify ways to streamline without sacrificing environmental protections.
- The property industry has a longstanding commitment to sustainability, making many of the Federal Government's requirements – particularly relating to energy efficiency – redundant.

- This submission argues that overregulation leads to a reassignment of sustainability resources at the company level. This reallocation comes at a cost to meaningful and proactive sustainability initiatives.
- We are also strong supporters of moves by the Federal Government to implement bilateral agreements to delegate federal assessments and approvals under the EPBC Act to relevant states and territories. This submission offers practical advice on how those bilaterals can be made most effective.
- The Property Council has been critical of moves to introduce standalone guidelines for the protection of koala habitat in south-east Queensland. This submission recommends that these be recast to better align with the Government's one-stop-shop agenda.
- This submission calls for the repeal of two pieces of environmental legislation which have created an unnecessary impact on property businesses:
 - the *Energy Efficiency Opportunities Act*, and,
 - the *Building Energy Efficiency Disclosure Act*.
- Both these instruments have been proven to increase compliance costs while simply regulating existing practice in the property industry.
- The Property Council also recommends streamlining measures to reduce the compliance burden associated with the:
 - National Greenhouse and Energy Reporting Scheme; and,
 - Commercial Building Disclosure Scheme (in the event it isn't repealed).
- To ensure gains in efficiency are not lost through subsequent bouts of regulation, the Property Council recommends the establishment of standard metrics to benchmark the cost of environmental regulation by state and industry.

Contents

1	Introduction.....	4
2	Jurisdictional Arrangements and Deregulation	5
2.1	Environmental Protection and Biodiversity Conservation Act	5
2.2	Implementation of EPBC Bilaterals	6
2.3	Specific requirements for koala habitat	6
2.4	Ongoing reporting conditions of EPBC approvals	8
3	Regulatory Burden vs Environmental Benefits	9
3.1	The compliance-sustainability resourcing trade off	9
3.2	Benchmarking environmental compliance costs.....	9
4	Improving Environmental Regulation.....	10
4.1	The National Greenhouse and Energy Reporting Scheme.....	10
4.2	The Commercial Building Disclosure Scheme	10
5	Opportunities for Deregulation	12
5.1	Energy Efficiency Opportunities Act	12
5.2	Building Energy Efficiency Disclosure Act.....	12

1 Introduction

The Property Council welcomes the opportunity to provide input to the Standing Committee on the Environment's *Inquiry into Streamlining Environmental Regulation, 'Green Tape', and One Stop Shops* (the Inquiry). This Inquiry is an important opportunity to build the evidence base for more effective, reasonable and economically sound environmental regulation.

Australia's construction industry faces a significant challenge as we seek to create the necessary workplaces, housing, infrastructure and public places to accommodate a growing population. The Property Council's members play a key role in financing, delivering and managing each of these asset types.

For decades, the property industry has recognised its role in reducing environmental impacts. This commitment to sustainability has manifested itself in a radical reduction in energy and water usage, and waste output.

The property industry has been an early mover, providing broad support for rating and reporting frameworks that promote transparency and allow the market to effectively evaluate an asset or entity's environmental performance.

Despite these efforts, the property industry has found itself hamstrung by excessive government efforts to regulate eco-efficiency.

At the company level, this has seen resources directed away from the business of sustainability to the business of complying with purposeless and duplicative regulatory requirements from all levels of government.

This submission aims to identify practical pathways for better balancing: limitations on environmental impacts on one hand; and private sector flexibility on the other.

These include:

- fast-tracking implementation of a one-stop-shop model for environmental assessments and approvals;
- reducing ongoing reporting obligations as part of EPBC approvals;
- withdrawing the Commercial Building Disclosure Scheme, until such time as practical improvements can be made;
- repealing the Energy Efficiency Opportunities Act; and,
- streamlining reporting requirements under the National Greenhouse and Energy Reporting Scheme.

Each of these measures would reverse policy decisions that have reduced the time and resources allocated by the property industry to practical sustainability outcomes.

The Property Council remains committed to targeted deregulation of this nature to promote economic growth without sacrificing environmental standards.

2 Jurisdictional Arrangements and Deregulation

2.1 Environmental Protection and Biodiversity Conservation Act

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has significant implications for the construction sector.

The EPBC Act has been subject to several reviews which examined its impact on development and sustainability objectives. The duplication between the Act and state-based environment protections is well understood and there has been no credible evidence presented that this duplication results in better environmental outcomes.

The EPBC Act lacks clear definitions, rules, and tests which has resulted in broad and inconsistent interpretations for more than a decade. All stakeholders have suffered from a lack of certainty and consistency.

As noted above, the property industry is among the hardest hit by this ongoing policy failing. With over 300 building and construction proposals referred to the Commonwealth in the last 12 months – construction costs and delays could be substantially reduced by delegating these powers to state and territory authorities.

The Property Council is therefore highly supportive of the Federal Government's moves to establish one-stop-shops for EPBC approvals and assessments. This move will finally deliver the streamlined process sought by both sides of politics for many years and will provide a welcome boost of certainty and efficiency for property investments.

Accordingly, the Property Council supports the practical approach detailed in the Productivity Commission's *'Five point plan towards bilateral approval agreements'* (PC 2013) – particularly the recommendations for strong oversight and strategic planning by the COAG Reform Council.

Further elements that would fast track infrastructure assessments and approvals include:

- introduction of new national standards for accrediting environmental impact assessments and approvals to better align Commonwealth and state systems;
- a more streamlined assessment process to cut red tape for business and improve timeframes for decision making, which includes an pathway for decisions on proposals within 35 business days, if all required information is provided;
- establishment of a single national list of threatened species and ecological communities to reduce inconsistencies between jurisdictions;
- provision of transparent information to educate communities about environmental assessments, including a standard practice of publishing the department's recommendation reports;
- a better heritage listing process based on a single, transparent assessment list.

Additionally, the Property Council recommends that environmental assessment reform go further to include the following proposals:

- Environmental Impact Assessment processes should be completely revised;
- decision-making authority under the EPBC Act should be delegated by the Minister to accredited states and territories, to prevent administrative log-jams at the Federal level;
- delegation is predicated on the states and territories being accredited by the Commonwealth to ensure stringent environment standards are maintained;
- the Commonwealth's role should be as an arms-length policy-making authority focused on auditing;
- the requirements of the EPBC Act should be clearly stipulated so that stakeholders understand their compliance obligations;
- the use of public inquiry should be limited only to projects proposed by the government applicants;

- public exhibition should occur only once, at the state or territory level;
- and the term 'major projects' should be defined, so as not to capture private projects inadvertently.

The reform of the EPBC Act and its operation in practice provide an enormous opportunity to streamline review processes, synthesise environmental policies and deliver substantial savings in the red tape currently impacting the sector.

2.2 Implementation of EPBC Bilaterals

The Property Council has welcomed the 'one stop shop' reform by the Federal Government - aimed at streamlining assessment and approval processes with State and Territory governments.

The Property Council is pleased by the progress of bilaterals in QLD and NSW in particular, and notes the work underway in SA and the ACT.

Unfortunately, while a 'one stop shop' model represents a significant step forward, there are still outstanding issues which have not been progressed under the bilaterals released for consultation to date.

These can be summarised as follows:

- **Statutory timeframes** – the NSW Draft Bilateral does not stipulate assessment and approval timeframes. Maximum timeframes should be set with limited 'stop the clock' provisions built in.
- **Replication of offsets policies** – the NSW and QLD draft bilaterals do not accredit those states' existing environmental offsets policies (BioBanking in NSW and the Environmental Offsets Policy in QLD). This creates unnecessary regulatory confusion.

- **Limited project scope** – the QLD Draft Bilateral only covers projects approved under certain QLD provisions. These are generally major projects, with mid-size projects still subject to federal-state duplication. This needs to be amended and steps taken to ensure similar issues don't arise as a result of the NSW planning reform process.
- **Performance monitoring** – draft bilaterals to-date do not provide an adequate mechanism for monitoring performance of assessment and approval authorities.

Full copies of the Property Council's submissions to each of the draft bilaterals are available on our website.

2.3 Specific requirements for koala habitat

The koala referral process has significant implications for the property industry and the residential development sector in particular.

The Property Council supports the protection of the koala and appropriate protection of koala habitat but does not believe it requires the unnecessary duplication and cost of the introduction of new Commonwealth guidelines in South East Queensland.

To avoid this, the Property Council supports the simplification and streamlining of the proposed referral process to bring it in-line with the existing koala protections in South East Queensland.

This complements the current Federal Government policy being pursued through the EPBC bilateral process.

This is justified because:

- The existing protections for koalas in Queensland form one of the strongest and most comprehensive suites of rules ever applied to koala species in Australia (Appendix A).
- Only 0.09 per cent of urban zoned land within the mapped area of the Commonwealth referral guidelines provides potential koala habitat (Appendix B, C).

- In the absence of clear guidelines with a scientific basis the majority of applications being referred to the Federal Government are done as 'insurance applications' (i.e. applications are made with no new evidence of any koala habitat and are lodged in order to mitigate project risk rather than respond to genuine environmental concern).

Thousands of residential lots have been halted by the introduction of the draft koala guidelines.

To prevent a significant deterioration in south-east Queensland housing supply the Property Council recommends that these assessments be given Federal Government priority while the guideline and bilaterals processes progress independently.

There are four basic steps that approval authorities can take to ease the compliance burden without weakening species protection.

1 - *Grant EPBC referral exemptions for land within existing urban zone and current approvals*

An overlay of koala habitat with the existing urban zone in Queensland shows that just 0.09 per cent of urban zoned land within the mapped area of the Commonwealth referral guidelines provides potential koala habitat.

This amounts to approximately 338 square kilometres of potential urban koala habitat (Appendix A, B).

The majority of this area is located within the controls of the South East Queensland Koala Conservation State Planning Regulatory Provisions.

The remaining areas outside of South East Queensland are typically in strategic locations such as the Gladstone State Development Area, where other controls apply.

Despite this the majority of applications from the sector have been insurance applications against Controlled Actions.

Insurance applications bog down the system, delay projects and add cost without delivering improved environmental outcomes.

The vast majority of these are from projects within the existing urban zone.

Ideally, the property industry would like the koala listing altered such that the matters of national environmental significance trigger applies only to non-urban zoned areas in Queensland.

This should be recognised within either the EPBC Act, the Regulation or in the koala listing.

Furthermore, the Property Council **opposes** retrospectivity applying the new Commonwealth guidelines which puts projects at risk of non-compliance.

2 - *Introduce an assessment and approval bilateral that will allow final determinations to be made in Queensland*

The existing State-based provisions are broadly accepted by conservationists and the property industry and form one of the strongest suites of koala conservation rules ever applied.

Protections under the Queensland system include:

- In critical locations the rules result in the prohibition of further development applications and the clearing of trees.
- In other locations proponents are required to undertake extensive studies and demonstrate how their proposal avoids conflict with koala communities and habitat.

The Draft Referral Guidelines largely ignore the existing State protections and will result in further compliance cost and duplication for the property industry.

Provided that there is a sufficiently wide definition of urban areas, the Property Council supports the adoption of an assessment and approval bilateral which allows final determinations to be made in Queensland.

Such an agreement should seek to streamline the process through recognition or accreditation of the existing State regime.

3 - *Recognise the existing Queensland Koala offsets program*

Following an overhaul of koala legislation commencing in 2010 the Queensland Government introduced a koala offsets policy. Under the policy koala offsets are set at a ratio of 5 to 1.

Alarming, the draft Commonwealth referral guidelines will jeopardise koala offsets paid for many existing projects by providing for retrospectivity.

Despite having already been through an extensive process incorporating large financial or direct planning offsets specific to koala habitat, existing projects under the guidelines will be considered no differently to a new project proposing no koala offset.

Projects must be deemed a Controlled Action in order for the existing offsets to be considered and reapplied through the Commonwealth environmental offset system.

There are significant costs and time delays for a project once deemed a Controlled Action.

The Property Council supports overriding provisions that do not preclude existing offsets set by the State based koala protections when undertaking assessments under the new Commonwealth guidelines.

4 - *Reach consensus on the scientific basis for koala habitat assessments*

The Commonwealth referral guidelines for koalas will introduce further duplication and red tape unnecessarily in an already heavily regulated system.

For instance, there is no evidence base to explain the shift between the South East Queensland Koala Conservation State Planning Regulatory Provisions which provide for a distance of two kilometers as an indicator of a site's connectivity value and the draft Commonwealth guidelines which require five kilometers.

To provide certainty and clarity for proponents, the Property Council urges the Queensland and Commonwealth Governments to reach consensus on a single set of scientific criteria for assessment under both systems, should a streamline approach not be achieved. This is absent from the current proposed guidelines.

2.4 Ongoing reporting conditions of EPBC approvals

Current Federal Government approvals typically contain endless reporting obligations, aimed at demonstrating ongoing compliance with consent conditions.

While some level of reporting is sensible to ensure that initial requirements have been met, extending these obligations into subsequent phases creates a significant burden on developers who would rarely gain a benefit from changing practices mid development or post-completion.

Once complying practices are established, the low likelihood of non-compliance should only warrant further auditing as a result of genuine third party complaints. Compliance with ongoing requirements should be dealt with in line with ordinary planning approval practices (ie. through government-originated verification in exceptional cases).

As with other areas of environmental regulation, the time and resources required to comply with ongoing reporting detracts from a proponent's ability to engage in proactive sustainability initiatives.

The Federal Government should look to reduce the reporting requirements for projects approved under the EPBC Act and require the same for state and territory agencies conducting assessments and approvals under bilateral arrangements.

3 Regulatory Burden vs Environmental Benefits

3.1 The compliance-sustainability resourcing trade off

The property industry has proactively recognised and adapted to shifting investor and community expectations on sustainability. As a consequence, property companies have developed a sophisticated and engrained approach to environmental management.

Major property asset owners have had sustainability plans in place for many years, overseen by a team of dedicated experts. In addition to responding to an ever-increasing number of voluntary reporting schemes, sustainability teams develop and implement plans to reduce waste, water and energy use, and lower greenhouse gas emissions.

Each time well intentioned governments add to the environmental reporting and compliance burden, there is a very real trade-off between the time consumed by compliance, and the resourcing of practical sustainability measures.

This nexus is not considered in the cost benefit analyses undertaken prior to regulation, and amplifies the detrimental impact of policies which don't materially improve sustainability outcomes.

The outcome of this trade-off is simple: **if well-intentioned environmental policies consume corporate resources without producing environmental outcomes, they are causing direct environmental harm.**

3.2 Benchmarking environmental compliance costs

Excessive regulation is often talked about but rarely reduced.

Without a clear understanding of how the regulatory burden changes over time, any gains in green tape reduction are likely to be eroded by subsequent policy initiatives.

The Property Council supports the establishment of a benchmark by which regulatory performance can be judged.

Given the slow nature of policy developments, this would not require an annual investigation.

Treasury should be tasked with undertaking a biennial study, aimed at establishing:

- the per annum cost of environmental compliance by industry segment;
- the cost variation between various states and territories;
- average approval times under key pieces of environmental law (EPBC, state planning laws, pollution licencing, energy efficiency certifications); and,
- reasons for significant increases in the figures above.

4 Improving Environmental Regulation

4.1 The National Greenhouse and Energy Reporting Scheme

The National Greenhouse and Energy Reporting Scheme (NGERS) was introduced by the Howard Government and is an important mechanism for measuring Australia's greenhouse gas emissions and tracking progress toward domestic and international abatement targets.

While the Property Council is generally supportive of NGERS and its objectives, there are opportunities to streamline the collection of data without sacrificing the accuracy of the Scheme.

The Property Council proposes two changes.

- **Remove obligations to report incidental emissions** – reporting of incidental emissions is complicated, ill-defined and does not significantly contribute to our understanding of overall emissions. The requirement to report incidental emissions should be removed from the *National Greenhouse and Energy Reporting Scheme Regulation 2008*. This would significantly reduce the reporting burden on NGERS reporting entities without affecting the integrity of NGERS.
- **Streamline reporting for NGERS and EEO** – the Property Council maintains that the EEO scheme should be repealed as soon as practicable (see 5.2).
- If the Government decides to ignore this recommendation, then steps should be taken to better integrate the scheme with NGERS.
- Currently entities which report under both NGERS and EEO are required to lodge two separate reports, containing similar data. While progress has been made in streamlining the online lodgement portal, there are still inconsistencies in the format that data are presented for each scheme.

4.2 The Commercial Building Disclosure Scheme

The Commercial Building Disclosure (CBD) Scheme mandates that owners of medium to large office properties must obtain a Building Energy Efficiency Certificate (BEEC) before dealing with the lease or sale of their asset. Office owners are also required to display a building's NABERS rating alongside any lease or sale advertisement.

The BEEC consists of two components: the building's NABERS rating, plus an assessment of the buildings lighting energy use (calculated using the 'Lighting Tool').

A BEEC lasts for a period of 12 months, and applications for new BEECS can take months to process. Therefore, in order to maintain a current BEEC building owners are required to undertake a lighting assessment more than annually. This can be costly and rarely changes given the infrequent nature of lighting upgrades.

The repercussions of not having a current BEEC are serious. Building owners are not able to engage in lease or sale discussions without a current BEEC. Meaning that unsolicited offers for sale or lease cannot be progressed until the months-long process of obtaining a BEEC is complete. This lacks practicality and has obvious commercial implications.

As it currently stands, **the costs of the CBD Scheme radically outweigh the benefits**. Accordingly, the Property Council recommends that the CBD Scheme be repealed in its entirety and a dialogue commenced about more sensible ways to encourage transparent energy use.

In the absence of government appetite to repeal the CBD Scheme, the Property Council recommends that:

- **the requirement for separate lighting assessments be scrapped;**

- provisions be introduced to allow a grace period for building owners to obtain a BEEC without disrupting early-stage lease or sale negotiations; and,
- the existing 75 percent threshold for mixed-use buildings be maintained to avoid market confusion.

5 Opportunities for Deregulation

5.1 Energy Efficiency Opportunities Act

The property industry has been a long-established leader in the field of energy efficiency. This is evidenced by a radical reduction in energy use, as well as industry support for the introduction of energy efficiency standards under the National Construction Code.

Property companies participate in a range of duplicative energy efficiency and reporting schemes, including;

- Section J of the Building Code of Australia (energy efficiency standards);
- appliance efficiency standards;
- Commercial Building Disclosure (mandatory disclosure);
- the National Energy and Greenhouse Reporting Scheme (NGERS);
- the National Australian Built Environment Rating Scheme (NABERS); and,
- Green Star.

The Energy Efficiency Opportunities (EEO) Scheme represents an unnecessary additional layer of red tape and lacks purpose in the context of other industry-specific energy efficiency mechanisms.

The identification of energy efficiency opportunities and assessment of their commerciality is a core part of the asset management business. There is no market failure requiring regulation of standard practice in this space.

The Property Council strongly supports the repeal of the EEO Scheme, or would welcome a discussion about specific exemptions for the Property Industry.

5.2 Building Energy Efficiency Disclosure Act

As discussed at 4.2 the CBD Scheme has proven to be an administrative burden on property owners for questionable environmental value.

The property industry has been a strong supporter of the establishment and adoption of NABERS ratings for office assets. This support has translated into strong uptake of ratings, which are used to showcase a building's energy efficiency and gain a competitive edge in the market.

There is no evidence to suggest that uptake and competition based on NABERS ratings would moderate in the absence of mandatory disclosure.

The information collected using the ill-famed Lighting Tool has proven to be of limited value to potential tenants or purchasers – who have been unable to translate technical data into helpful information.

The Property Council supports the objective of driving energy efficiency through transparency, however the CBD Scheme has proven to be an ineffective and costly mechanism for achieving market transformation.

On that basis, **the Property Council recommends that the *Building Energy Efficiency Disclosure Act* be repealed** and new avenues for reducing energy use be investigated.



Property Council of Australia
Level 1, 11 Barrack Street, Sydney NSW 2000
Ph: 02 9033 1900
www.propertyoz.com.au