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EPBC Act Cost Recovery Consultation  
EPBC Reform Taskforce  
Department of Sustainability, Environment,  
Water, Population and Communities  
GPO Box 787  
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## **Cost Recovery under the Environment Protection and Biodiversity Conservation Act**

On behalf of the Housing Industry Association (HIA) I would like to provide the following comments in relation to the Consultation Paper on cost recovery under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.

HIA represents over 40,000 members involved in the residential building and development industry nationally. These members include residential land developers who undertake major land subdivisions and residential projects, along with builders involved in constructing much needed housing across Australia.

HIA and our members recognise the importance of protecting the natural environment as part of undertaking residential development. To this end, the role of the EPBC Act and the complementary legislation in the states and territories is supported. However the practical implementation and administration of these statutes has been recognised by all levels of government as difficult, duplicative and time consuming.

Fees and charges applied under planning and environmental legislation for the administration of the approval processes are a reasonable and accepted part of the residential development process. However, currently these are not full cost recovery charges, despite the ability for this to be the case. Therefore the move to consider such charges needs to provide sufficient evidence of the benefits that may flow to the community and the proponent.

The Consultation Paper explores a full cost recovery fee commensurate with the assessment required for:

- Environmental impact assessments (EIA) including referrals, assessments, approvals, post-approval monitoring and audits
- Wildlife trade regulation, and
- Strategic Assessments (SA)

HIA members are involved with the EIA and SA aspects under the legislation and therefore comments are provided in this regard.

The application of the EPBC Act must provide consistency and certainty. The system must prevent cost inefficiencies from poor administrative practices being passed onto the proponent.

The EPBC Act plays an integral role in protecting nationally significant values for the betterment of Australia's environment and this responsibility should be equitably shared by all.

Full cost recovery for EIAs and SAs where application costs are passed through to the cost of new homes is inconsistent with current Federal and State government policies to improve housing affordability. The benefit of an EIA and SA goes beyond the proponent and provides benefit to the community as a whole, therefore a proportion of the costs should be equally shared through the taxation system.

HIA is opposed to a regulatory system that seeks full cost recovery for the administrative assessment required under the EPBC Act for EIAs and SAs and which includes direct and indirect departmental or agency resource allocations, as this is an inequitable method for cost recovery.

Our detailed comments are set out in Attachment 1 and if you have any questions regarding these please do not hesitate to contact Janine Strachan on [j.strachan@hia.com.au](mailto:j.strachan@hia.com.au).

Yours sincerely

HOUSING INDUSTRY ASSOCIATION LIMITED

A handwritten signature in black ink, appearing to read 'Kristin Brookfield', written in a cursive style.

**Kristin Brookfield**

Senior Executive Director,  
Building Development and Environment

## Comments on Cost Recovery Proposal under the EPBC Act

### ***General***

The broad objective of the EPBC Act is to protect and conserve endangered and significant species for national biodiversity. HIA recognises that there is a public good element of the EPBC Act and the current process of administering legislation of this type is equitably shared by proponents and the Australian tax payer.

Asserting that full cost recovery is targeted at a 'stakeholder' fails to recognise the costs already incurred by the residential development industry and the role that industry contributes in bringing residential land onto the market. The development of land is a lengthy process involving strategic and local planning processes, coordinating land delivery to meet state government growth strategies, securing of financial support, providing required infrastructure, providing appropriate protection of the natural environment and seeking to deliver affordable and sustainable housing that meets the expectations of all Australians.

Economic research has found that Australia is experiencing a significant undersupply of housing driven largely by land shortages. Using estimates of the annual gap between underlying demand and dwelling completions, HIA estimates that as at June 2011, Australia had a cumulative shortage of 229,500 dwellings. This figure is in line with estimates from a range of institutions<sup>1</sup>.

Australia requires 1.6 million new dwellings over the next nine years, compared with a dwelling completion level over the past nine years of 1.4 million. If the industry were to build at the average of the past 20 years (HIA's medium-build rate scenario) then Australia's cumulative dwelling shortage could hit 372,100 dwellings by 2016 and 500,900 dwellings by 2020.

Clearly any additional fees or cost recovery charges allocated to land development is going to negatively impact affordability of land prices and the land housing deficit to continue.

The development industry is not shirking its financial and landholder responsibility in the protection of species listed in the EPBC Act as the industry researches and produces environmental assessment reports required under legislation. Whilst the proponent funds the report, the mitigation responses may include: excising of land and water bodies for the permanent protection of species; native vegetation offsets; creating vegetation corridors; and revegetating degraded landscapes. The costs associated with protection of environmentally significant areas are a recognised part of the residential development process, however they are reflected in the sale price and ultimately passed onto the home buyer.

### ***Impact on housing affordability***

Recognition for the full costs that proponents incur to deliver residential land developments such as Federal, state and local environmental and planning approvals, development charges, taxes and duties have been ignored in this review. These costs are significant for greenfield developments and continue to contribute to the demise of housing affordability in Australia.

Research undertaken by the Centre for International Economics (CIE) found that indirect and direct taxes and charges on a greenfield block of land can contribute: \$110,286 for Melbourne; \$128,306 for Brisbane and \$152,691 for Sydney. These figures do not include raw land price purchase and developer margin. The CIE research found that In 2007-08 the housing sector as a whole contributed almost \$40 billion in taxation revenue to Federal, state, and local governments and when among Australia's 27 largest industrial sectors (> \$10 billion), the residential building sector is the second most heavily taxed sector.

The proposal to seek full cost recovery on land development projects for both EIAs and SAs will add further financial burden to an already heavily taxed sector, when the objective of protecting nationally listed species has far broader benefits for Australian society.

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<sup>1</sup> For example, Goldman Sachs estimates a cumulative deficit of 250,000 dwellings in 2012, the National Housing Supply Council estimates a mid-2011 shortage of 228,300 dwellings, Westpac estimates a mid-2010 shortage of around 200,000 dwellings, and ANZ estimates that NSW alone had a housing deficit of 126,600 dwellings as at mid-2011.

### ***Basis of cost recovery***

The consultation paper fails to recognise the development industry's role in facilitating other government priorities including the realisation of residential land and housing, whilst adhering to national legislation that protects or mitigates the loss of nationally listed species. Rather, it considers the development industry as a proponent and beneficiary of a project without seeing how industry is fulfilling the housing needs of the future or recognising the justification for regulation setting in the first place.

A factor uppermost in the consideration of the residential development industry when it pays a fee that will ultimately become a cost to development is whether the fee represents value for money in terms of the service, certainty, timeframes and the equitable distribution of such a fee. The consultation paper has failed to demonstrate how fees and cost recovery charges will be proportioned equitably and result in an improved assessment system that will benefit the development industry.

HIA believes the principles of cost recovery must be based on a system where industry and community receive value for money in the approval process. It is difficult for Government to justify the creation of fees without demonstrating a measurable change in services to be provided.

Industry is particularly concerned that the processes under the EPBC Act are not independent and that a proponent will be required to pay the full costs of a regulatory process without picking the external consultants engaged and without being able to obtain the documentation or final reports that were produced as part of the process.

The costs of administering a regulation to the wider tax base should have been addressed as part of the regulations creation and not created with the single intention of recuperating costs from those subjected to the regulations.

HIA questions how the creation of fees will drive efficiency and certainty of the EPBC Act processes and notes that in 2009-10, 94 per cent of the statutory decisions under the EPBC Act were made within the statutory timeframes. Therefore it already achieves a significant degree of certainty to proponents. For the EIA process specifically, 73 per cent of decisions made were within the statutory timeframes. Of the decisions made outside of the timeframe almost two-thirds were made within a further 10 business days of the statutory due date.

The report suggests that the introduction of a business improvement charge will deliver cost savings to government where improved procedures will reduce administration and direct costs, yet the paper has not adequately covered how this charge would result in improved efficiencies of operations. HIA is unclear why proponents should pay for improved efficiencies when the administration of the legislation is a function of government incumbent through the making of the EPBC Act. Therefore the introduction of a business improvement charge as canvassed in the consultation paper is not supported. Given the system is reported to largely be delivering within required statutory timeframes there would appear to be no obvious 'inefficiency' to be resolved.

### ***Strategic Assessments***

HIA members have advised that it is not the timeframes but it is the implementation of EPBC Act requirements and the operation of Strategic Assessments (SAs) that create the most administrative burden. The HIA recognises the ability of SAs to remove the need for individualised EIAs and we agree with the review's findings that it is not appropriate to cost recover from state and territory governments to Federal Government for proposed SAs and it is understood that with more SAs there will be a lesser need for the EIAs and hence less assessment administration.

However HIA is opposed to the suggestion that costs for the SA could potentially be passed on later through state legislation to future users or developers within the SA area. The review fails to outline how it would succeed in ensuring 'no free ride' criteria is followed for areas which have long project timelines and may seek out of sync development.

To realise the benefits of the SA process, HIA would support an improvement in EPBC requirements and the management of state legislation for protecting matters of environmental significance.

For example, the implementation of SAs have proven very complex for the purpose of expanding Melbourne's Urban Growth Boundary in 2010.

HIA members involved in the implementation of the SA have raised concerns that the Victorian Department of Sustainability and Environment has not adopted the strategic approach as intended for implementing the Commonwealth biodiversity approval requirements. Instead, the Department of Sustainability and Environment continues to apply the principles of a site-by-site assessment of avoid, minimise and offset habitat or vegetation loss and this does not generate the certainty required by industry.

This issue has also been identified by the Victorian Competition and Efficiency Commission which in a recent report stated:

*"It appears that significant issues may remain in the interplay between development, native vegetation, and state-level enforcement of the EPBC Act. Better integration of the EPBC Act processes (which are now administered by Victoria) and Victoria's planning regime seem to be needed to reduce substantial regulatory burdens. This may require further definition of the state's role in administering the EPBC Act assessment process."*<sup>2</sup>

Prior to 2009, the management of nationally significant biodiversity in Victoria, like all other states and territories, was governed by the Commonwealth Government. In 2009 the Victorian Government entered into an agreement with the Commonwealth Government to implement a SA in Melbourne's new urban growth areas.

Even though the SA approach is operating in Victoria, it has not resulted in a more streamlined process. The result is that land developers have to undertake various detailed assessments to ensure the accuracy of EPBC Act requirements under the SA program

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<sup>2</sup> Victorian Competition and Efficiency Commission (March 2011): *An Inquiry into Victoria's regulatory framework: Part 2 Priorities for Regulatory Reform* (Page 43)