

HIA Submission

Draft Bilateral Agreement
NSW and Commonwealth Governments
EPBC Act 1999

DEPARTMENT OF CLIMATE CHANGE, ENERGY, THE ENVIRONMENT AND WATER

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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.

Introduction

HIA welcomes the opportunity to provide feedback on the proposed bilateral agreement between the Commonwealth of Australia and the State of New South Wales under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

HIA continues to support efforts to streamline environmental assessment, reduce duplication between levels of government and provide proponents with greater certainty about their environmental obligations as early as possible in the development process. Updating the bilateral agreement should build on the existing arrangements and ensure that the new Commonwealth requirements can be addressed through a clear and integrated NSW assessment process.

A properly implemented bilateral agreement has the potential to deliver significant benefits for the residential building and land development industry. More timely and coordinated assessments would reduce unnecessary regulatory costs and delays, supporting improvements in housing supply and affordability.

These improvements are particularly important in the context of the current housing crisis. HIA members continue to report that EPBC Act assessment delays, specialist consultant costs and biodiversity offset obligations can have a significant effect on the cost and timing of new residential land. All reasonable opportunities to improve the productivity, consistency and certainty of the environmental regulatory system should therefore be pursued.

HIA supports the continuation of the bilateral agreement for NSW. However, its effectiveness will depend on how the new Commonwealth framework interacts with existing NSW legislation, assessment methods and biodiversity offset arrangements. Without sufficient clarity and alignment, the updated agreement could introduce further uncertainty at a time when attracting investment in new housing projects is already challenging.

The bilateral agreement will not, by itself, resolve all the issues affecting biodiversity assessment and offset delivery. It should form part of a continuing reform program focused on better environmental data, more consistent assessment, workable offset pathways and measurable environmental outcomes.

This submission recommends targeted amendments and implementation measures to provide greater regulatory certainty, preserve recognition of established NSW assessment arrangements, support the practical application of the new Commonwealth requirements and protect projects during the transition to the updated framework.

Recognition of the NSW Biodiversity Offsets Scheme

The existing bilateral agreement expressly acknowledges the NSW Biodiversity Offsets Scheme as an endorsed state policy for the purposes of setting EPBC Act approval conditions. This recognition provides important certainty about the role of the Biodiversity Assessment Method (BAM) and Biodiversity Development Assessment Reports (BDARs), and NSW environmental offset arrangements.

HIA notes as currently worded the draft bilateral agreement does not expressly carry this recognition forward. HIA understands from discussions with the Department that where the NSW framework achieves the required net gain outcome for a relevant Commonwealth protected matter, the corresponding Commonwealth requirement is intended to be satisfied. If this is the intended policy outcome, it should be expressly stated in the agreement.

Recommendation 1: Explicit Recognition of the NSW Biodiversity Assessment Methods
HIA recommends that: • The updated bilateral agreement should expressly continue Commonwealth recognition of the Biodiversity Assessment Method (BAM) and the NSW Biodiversity Offsets Scheme (BOS). • It should confirm that a Biodiversity Development Assessment Report (BDAR) may be relied upon for the Commonwealth assessment and that, where the NSW framework achieves the required net gain outcome for a Commonwealth protected matter, the corresponding Commonwealth requirement is satisfied.

Practical guidance on unacceptable impacts and net gain

HIA members are currently seeking advice from environmental specialists on new housing and land development projects that will be lodged under the updated framework. However, practitioners are not yet able to confidently advise what the new unacceptable impacts and net gain tests will mean for those projects.

This is creating immediate uncertainty for proponents making decisions about land acquisition, project design, development yield and feasibility. They need to understand whether a project may result in an unacceptable impact, what changes may be required and the likely implications of meeting the net gain test.

Recommendation 2: Guidance on Unacceptable Impacts and a Net Gain
HIA recommends that: • Regulators should publish practical guidance and worked examples before the updated framework commences so environmental specialists can more confidently advise proponents on how the unacceptable impacts and net gain tests will apply to new projects.

Clarify the Interaction with Restoration Contributions Account

HIA supports practical and flexible mechanisms for delivering environmental outcomes. The updated bilateral agreement should therefore clearly explain how the Commonwealth restoration contribution mechanism will operate alongside the NSW Biodiversity Conservation Fund.

Both mechanisms should be supported by transparent reporting on the receipt and expenditure of contributions, the restoration activities funded and the environmental outcomes achieved. Contributions should be deployed within reasonable timeframes, while allowing sufficient flexibility to secure the most effective long-term restoration outcome.

While both frameworks appear to contemplate a three-year expenditure period, there appear to be different requirements for the duration over which environmental outcomes must be maintained. This could affect the cost and practical operation of each mechanism.

These differences should be reconciled or, at a minimum, clearly explained before the updated bilateral agreement commences.

Recommendation 3: Explain the Interaction between Offset Funds
HIA recommends that: • the Commonwealth and NSW clearly explain how the restoration contribution mechanism and NSW Biodiversity Conservation Fund will operate together under the updated bilateral agreement; • any differences in expenditure periods, maintenance obligations and contribution calculations be identified and explained; and • both governments report transparently on the allocation of contributions, the restoration activities funded and the environmental outcomes achieved.

Early implementation review

The draft bilateral agreement provides for its first regular review within three years of commencement. Given the significance of the new Commonwealth requirements, HIA considers that an earlier implementation review is warranted.

The review should examine whether the updated agreement is reducing duplication, improving assessment timeframes and providing proponents and environmental practitioners with greater certainty.

It should also consider whether the NSW biodiversity assessment process is operating effectively with the new Commonwealth requirements, whether transitional projects have experienced difficulties and whether proponents assessed through NSW can access the Commonwealth restoration contribution mechanism in practice.

Recommendation 4: Early Implementation Review
HIA recommends that: • The Commonwealth and NSW Governments undertake and publish an implementation review within 12 months of the updated agreement commencing.

Broader issues requiring ongoing reform

Updating the bilateral agreement is an important step towards improving coordination between the NSW and Commonwealth systems. However, it will not resolve all the practical issues affecting biodiversity assessment, offset delivery and housing feasibility. The agreement should not be treated as a "set and forget" reform.

Other ongoing concerns for industry include:

- **Progressive loss of development capacity:** Land identified for housing can be progressively reduced as environmental avoidance is reconsidered through strategic planning, rezoning, development assessment and Commonwealth approval.
- **Limited certainty from earlier planning decisions:** Biodiversity matters addressed during rezoning or strategic planning can be reopened during development assessment, reducing confidence in earlier decisions.
- **Changing requirements over long project timeframes:** Projects can become subject to revised mapping, assessment methods and agency interpretations after substantial work and investment have occurred.
- **Repeated consideration of avoidance:** Avoidance and minimisation can be reconsidered at successive stages without sufficient recognition of earlier project redesign.
- **Unavailable or impractical offset pathways:** Projects can be unable to proceed where required credits are unavailable, access to a government contribution mechanism is restricted and no suitable alternative is accepted.

Recommendation 5: Broader issues requiring ongoing reform
HIA recommends that: • The updated bilateral agreement forms part of a continuing reform program that improves development certainty, recognises earlier environmental assessment, reduces repeated consideration of the same impacts and provides workable pathways for delivering measurable environmental outcomes.

Conclusion

HIA supports the continuation and updating of the bilateral agreement between the Commonwealth and NSW under section 45 of the EPBC Act.

The existing bilateral arrangements provide an important foundation for coordinating NSW and Commonwealth environmental assessment requirements. The proposed update should build on that foundation by clearly integrating the new Commonwealth requirements without diminishing recognition of the established NSW biodiversity assessment and offset framework.

For the updated agreement to operate effectively, proponents and environmental practitioners must be able to understand how the unacceptable impacts and net gain tests will apply to new projects. The agreement should also clearly explain how NSW assessments will be used for Commonwealth decision-making and how the Commonwealth restoration contribution mechanism will interact with the NSW Biodiversity Conservation Fund.

These matters require resolution before the updated framework commences. Without clear guidance and alignment, the new arrangements risk introducing further uncertainty into land acquisition, project design and feasibility decisions at a time when investment in new housing is urgently needed.

HIA supports an implementation review within 12 months to determine whether the updated agreement is reducing duplication, improving assessment timeframes and providing greater regulatory certainty in practice. The findings should inform early changes to the agreement, Administrative Arrangements or supporting guidance where required.

The updated bilateral agreement should also form part of a continuing program of biodiversity reform. Further work will remain necessary to improve development certainty, recognise earlier environmental assessment, provide workable offset pathways and ensure regulatory requirements deliver measurable environmental outcomes.

Subject to the amendments and implementation measures recommended in this submission, HIA supports the updated bilateral agreement and looks forward to working with the Commonwealth and NSW Governments to ensure it delivers a more coordinated, transparent and workable environmental assessment process.