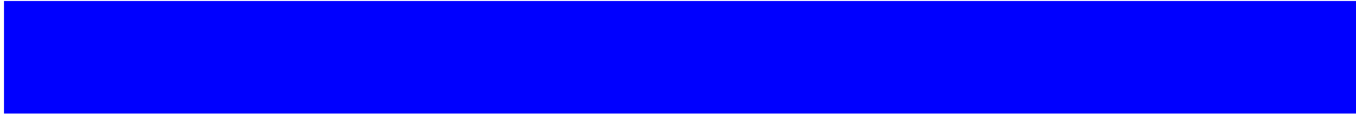

Cutting business red tape

Response to IPART draft report into business regulation

Property Council of Australia – August 2006

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Executive Summary

The Property Council welcomes the opportunity to provide comments on the Independent Pricing and Regulatory Tribunal's (IPART) draft report investigating the burden or business regulation in NSW.

IPART has conducted a very comprehensive investigation into business regulation and we appreciate the opportunity to provide input into this investigation, through direct meetings with IPART, participation in stakeholder workshops and submissions.

The Property Council believes IPART's draft report identifies important improvements to the regulation making process in NSW as well as specific improvements to current business regulation. Our response to IPART's draft report focuses on the latter, in particular planning and development regulations, commercial property management, and sustainability issues.

Disappointingly, IPART did not include any recommendations regarding improvements to property taxes (design and definitions) or focused on resolving mine subsidence issues affecting key growth areas in NSW.

The Property Council believes there is significant need for improvement to reduce the complexity and compliance costs associated with property taxes which generate unnecessary costs for businesses operating across Australian jurisdictions. We believe IPART's recommendation to create greater consistency in respect of payroll tax should also apply to property taxes, in particular conveyance duty.

We also believe it is imperative that the Government tackle the issue of mine subsidence to ensure awareness of this issue is adequately integrated into state and local government planning strategies, consistent approval periods for development are provided and alternative funding arrangements to replace or supplement the current system are explored, including consideration of US insurance and reinsurance systems.

1. Promote property tax uniformity

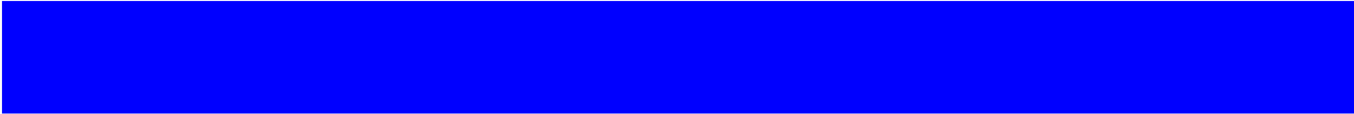
As stated in our previous submission to IPART, a range of state and local government based property taxes and levies have grown across Australia over time. While generically similar, the detail of these taxes and levies tend to differ markedly across states and local government boundaries.

Property owners and managers, many of whom operate nationally if not globally, incur additional legal and administrative costs to comply with different taxes and levies. These costs are an unnecessary burden and NSW should take a lead in striving to reduce them.

Examples of property tax anomalies in respect of conveyance duty (land rich duty provisions) are outlined below to illustrate the need for reform. Businesses which own land among their assets in more than one state face high, multiple compliance costs incurred in determining whether land-rich duty provisions apply because of:

- different definitions:
    - "public unit trust" – some jurisdictions do not define public unit trusts except in opposition to private unit trusts, and the minimum number of investors varies from no fewer than 50 in some jurisdictions to not less than 300 in others
    - "private unit trust" – some jurisdictions do not define private unit trusts, other jurisdictions define them in opposition to public and wholesale unit trusts while other jurisdictions specify a maximum number of investors up to 50 persons
    - "wholesale unit trust" - some jurisdictions specify minimum levels of funds under management (between $50 million and $500 million) while other jurisdictions specify that 80% of units must be held by "qualifying investors" (funds with at least 300 members, public unit trusts etc) and no one investor is entitled to more than 50% of the units.
- different land rich thresholds exist (i.e. proportion of assets in property) – 60% in NSW, VIC, WA and QLD compared to 80% in SA and TAS. In the ACT and NT, the land-rich duty provisions do not include a ratio threshold.
- different minimum land value thresholds exist - $2 million in NSW, $1 million in VIC, WA, QLD and SA and $500,000 in TAS.
- different definitions of "associated person" and "qualifying investor" apply across jurisdictions.
- different requirements exist as to the assets required to be excluded to determine whether the minimum land-rich ratio threshold is exceeded.

The Property Council believes all levels of government should strive to adopt common tax structures and definitions to reduce business compliance costs. Best practice, being the most economically efficient, equitable and simple tax structures, should be identified and replicated nationally.



Property Council Recommendation

NSW take the lead to encourage Commonwealth, state and territory and local governments to adopt common property tax structures and definitions based on best practice to reduce business compliance costs.

2. Resolve mine subsidence problems

Unfortunately, IPART's draft report does not identify specific recommendations to improve development application processes and insurance mechanisms in respect of mine subsidence. This was a key issue raised by the Property Council in its previous submission.

Large tracts of land across key centres identified in Government plans to house future growth (housing and employment) are affected by mine subsidence. This includes land in the Hunter, Lithgow and Picton.

Development in these locations is controlled in large part by the NSW Mine Subsidence Board (MSB) which acts as a concurrent consent authority for building and other surface developments in addition to administering a compensation scheme (funded through annual coal levies) for surface improvements damaged by subsidence following the extraction of coal or shale.

Being located in a mine subsidence area can significantly hinder a development's potential – through costly site examination and rectification works and building restrictions. Achieving desired higher densities in these locations is almost impossible. In the Hunter, mine subsidence issues will limit much of the growth envisaged in the NSW Government's Draft Lower Hunter Strategy, with key areas affected including the Newcastle CBD and Charlestown.

Site rectification can cost up to $2 million, making development unviable. Together with the cost of investigative works, to assess the status of mine works, projects are being burdened with uncertain cost and risk.

The Property Council believes fundamental changes are urgently required into the way mine subsidence risk is evaluated and legislated. We believe that the MSB should not have dual responsibilities as a consent authority and administrator of the Mine Subsidence Compensation Fund. The NSW Government should explore introducing alternative funding arrangements to replace or supplement the current system. This should include consideration of insurance and reinsurance systems which operate in the US, enabling the final asset owner to obtain mine subsidence insurance.

The MSB should also be involved in developing long term planning strategies so that all arms of government are working to achieve the same goals, informed by the same information. And, MSB approvals should be valid for the same period as other relevant development consents (currently MSB certification is only valid for two years, whereas other development last between three to five years). This inconsistency provides no policy purpose and only generates costs to applicants and increases project risks.

Property Council Recommendation

The NSW Government should:

a) make mine subsidence a priority issue for the Lower Hunter Regional Strategy and fund investigation and remediation in priority growth areas

b) restructure the Mine Subsidence Board

c) strengthen the funding base or allow alternative insurance/ reinsurance options for the MSB

d) ensure coordination of MSB with state and local government strategies and instruments

e) amend the MSB certification period so that approvals are valid for five years.

3. Response to IPART recommendations

NSW Greenhouse Gas Abatement Scheme (GGAS)

Although not a specific recommendation, IPART's report endoreses the work of the joint working group to develop a nationally consistent framework for greenhouse gas and energy reporting and the work of the national taskforce to develop an agreed national model for emissions trading, and strongly supports NSW's engagement in, and implementation of recommendations arising out of, these national initiatives as a priority area for reform.

Property Council Comment

NSW has led the way on emissions trading with the Greenhouse Gas Abatement Scheme (GGAS). The Property Council believes this should provide the basis for a national scheme and should be adopted.

Property Council Recommendation

The Property Council welcomes IPART's support for a national scheme for emissions trading.

Recommendation 19 - Energy efficiency

In the short term, that the Government:

a) continue to encourage the Federal Government to recognise NSW Action Plans as meeting the Energy Efficiency Opportunities Assessment (EEOA) program requirements

b) look to allow increased flexibility in the Action Plan requirements where greater consistency with EEOA requirements can be achieved.

Property Council Comment

Many organisations in NSW named among the top 200 water or energy consumers have been working with the NSW Government on developing action plans to reduce their consumption and have applied for funding to achieve these objectives. Many agreements between the Government and private sector are already in place and funds have been allocated. There are also several rounds ongoing at present.

Property Council Recommendation

The Property Council supports achieving greater efficiency between the two state and national programs, particularly where initiatives established in NSW can be recognised under the national scheme.

Recommendation 21 - Environmental assessment

That the Government enter into an assessment bilateral agreement under the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) with the Commonwealth, and expedite the signing of such an agreement. In the longer term, the Government should also consider entering into further approval bilateral

agreements for appropriate specific developments, classes of development or places, or processes.

Property Council Comment

Work has been happening on this front through COAG. This is particularly important in providing certainty over threatened species and biodiversity legislation, especially with BioBanking now being proposed in NSW.

The Property Council understands that the NSW Government is trying to reach an understanding on this front with relation to the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*. We encourage these efforts.

Property Council Recommendation

The Property Council supports a bilateral agreement on biodiversity and conservation assessment being entered into between the NSW Government and Commonwealth Government.

Recommendation 33 - Building Regulation (BASIX)

That the Government conduct a post-implementation review of BASIX within five years of implementation to identify whether BASIX is meeting its objectives, and publicly report its findings. This review should include an updated cost-benefit analysis of BASIX, based on the Department of Planning's monitoring of actual water and energy/emissions savings.

Property Council Comment

The Property Council welcomes IPART's recommendation for a thorough review of BASIX after five years to ensure it is delivering envisaged water and energy savings.

The Property Council supports BASIX as an innovative and outcome-orientated method of regulating energy and water efficiency in new housing. We have had ongoing discussions with the Government on the economic impact of the targets, and welcome the decision to retain at 20% energy target for multi-unit dwellings. Our member feedback demonstrates that this still incurs a higher than acceptable cost. We therefore support the need for a review after five years, incorporating a cost-benefit analysis.

The Property Council understands that the Department of Planning recently commenced a program where the use of water and energy by BASIX-compliant dwellings is now being tracked by the utilities authorities. We believe this data should be used to inform the IPART-recommended review.

Property Council Recommendation

The Property Council strongly supports a five yearly review of whether BASIX is delivering envisaged water and energy savings and includes an update of the cost-benefit analysis associated with meeting prescribed targets.

Recommendation 58 - Planning and development assessment

That the Government implement the reform program it has recently initiated with the Department of Planning as a high priority, and that the Department of Planning seeks to realise opportunities for further efficiency gains by:

a) considering ways to increase the use of, and achieve a more consistent approach to, exempt and complying development amongst local councils – eg, via the standard Local Environmental Plan (LEP)

b) working with concurrence agencies to further streamline the concurrence process (eg, through ensuring that, where appropriate, concurrence requirements are stated upfront in LEPs)

c) working with other regulatory agencies to further identify and remove any unnecessary concurrence requirements

d) working with relevant agencies to further identify and remove any unnecessary integrated development requirements (ie, identify where licences or permits are not required for development applications)

e) further consolidating the number of State Environmental Planning Policies (SEPPs) and Regional Environmental Plans (REPs) within NSW.

Property Council Comment

The Property Council strongly agrees with IPART's findings that development assessment is one of three priority areas requiring further reform. The Property Council has been a strong supporter of and contributor to reforms over recent years, such as strategic planning, major development assessment, planning instruments and development contributions. However, the largely untapped area is local development assessment, and this needs to be subject of a new wave of reform.

Part a) – increasing use of exempt and complying development

The NSW Government gazetted a standard local environmental plan on 31 March 2006 (the LEP template) which includes clauses, land use zones and definitions that can be applied across NSW. Councils may not introduce new clauses, definitions or zones that duplicate those in the template.

All local councils must update their local plans to be consistent with the standard within the next five years, and the first 13 councils must adopt a new plan within two years of the template's gazettal.

The template includes standard definitions but it does not include standard exempt and complying development schedules. While some councils use SEPP 60 – exempt and complying development, significant variation exists between councils. For example, some councils have their exempt and complying development schedules in their local environmental plans, while others use development control plans.

There has been very little expansion in this area since the 1997 changes to the legislation and despite the recommendations of the Government's Local Development Taskforce (the Bird Review) in 2004.

Part b) and c) – streamlining and unnecessary concurrences

Reforms to the NSW planning system in 2004 sought to significantly reduce the number of concurrences required by various government departments in NSW through amendments to legislation including the Rivers and Foreshores Act and Roads Act. These reforms were strongly welcomed, but more reform is necessary to ensure reduce the impact of concurrences on all types of development.

For example, many minor coastal developments must be referred to a range of government agencies for comment, resulting in significant delays for the consent authority assessing the application and frustrations for the applicant. We do not believe there is any necessity for the Deportment of Planning to assess coastal development in the Greater Metropolitan Region. Similarly, minor internal household renovations in Newcastle need to be referred to the Mine Subsidence Board for comment, adding unnecessary cost and time.

Part d) – removing unnecessary integrated development requirements

Significant opportunity exits to identify and reduce duplicated requirements and consolidate licences and permits. Certain licences and permits need to be issued outside the development assessment process. The need to consult with a range of government agencies during the development assessment process is costly, time consuming and frustrating for all parties. It is strongly recommended all opportunities to minimise these concerns be addressed and implemented.

There is significant need to resolve anomalies where development applications lodged under different parts of legislation require differing levels of involvement of other government agencies. This is confusing and frustrating for applicants as well as consent authorities.

For example, development applications lodged under Part 4 of the Environmental Planning Assessment Act that are also subject to the Native Vegetation Act require consent from both the local council and Catchment Management Authorities. However, larger and more complex development applications that are lodged under Parts 3A or 5 of the EP&A Act need not obtain CMA approval.

This anomaly can result in CMAs overruling consent given by councils for very minor developments.

Part e) – consolidating the number of SEPPs and REPs

Reforms to the NSW planning system in 2004 foreshadowed a significant reduction in the number of State Environmental Planning Policies (SEPPs) and Regional Environmental Plans (REPs) in NSW. This was to occur through a combination of consolidation of existing plans into the standard LEP, consolidation of other plans, and the retirement of plans which were no longer required.

The number of SEPPs was to reduce from 59 to 24, and the current 44 REPs would be reduced to just "a handful".

A reduction in the number of planning instruments to which an applicant and consent authority must refer is a welcome. The Property Council strongly supported this reform but is disappointed so few SEPPs and REPs have been incorporated into the Standard LEP.

Property Council Recommendation

The Property Council strongly supports;

a) **increasing the use of exempt and complying development in all local councils through a review of the exempt and complying development schedules to complement the LEP template,**

b) **streamlining the concurrence process,**

c) **the Department of Planning working closely with all government agencies with a role in providing development consent to ensure ad-hoc concurrences are removed. The introduction of amendment to the standard LEP should be considered as an option to concurrences,**

d) **removal of further unnecessary integrated development requirements such as amending the Native Vegetation Act to ensure development applications lodged under Part 4 of the Environmental Planning and Assessment Act are not subject to approval by Catchment Management Authorities,**

e) **reducing the number of State-introduced and developed planning instruments.**

Recommendation 59 - Planning and development assessment

That the Government subject recent reform initiatives to post-implementation review within three to five years of implementation, to assess their effectiveness, and to efficiently target any future reform initiatives.

Property Council Comment

There have been numerous reforms to the NSW local and state planning system in recent years aimed at delivering cost and time savings as well as environmental and social benefits. Consent authorities (at the state and local level) have been charged with implementing those reforms.

The Property Council called for and supported most of these reforms. However, there is evidence that of the major assessment process under Part 3A of the Environmental Planning and Assessment Act 1979 has not lead to a more streamlined or certain outcome for many applicants. We are aware that efforts are being made to improve this performance.

Property Council Recommendation

The Property Council supports a post-implementation review of planning reforms in NSW within three to five years to assess effectiveness and provide an opportunity make necessary modifications to continually improve the planning system.

Recommendation 64 – Property agents (commercial)

That the Office of Fair Trading finalise its review of the *Property Stock and Business Agents Act 2002* as soon as possible, and that in doing so it considers:

a) the role of the Act and its requirements in regards to tenant protection, given the objectives of the Act and other legislation in place to protect tenants

b) exemptions from requirements fro commercial property agents who are managing the property of a related company

c) other potentially viable exemptions from requirements of the Act for specific classes of commercial property, taking into account the costs and benefits (including administration costs) of such exemptions

d) whether educational and professional development requirements under the Act could be made more relevant to the commercial sector, including the retail component of this sector, and possible exemptions from these requirements for commercial property managers (eg, per the ACT model)

e) the costs and benefits of current provisions related to trust accounts (eg, in terms of requirements for cheques, receipts and the collection and banking of rents) and of viable alternatives to these requirements, taking into account cross-jurisdictional impacts.

Property Council Comment

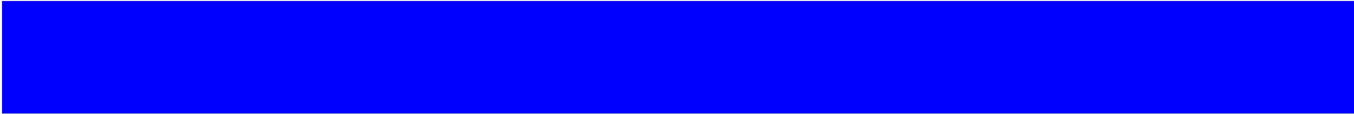
We welcome IPART's recommendation to expedite completion of the Office of Fair Trading's (OFT) review into the *Property Stock and Business Agents Act* (PSBA). The Property Council also supports consideration of the specific issues ((a) to (e)) identified by IPART.

The PSBA Act does not provide protection to tenants because tenants are not party to the agent relationship that the PSBA Act regulates. If a property is owned and leased/managed by the same person there is no regulation by the PSBA Act whatsoever. Tenants have dealings with agents but this does not mean they are at risk from these dealings.

The Property Council strongly support IPART's recommendation (b) that OFT considers exemptions from requirements for commercial property agents managing the property of a related company. Such an exemption would not be a departure from current policy as the PSBA Act is intended to regulate the agency relationship and not property owners managing or leasing their own property. Victoria already has such an exemption.

The Property Council is pleased to see the necessity of professional development requirements (d), questioned. We do not, however, believe expanding these professional development requirements to mandate retail property courses for tenants is a solution. There is no evidence of a need to expand Government regulation of professional development in the retail property industry.

The Property Council notes the comments in the draft report regarding the interest taken from trust accounts, particularly the fact that this money is used for a number of other purposes other than the statutory Compensation Fund. This suggests that any Government resistance to removing this unnecessary regulation on industry might be simply because they would lose revenue. Regulation in this instance is meant to protect consumers, not act as a de facto tax measure.



Property Council Recommendation

The Property Council supports expediting completion of the Office of Fair Trading's review of the *Property Stock and Business Agents Act*, giving consideration to the issues identified by IPART.

Contact

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