Pre-Budget Submission: 2010-11 Federal Budget

Property Council of Australia
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# Table of Contents

Executive Summary ........................................................................................................ iv  

Property Council in Brief ......................................................................................... vi  

Recommendations ....................................................................................................... vii  

A Guide to Reading this Submission .......................................................................... xxiv  

1 Lower Taxes .............................................................................................................. 1  
  1.1 Reduce property taxes ...................................................................................... 2  
  1.2 Minimise developer charges ........................................................................... 8  
  1.3 Reduce international withholding taxes ....................................................... 11  
  1.4 Eliminate foreign tax FIF and CFC attribution rules .................................. 12  
  1.5 Sources ........................................................................................................... 14  

2 Increase Liquidity ................................................................................................... 15  
  2.1 Diversify and deepen public and private debt markets ............................... 16  
  2.2 Sources ........................................................................................................... 18  

3 Slash Red Tape ...................................................................................................... 20  
  3.1 Reassess regulatory impact assessment ....................................................... 21  
  3.2 Deliver faster, more rational development assessment systems ............ 25  
  3.3 Create one set of property rules across the country ................................... 27  
  3.4 Create nationally consistent OHS rules ....................................................... 29  
  3.5 Streamline and rationalise planning and building rules ............................ 31  
  3.6 Introduce rational disability access rules .................................................... 33  
  3.7 Sources ........................................................................................................... 34  

4 Modernise Investment Management Rules ....................................................... 36  
  4.1 Create flexible A-REIT unit holder distribution rules ............................... 37  
  4.2 End the thin cap rule penalty for property trusts ...................................... 38  
  4.3 Increase access to more foreign treaty tax benefits ................................... 40  
  4.4 Remove the CGT penalty on trust restructures .......................................... 43  
  4.5 Create simpler, more meaningful capital raising documentation .......... 44  
  4.6 Simplify GST rules and end the margin scheme confusion ................. 45  
  4.7 Sources ........................................................................................................... 47  

5 Increase Infrastructure Investment and Improve Strategic Planning ............ 48  
  5.1 Increase priority spending on ‘big ticket’ infrastructure ............................ 49  
  5.2 Increase spending on urban infrastructure .................................................. 50  
  5.3 Secure long-term planning strategies for all urban centres ....................... 52
Executive Summary

The Property Council supports a budget that delivers:

- a return to strong ongoing economic growth of three to four percent;
- low inflation and stable interest rates;
- a public policy reform framework for long-term sustainable growth; and,
- programs that build community capacity and more effectively balance social, environmental and economic objectives.

The Property Council proposes that the following concepts guide the design of the 2010 Budget:

- **key performance indicators** – clarity about the measurable goals of all budget programs;
- **community capacity building** – lifting the ability of individuals, families and firms to make the most of their relative talents and opportunities;
- **sustainability** – optimising governance, economic, social and environmental assets for the long-term benefit of the community;
- **a modernised Australian Federation** – a clear allocation of the relative responsibilities, powers and accountabilities of the three spheres of government;
- **a war on red tape** – more efficient regulation, less duplication and minimal conflict of policy settings;
- **tax reform** – lower taxes achieved through more efficient tax design that also delivers lower compliance costs and promotes a competitive economy;
- **modern policy assessment instruments** – adoption of methodologies that better allocate scarce resources (such as capital spending on infrastructure) on a triple bottom line basis and more effectively assess regulatory impacts;
- **accounting for spatial implications** – an understanding of the spatial consequences of all policy programs; and
- **incentives** – the use of incentives to transform market behaviour to meet community goals as an alternative to regulation.
Endorsements

The Property Council supports policy research cited in this submission by:

- the Business Coalition for Tax Reform;
- Infrastructure Partnerships Australia;
- the Shopping Centre Council of Australia; and
- the Australian Sustainable Built Environment Council.

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Property Council in Brief

The Property Council represents the property investment sector in Australia.

Its members include every major property investor in the country.

Members are engaged in the entire property investment universe, which includes all:

- dimensions of property activity (financing, funds management, development, ownership, asset management, transaction and leasing);
- major property types (offices, shopping centres, residential development, industrial, tourism, leisure, aged care, retirement and infrastructure);
- major regions of Australia and international markets; and,
- the four quadrants of investment – public, private, equity and debt.

Some key statistics:

- the market value of all land and buildings in Australia is $4.3 trillion;
- the value of investment grade stock under management is $340 billion;
- more than 11.6 million Australians collectively own major segments of the nation’s most valuable commercial property assets;
- total construction spending in 2010 is forecast to be $100 billion in buildings and $69 billion in infrastructure (total: $169 billion);
- listed property is currently 5.57% of the capitalised value of the ASX;
- 39% of investment grade stock is listed;
- the market value of foreign assets owned by Australians is $50 billion;
- $149 million flows in to the property sector from super funds in an average week; and
- $29 billion in property specific taxes are paid annually.
Recommendations

1. **Lower Taxes**

1.1 **Reduce property taxes**

The Federal Government should:

1.1.1 adopt the BCTR State Tax Reform Model for Comprehensive Business Tax Reform;

1.1.2 commit to a new round of business tax reform in consultation with industry, underpinned by a new intergovernmental agreement;

1.1.3 through COAG, work with its state and territory counterparts to:

- set a timetable to eliminate inefficient business and property taxes with clear performance milestones;
- commit all jurisdictions to a root and branch modernisation of the business tax system;
- deliver a new system for allocating GST revenue;
- set a five year target to reduce the reliance of Australian governments on indirect taxes; and
- commit all jurisdictions to undertake five yearly reviews of their indirect tax systems with the objective of reducing their reliance on high dead-weight taxes and significant compliance costs;

1.1.4 ratify a new Intergovernmental Agreement to give effect to COAG’s tax reform program;

1.1.5 through COAG, work with its state and territory counterparts to create a framework that ensures all local councils:

- adopt an equitable and consistent rating base;
- develop a consistent criteria and process for changing the rating base;
- confirm that the rating base has been established in accordance with the framework;
- link any increase in local government rates to a reduction in development levies where they exist; and
• consult with industry and the community regarding proposed changes in council rates, charges, or levies;

1.1.6 through COAG, work with its state and territory counterparts to:
• commit to an annual review of local council rates, charges and levies to ensure that the above framework is being followed; and
• commit to the abolition of car parking congestion levies;

1.1.7 The Federal Government should adopt a standard set of property tax rules and definitions for:
• stamp duty on property;
• land tax and land rich provisions; and
• unit trust definitions and corporate reconstruction (including stamp duty relief to restructure under a head trust (top hatting)).

1.2 Minimise developer charges

The Federal Government should, through COAG, work with its state and territory counterparts to:

1.2.1 increase the use of government borrowing, public-private partnerships (PPPs), Business Improvement Districts (BIDs), and Growth Area Bonds (or tax increment financing) to fund future infrastructure, in preference to inefficient mechanisms such as development levies;

1.2.2 establish a strategy to:
• minimise the use of development levies in the short-term and abolish them completely in the longer-term; and
• ensure that development levies are only levied for public infrastructure specifically servicing the project being taxed – proportionate to the development and after taking account of community-wide and intergenerational benefits that should be funded by the broader society;

1.2.3 audit development levies collected by government and statutory authorities on an annual basis, and ensure unspent funds are returned if not spent within two years;

1.2.4 establish a formal framework for implementing the above reforms; and

1.2.5 commit to trial growth area bonds in three pilot studies in each state and territory.
1.3 **Reduce international withholding taxes**

The Federal Government should:

1.3.1 establish a zero percent interest withholding tax rate for all debt raisings other than related-party debt; and

1.3.2 clarify the operation of the withholding tax regime for investors, including unregistered managed investment schemes.

1.4 **Eliminate foreign tax FIF and CFC attribution rules**

The Federal Government should:

1.4.1 exclude property income from the CFC and FIF rules;

1.4.2 expand the listed country exemptions in the FIF rules to include foreign entities in CFC listed countries;

1.4.3 extend the FIF exemption for complying super funds to Australian unit trusts controlled by super funds;

1.4.4 extend the listed public company exemption to listed public unit trusts;

1.4.5 modernise FIF exemptions to include widely held unit trusts and not just companies, and activities such as property acquisitions, asset management, and development; and

1.4.6 implement the following technical amendments to the attribution rules:

- allow functional currency elections for trusts;
- ensure property entities do not pay tax on unrealised gains under the attribution regimes;
- allow Australian entities with interests in foreign trusts or foreign hybrids to elect to apply existing trust and partnership provisions instead of the attribution rules;
- apply similar rules for branch equivalent calculations under the attribution rules for foreign flow through entities and foreign branches;
- use the tax rules in each listed country as the basis for branch equivalent calculations; and
- use adjusted Australian tax law as the basis for branch equivalent calculations regarding unlisted countries.
2. **Increase Liquidity**

### 2.1 Diversify and deepen public and private debt markets

The Federal Government should:

- **2.1.1** introduce a guarantee scheme for AAA-rated asset backed securities and property debt instruments;

- **2.1.2** work with ASIC to remove domestic and international regulatory barriers to corporate bond and CMBS markets;

- **2.1.3** through APRA:
  - ensure the banks’ implementation of Basel II enhancements improves the flow of commercial property lending;
  - ensure the banks better rate the risks associated with debt; and
  - work with the banks to inject more science into capital adequacy risk assessments to different categories of lending (“slotting”);

- **2.1.4** establish a single, low flat rate charge for its wholesale funding guarantee for all banks regardless of their credit rating; and

- **2.1.5** create a contingency rollover funding vehicle – every system needs a secure back up in place.

3. **Slash Red Tape**

### 3.1 Reassess regulatory impact assessment

The Federal Government should:

- **3.1.1** direct the Business Regulation and Competition Working Group to meet formally with private sector stakeholders to determine targets for deregulation; and

- **3.1.2** adopt the RIS methodology developed by CRA International for all new regulation.

### 3.2 Deliver faster, more rational development assessment systems

The Federal Government should:

- **3.2.1** expand upon the COAG agreement for planning and development assessment reform and set a timeline for the implementation of the DAF Model in each state and territory;
3.2.2 work with the States to ensure that, by June 2011, at least 50 percent of all applications lodged in each local government area fall within the development assessment tracks of ‘exempt’, ‘self assessable’, or ‘code assessable’ as outlined under principle 4 of the DAF leading practice model;

3.2.3 develop a model template for track-based assessment to be adopted nationally by 2012, in consultation with all jurisdictions and industry;

3.2.4 seek commitment from the jurisdictions that each state and territory develop stand-alone codes for:

- single dwelling residential developments by June, 2010;
- multi-unit residential developments by June, 2011;
- industrial developments by June, 2011; and
- commercial developments by June, 2012;

3.2.5 continue support for the development and implementation of the Electronic Development Assessment (eDA) standards across the states and territories;

3.2.6 through COAG and the National Competition Commission, provide financial incentives to state, territory, and local governments to implement the DAF reforms, in line with programs already announced by the Australian Government (such as the Housing Affordability Fund); and

3.2.7 increase the resourcing of the DAF Secretariat so that it is serviced by at least one full-time project manager and has sufficient funds available for applied research.

3.3 Create one set of property rules across the country

The Federal Government should:

3.3.1 engage with the Property Law Reform Alliance over its draft Uniform Torrens Title Act to determine how best to achieve a nationally consistent property law system;

3.3.2 establish a COAG property law reform project for real property along the lines of the personal property law reform initiative; and

3.3.3 host a high-level ministerial meeting with state and territory authorities to discuss mechanisms to create a uniform property law system.

3.4 Create nationally consistent OHS rules

The Federal Government should:
3.4.1 work with Safe Work Australia and state and territory regulators to ensure that model OHS legislation creates a clear, fair and equitable system;

3.4.2 ensure that the onus of proof for any incident is always placed on the prosecution, not on the defendant;

3.4.3 clarify the responsibilities of duty holders under the Safe Work Act 2009;

3.4.4 ensure that responsibilities of duty-holders are clearly defined;

3.4.5 remove the right of unions to prosecute safety complaints;

3.4.6 amend the penalties for minor breaches of the Act to more appropriate levels; and

3.4.7 give legal standing to industry codes of practice.

3.5 **Streamline and rationalise planning and building rules**

The Federal Government should:

3.5.1 ensure that planning rule changes that impact upon building regulations are subject to regulatory impact assessment; and

3.5.2 introduce a National Construction Code covering all aspects of building and construction to ensure consistent standards are maintained across Australia.

3.6 **Introduce rational disability access rules**

The Federal Government should:

3.6.1 amend the Premises Standards and the guidelines to emphasise that they represent absolute regulatory standards;

3.6.2 reinstate the ‘80th percentile’ circulation spaces currently used in the Building Code until such time as empirical evidence is provided to demonstrate a need for increased dimensions;

3.6.3 ensure that there is a fair test for unjustifiable hardship;

3.6.4 consider options that might protect owners from complaints about egress for people with disabilities until such a time as it is included in the BCA; and

3.6.5 revise the proposed Administration Protocol to ensure that Building Access Panels can make decisions fairly, equitably, and (above all) quickly.
4. Modernise Investment Management Rules

4.1 Diversify and deepen public and private debt markets

The Federal Government should:

4.1.1 establish a dedicated MIT tax regime in Australian law that includes REITs but excludes discretionary trusts;

4.1.2 retain the classic features of a collective investment vehicle system, such as flow through status, tax deferred income, and CGT concessions;

4.1.3 allow MITs to undertake all forms of investment in property while retaining tax flow through status, including the ability to control taxable companies;

4.1.4 clearly define ineligible investment activities, to enable the scrapping of complicated and outmoded ‘active/passive’ rules;

4.1.5 allow fund trustees effectively to manage capital by retaining a portion of earned income;

4.1.6 modernise attribution rules to serve the long term interests of collective investors better;

4.1.7 enable Australian MITs to provide their unit holders with the treaty benefits applicable to inbound income that are generally lost to Australians who invest in REITs;

4.1.8 offer elective access to the proposed MIT regime to any entity that is widely held, either directly or on a trace through basis;

4.1.9 deem sovereign wealth and investment funds to be widely held as they represent the collective wealth of nations; and

4.1.10 retain the existing Division 6 as a fall back regime for trusts that do not qualify or elect not to enter the new MIT regime.

4.2 End the thin cap rule penalty for property trusts

The Federal Government should:

4.2.1 align the treatment of trusts and companies under thin capitalisation calculations;

4.2.2 allow wholly-owned trust groups to apply thin capitalisation rules on a consolidated basis;

4.2.3 allow stapled groups to apply thin capitalisation rules on a consolidated basis;
4.2.4 ensure thin capitalisation provisions do not apply to partnerships formed in foreign jurisdictions, non-resident trust estates, or foreign hybrid entities.

4.3 Increase access to foreign treaty tax benefits

The Federal Government should:

4.3.1 continue to support the development of Australia as a managed funds hub with a competitive, flexible tax treaty policy;

4.3.2 implement the recommendations of the Johnson Report released by the Australian Financial Centre Forum (AFCF)1;

4.3.3 commit to the ongoing reduction of withholding tax rates;

4.3.4 establish a zero percent interest withholding tax rate for all debt raisings other than related-party debt;

4.3.5 resolve that a foreign investor in an A-REIT is not deemed to be taxable in Australia;

4.3.6 apply treaty dividend articles to A-REIT distributions;

4.3.7 eliminate double taxation where portfolio investment gains on disposals of “land rich” entities are taxed by the country of residence - ensure they are not also subject to capital gains in Australia;

4.3.8 enable Australian MITs to provide their unit holders with the treaty benefits applicable to inbound income that are generally lost to the ordinary Australians who invest in A-REITs;

4.3.9 prioritise tax treaty negotiations and regular reviews for countries that are major sources of inbound, and targets/destinations for outbound, Australian investment (commencing with USA, UK, New Zealand, Germany, France, and Japan);

4.3.10 convene a tax treaty negotiation advisory group, that includes representatives from business/sectoral groups, to support Treasury in Australian tax reform and OECD forums;

4.3.11 enact tracing provisions to “look through” widely held A-REITs in foreign jurisdictions that impose higher withholding tax rates on non-portfolio distributions; and

4.3.12 remove unnecessary “source rules” from tax treaties.

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1 Australia as a Financial Centre, Australian Financial Centre Forum (January 2010)
4.4 Remove the CGT penalty on trust restructures

The Federal Government should:

4.4.1 maintain trust cloning provisions or provide a dedicated rollover relief provision for unit trusts; and

4.4.2 extend CGT exemptions to foreign direct property investors.

4.5 Create simpler, more meaningful capital raising documentation

The Federal Government should:

4.5.1 support the Treasury and Financial Services Working Group’s simple PDS recommendations; and

4.5.2 support the AFCF Johnson Report recommendation for a regional funds passport.

4.6 Simplify GST rules and end the margin scheme confusion

The Federal Government should:

4.6.1 Finalise amendments to simplify and improve the operation of the margin scheme.

4.6.2 Clarify the rules for Division 129 adjustments.

4.6.3 Amend Division 135 Going Concern and Farmland provisions to ensure adjustments under the division are consistent with:

- other GST adjustment provisions (such as Division 129); and
- GST provisions that result in taxpayers not being able to claim full GST credits (such as Division 11).

4.6.4 Revise the financial acquisitions thresholds as follows:

- exclude acquisitions made in the course of the commencement or termination of an enterprise from the definition of “financial acquisition”; 
- extend the current exclusion for borrowings to any activity associated with raising equity capital;
- amend the period for test for exceeding the threshold to six months retrospectively and six months prospectively; and,
• increase such thresholds to 25% or $100,000.

4.6.5 Replace the “General Interest Charge” provisions with “Shortfall Income Charge” provisions for GST purposes.

4.6.6 Align the ‘five year’ period in section 40-75 to the “five adjustment periods” in Division 129 to simplify the interaction between the two provisions.

4.6.7 Identify “Residential Premises” using a test is based only on physical characteristics of the premises (which also determines the “use”).

4.6.8 The “consideration” associated with the purchase of a retirement village should include items that:
  • are agreed between the vendor and purchaser;
  • exhibit a nexus with the taxable supply of the premises; and
  • are supplied for value.

4.6.9 Simplify the operation of Division 105 Mortgagee Sales.

4.6.10 Allow registered commercial or invoicing agents to be registered for GST purposes.

4.6.11 Allow tax law partnerships to account for their income and expenses through each partner’s own returns without lodging partnership returns.

4.6.12 Simplify the adjustment note provisions.

4.6.13 Increase the limits on all GST thresholds in the GST law in line with the scale and complexity of current business activities and provide a mechanism for periodic adjustment.

4.6.14 Allow a joint venture elect to be treated as a joint venture for GST purposes where it is already a Joint Venture for accounting purposes under IFRS.

4.6.15 Apply income tax self assessment style initiatives to the GST regime.

4.6.16 Modernise the GST law by adopting the following specific technical amendments:
  • allow any eligible entity to join or leave a GST group at any time;
  • amend recipient credit tax invoice provisions (RCTI), to allow the RCTI agreement to be included in the relevant tax invoice;
  • expand on-line access to eliminate written communication;
  • remove the requirement to identify and report on barter transactions where no net revenue would be collected from the transaction; and
• income tax self assessment style processes should be applied to the GST regime.

5. **Increase Infrastructure Investment and Improve Strategic Planning**

5.1 **Increase priority spending on 'big ticket' infrastructure**

The Federal Government should:

5.1.1 provide a minimum $5 billion injection of funds annually to the Building Australia Fund for future infrastructure projects;

5.1.2 direct Infrastructure Australia and the Major Cities Unit to develop five, 10, and 20 year infrastructure strategies for Australia’s urban areas; and

5.1.3 ensure that these strategies have key milestones and performance indicators to allow for independent assessment of their effectiveness.

5.2 **Increase spending on urban infrastructure**

The Federal Government should:

5.2.1 direct two thirds of all future Federal infrastructure investment towards urban infrastructure projects;

5.2.2 use PPPs and other innovative funding mechanisms to accelerate the delivery of infrastructure projects; and

5.2.3 through COAG, work with state, territory, and local governments to adopt and implement Growth Area Bonds in areas needing renewal.

5.3 **Secure long-term planning strategies for all urban centres**

The Federal Government should:

5.3.1 develop a comprehensive population policy to back up the “Building a Big Australia” plan and identify the key growth areas requiring attention;

5.3.2 establish an independent authority to audit the strategic planning performance of governments; and

5.3.3 establish a dedicated Urban Renewal Commission in each major city to oversee and deliver urban renewal projects; and

5.3.4 link Federal financial support to the success of each Commission in meeting KPIs.
6. Increase Green Incentives

6.1 Secure incentives for green developers and owners

The Federal Government should:

6.1.1 introduce accelerated depreciation for buildings that retrofit (retro-green) to meet higher environmental standards.

6.1.2 work through COAG to transform existing energy efficiency (white) certificate schemes into a national framework.

6.1.3 extend the life of the Green Building Fund, by allocating an additional $100 million dollars to it;

6.1.4 expand the coverage of the Green Building Fund to include retail and industrial property, as well as office buildings; and

6.1.5 Implement a national building tune-up program to improve the performance of individual buildings across Australia.

6.2 Ensure common sense reporting on energy and carbon

The Federal Government should:

6.2.1 revise existing reporting regimes and responsibilities to identify areas that may be streamlined and simplified;

6.2.2 introduce a Federal moratorium on additional compulsory reporting requirements for at least two years, pending the outcomes of the above review; and

6.2.3 through COAG, seek a similar moratorium from state and territory governments.

6.3 Deliver sensible policies on climate change adaptation

The Federal Government should:

6.3.1 prioritise a research program to identify the implications of climate change and possible sea level rises on buildings and communities;

6.3.2 introduce a policy that ensures no new regulations can be proposed in this area without strong scientific evidence; and

6.3.3 give priority under the proposed National Building Tune-Up program for buildings being retrofitted to adapt to climate change conditions.

6.4 Develop a viable market for renewable and distributed energy resources
The Federal Government should:

6.4.1 through COAG, work with its state and territory counterparts to:

- reduce regulatory impediments to the generation and use of renewable and distributed energy;
- ensure that operators who generate energy are able to achieve appropriate commercial returns by introducing a national system for gross feed-in-tariffs; and
- make it easier for buildings and precincts to harvest water and mine waste; and

6.4.2 relaunch and expand the Green Precincts Fund as an equivalent investment to the National Energy Efficiency Initiative, with a focus on:

- distributed energy generation;
- water harvesting;
- waste mining; and
- the establishment of an electric vehicle recharging network.

7. Improve Housing Delivery

7.1 Ensure availability of funding for development

The Federal Government should:

7.1.1 explore the potential for a government guarantee to ensure supply can continue to be brought to market;

7.1.2 examine the risk profile of residential housing as distinct from other sectors and develop policy appropriate to it;

7.1.3 engage with the banking and development sectors to understand the key road blocks in current financing and possible government responses; and

7.1.4 create a more transparent environment regarding APRA decision-making, including publishing the minutes of APRA meetings publically.
7.2 Secure a future for multi-unit residential housing

The Federal Government should, through COAG, work with its state and territory counterparts to:

7.2.1 recognise that current metropolitan strategies are not being achieved and commit to strategies for growth which have measurable, annual targets for the delivery of housing supply;

7.2.2 develop a streamlined process for multi-unit residential development assessment to fast-track the delivery of housing;

7.2.3 support a harmonised approach to development assessment and adopt a national template for applications to ensure that the approvals process is not unduly delayed by questions of sufficient detail; and

7.2.4 engage with key stakeholders to identify ways to educate the community better about sustainable urban growth.

7.3 Increase the supply of zoned/serviced land

The Federal Government should:

7.3.1 continue to support the National Housing Supply Council and its work into identifying the key issues needed to improve affordability and delivery of supply;

7.3.2 facilitate the development of a harmonised system of data collection by the states on land supply and ensure that an independent review of the data is undertaken;

7.3.3 support the orderly release of land, synchronised with the provision of infrastructure, to facilitate urban consolidation and reduce the cost of land development;

7.3.4 set national, regional and local targets for housing supply which facilitate growth and are tied to demographic indicators;

7.3.5 target the coordination of land release with a focus on areas of higher demand growth;

7.3.6 recognise the inherent balancing act that must take place in the delivery of housing between greenfield and brownfield sites;

7.3.7 require that states provide 25 year plans that identify both serviced land and future land supply, to accommodate growth projections; and

7.3.8 commit to the release of Commonwealth Government crown land and ensure that it is competitively available for the market.
7.4 **Commit to a balanced response to environmental initiatives**

The Federal Government should, through COAG, work with its state and territory counterparts to:

7.4.1 ensure early engagement with the industry in the development of regulation and policy that will impact the housing industry;

7.4.2 review the timeline for six star development for apartment buildings and reconsider a phase-in period for this segment of the market;

7.4.3 consider strongly the adoption of recommendations in the EPBC Act Review that provide for early engagement by the Federal government and allow for joint assessments with state governments;

7.4.4 commit to engage with the industry to ensure a streamlined and efficient system for mandatory disclosure in residential properties; and

7.4.5 develop a strategy for improving the energy efficiency of established homes.

7.5 **Continue the public stimulus for housing and the growth of the community housing sector**

The Federal Government should, through COAG, work with its state and territory counterparts to:

7.5.1 recommit to the public stimulus package for social and public housing at its current level;

7.5.2 continue to increase the supply of affordable housing; and

7.5.3 implement sector capacity reform, which will ensure greater national consistency of the social housing sector’s regulatory environment, to allow developers to partner with the community sector to deliver better outcomes.

7.6 **Support the establishment of finance mechanism to get Australians on the homeownership ladder**

The Federal Government should through COAG, work with its state and territory counterparts to:

1.6.1 investigate whether state programs such as Key Start in Western Australia are an appropriate way of supporting home ownership and review whether they have a national application;

1.6.2 consider the provision of a financial guarantee for states that establish such programs; and
coordinate a review of the benefits of shared equity schemes and the role of
governments in their establishment.

8. **Introduce More Reform**

8.1 **Maintain law and order on construction sites**

The Federal Government should:
8.1.1 preserve the current structures, powers, and operations of the Australian
Building and Construction Commission in the proposed Office of the Fair
Work Building Industry Inspectorate; and

8.1.2 maintain the provisions of the *Building and Construction Industry
Improvement Act*.

8.2 **Liberalise shopping centre trading hours**

8.2.1 The Federal Government should work with state and territory counterparts
to remove government regulation of trading hours.

8.3 **Develop sensible contract and leasing laws**

8.3.1 The Federal Government should continue to reinforce the separation of
commercial contracts from legislation designed to protect consumers.

8.4 **Deliver simpler and fairer rules for insurance**

The Federal Government should:

8.4.1 commit to a strategy for improving the insurance market in Australia,
through:

- allowing continued access to the Australian market by foreign
  insurers, provided they are licensed in a jurisdiction that has a
  comparable prudential regime or with which Australia has a double
tax treaty;

- exempting single parent captive insurers from APRA regulation,
because they only have one client. APRA’s prudential regime should
  be applied to premiums that require a prospectus – wholesale
  insurance should automatically be exempt; and

- abandoning the insurance exemption criteria proposed by the last
government;

8.4.2 through COAG’s Business Regulation and Competition Working Group,
review current state and territory approaches to insurance and
compensation, particularly:
• the retention of the key elements of the 2002 tort law reforms, including proportionate liability and the defence of contributory negligence;
• the development of a matrix to guide compensation decisions;
• a review of the law of negligence; and
• the potential for aggregating taxes and levies on insurance premiums into a single charge, calculated with a standard formula, with any taxes levied only on the cost of the untaxed premium; and

8.4.3 amend the Terrorism Insurance Act to allow for reviews of the Act every ten years, rather than every three. Current deductible rates should be retained until this new review date has been reached.
A Guide to Reading this Submission

This submission provides recommendations on **38 policy topics** grouped by **eight broad themes**:

1. Lower Taxes
2. Increase Liquidity
3. Slash Red Tape
4. Modernise Investment Management Rules
5. Increase Infrastructure Investment and Improve Strategic Planning
6. Increase Green Incentives
7. Improve Housing Delivery
8. Introduce More Reform

This submission focuses on policy issues with implications for the 2010 budget.

In general, one to two pages of commentary and recommendations are provided for each topic.

The Property Council of Australia can provide considerably more detail for each subject area, including extensive research reports prepared by Australia’s leading independent consultants and academics.

We are keen to share these resources with the Australian Government.
1 Lower Taxes

This chapter urges the Federal Government to:

• reduce property taxes;
• minimise developer charges;
• reduce international withholding taxes to zero; and
• eliminate foreign tax FIF and CFC attribution rules.

Fiscal implications – 2010 Federal Budget

Tax reform – no fiscal implications for 2010
1.1 *Reduce property taxes*

Australia has 125 business taxes.

Ninety percent of all tax revenue is raised by just ten taxes.

Property is disproportionately overburdened by these taxes.

The Property Council welcomes the Henry Review of Australia’s Future Tax System and looks forward to the Government’s response to Dr Henry’s report.

**Reform inefficient state and territory taxes**

Australian business is weighed down by an inefficient and overly complex tax system.

A major effort is required to rationalise and modernise these taxes and thereby deliver a more productive, competitive economy.

The critical over-reliance on property taxes has grown since the introduction of the GST and the intergovernmental agreement to remove inefficient taxes.

Yet, despite being one of the most inefficient state taxes, commercial conveyancing duty continues to be a key feature of state and territory budgets.

Such a dependence on high taxes exposes state governments to revenue volatility.

Replacing inefficient business taxes with better revenue sources is a crucial step toward improving the economic health of the nation.

**Better alternatives**

The Business Coalition for Tax Reform (BCTR), of which the Property Council is a member, has commissioned an independent broad-scale review of state business tax reform options.

This review provides clear and practical alternatives for a new round of business tax reform.

The BCTR’s research shows that:

- business and the community are substantially better off with more efficient taxes; and

- reform is achievable now without changing the overall tax burden or government revenue.
Successful reform needs:

- clear and achievable aims and outcomes;
- fixed timelines to achieve outcomes;
- a significant package of tax reforms for real change; and
- Federal-State co-operation to establish efficient revenue sources.

Australian governments should commit to a new round of real business tax reforms, underpinned by a new intergovernmental agreement.

The BCTR has developed three reform packages that provide the greatest ongoing economic gain.

Importantly, each of the packages shows that the states are better off in all cases if they remove a significant proportion of inefficient property taxes:

- **Package 1: Improving growth by reducing conveyancing duty and removing insurance duties**
  
  This would deliver a 0.6% increase in GDP in the long term and $10 billion Federal funding.

- **Package 2: Enhancing competitiveness by removing commercial conveyancing duty, land tax and reducing payroll tax**
  
  This would result in a 0.4% higher GDP in the long term and $10 billion Federal funding.

- **Package 3: Maximising state tax reform by removing conveyancing and insurance duties and reducing land tax**
  
  This package would increase GDP by 1.7% in the long term and $17.2 billion State and Federal funding.

Each of these packages could be funded wholly or in part by a Federal and/or state broad-based tax.

They represent money well spent because the packages would:

- deliver a large economic dividend per dollar spent on reform;
- produce larger economic benefits than by simply replacing lower cost Australia-wide taxes; and
- not change the overall tax burden.
Reform property rates and charges

Local Government rate revenue has increased over 70% since 1998.

But, there is a lack of consistency between councils about how rates and charges are raised and a paucity of measures to prevent discretionary increases.

Rates and development application fees can vary dramatically from one Council area to another, with no obvious or transparent methodology (see also section 1.2).

These fees can add significantly to the cost of development and the operation of property as an asset.

The Property Council is concerned about the lack of uniformity of rating methods across local government areas.

While council rates are necessary to fund core services such as rubbish collection and park maintenance, they are generally based on property values rather than the service supplied.

This is inefficient and distorting, effectively turning what should be a user-pays system into a wealth tax.

Because land values change from year to year, it creates an unstable, inequitable, and volatile revenue base for councils.

The current approach to rates violates core tax reform principles:

1) **Efficiency** – local government taxes are currently distorting consumption decisions through their significant impact on affordability and development costs;

2) **Transparency** – it is difficult for business to understand and anticipate the impact of local taxes because there is no consistent process for establishing or increasing them;

3) **Equity** – property unfairly bears 100% of the burden of local taxes which are used for serving the wider public;

4) **Simplicity** – the local taxing system and multiple rating options adds considerable complexity.

To overcome these problems, the Council of Australian Governments (COAG) should commit to a framework that ensures all local councils:

- adopt an equitable and consistent rating base;
- develop clear and standard criteria and processes for changing the rating base;
• confirm that the rating base has been established in accordance with the framework;

• link any increase in local government rates to a reduction in development levies where they exist; and

• consult with industry and the community regarding changes in rates, charges or levies.

Car parking congestion levies

The Property Council has always supported investment in public transport infrastructure and measures to prevent congestion in our centres.

A number of states have imposed car parking congestion levies on property owners as a means of achieving this.

The object of these levies is to discourage car use in business districts by imposing a charge on off-street commercial and office parking.

However, in Sydney the car parking levy has increased six times since 1992 with little evidence to suggest that it has actually reduced congestion.

This is simply another revenue raising device, another tax on property.

It does not deter car travel across a CBD, nor is it influential in reducing the number of parking spaces built, as these are determined by planning regulations.

Car parking congestion levies:

• unfairly target those workers and businesses who are poorly serviced by public transport;

• do not effectively combat congestion, as they tax the destination not the vehicle; and

• inequitably charge owners for a community-wide problem not directly related to property.

Stamp duty and land tax

Stamp duty and land tax on property is collected by all states, although the definitions and provisions differ.

Property owners who invest across Australia or from overseas incur substantial legal and administrative costs to comply with different, complex state tax provisions.

It makes investment in some states unattractive and uncompetitive.

This inhibits capital investment in Australian property.
All state governments should adopt a standard set of property tax rules and definitions in relation to:

- stamp duty on property;
- land tax and land rich provisions; and
- unit trust definitions and corporate reconstruction exemptions including stamp duty relief to restructure under a head trust (top hatting).

The Property Council has also proposed harmonising unit trust definitions and corporate reconstruction exemptions.

**Unit trust and corporate reconstruction rationalisation**

State land-rich provisions impede investment opportunities and growth for businesses investing across multiple jurisdictions.

Unit trusts and groups incur high compliance, structuring and stamp duty costs because:

- there are inconsistent state provisions;
- it is hard to comply with some concession provisions;
- unit trusts are often treated differently from similar investments made by companies; and
- Federal Government CGT relief for restructuring (top Hatting) needs state stamp duty relief if it is to work.

These technical difficulties mean that many REITs choose not to invest in particular Australian jurisdictions due to the onerous and restrictive stamp duty rules, and foreign investors are often deterred from investing in Australian real estate.

It is those jurisdictions, their residents, and their business communities that are ultimately disadvantaged as a result.

The Property Council of Australia proposes:

- a model for the imposition of stamp duty on public and wholesale REIT vehicles; and
- a model for appropriate corporate reconstruction exemption relief.

The model recommends a uniform approach across all jurisdictions, promotes the efficient movement of capital within the market, and avoids the imposition of double taxation.
Recommendations

The Federal Government should:

1.1.1 adopt the BCTR State Tax Reform Model for Comprehensive Business Tax Reform;

1.1.2 commit to a new round of business tax reform in consultation with industry, underpinned by a new intergovernmental agreement;

1.1.3 through COAG, work with its state and territory counterparts to:

- set a timetable to eliminate inefficient business and property taxes with clear performance milestones;
- commit all jurisdictions to a root and branch modernisation of the business tax system;
- deliver a new system for allocating GST revenue;
- set a five year target to reduce the reliance of Australian governments on indirect taxes; and
- commit all jurisdictions to undertake five yearly reviews of their indirect tax systems with the objective of reducing their reliance on high dead-weight taxes and significant compliance costs;

1.1.4 ratify a new Intergovernmental Agreement to give effect to COAG’s tax reform program;

1.1.5 through COAG, work with its state and territory counterparts to create a framework that ensures all local councils:

- adopt an equitable and consistent rating base;
- develop a consistent criteria and process for changing the rating base;
- confirm that the rating base has been established in accordance with the framework;
- link any increase in local government rates to a reduction in development levies where they exist; and
- consult with industry and the community regarding proposed changes in council rates, charges, or levies;
1.1.6 through COAG, work with its state and territory counterparts to:

- commit to an annual review of local council rates, charges and levies to ensure that the above framework is being followed; and
- commit to the abolition of car parking congestion levies;

1.1.7 The Federal Government should adopt a standard set of property tax rules and definitions for:

- stamp duty on property;
- land tax and land rich provisions; and
- unit trust definitions and corporate reconstruction (including stamp duty relief to restructure under a head trust (top hatting)).

1.2 **Minimise developer charges**

Councils are increasingly using upfront development levies on new construction to supplement their income.

Over the past 11 years, state and local governments across New South Wales, Victoria, and Queensland have significantly increased their reliance on this approach fund everything from infrastructure to library books.

This resulted in a rise in infrastructure charges for a typical new Sydney house from $12,000 (in 1995) to $68,000 (in 2006).

Similarly, infrastructure charges for a typical new Brisbane unit rose from $2,000 (in 1995) to $13,000 (in 2006).

Recent Residential Development Council research shows that upwards of 25% of the cost of delivering a home to market is as a result of these taxes.
Levies are being charged in an ad hoc and opportunistic manner by state, territory, and local governments with little attempt to justify whether they are needed or appropriate.

This creates several problems:

1. **Inconsistency**

   At present, there is no consistent policy approach to determine the size and use of development levies.

   This inconsistency is not just occurring between states, but within them.

   For example in NSW alone:

   - the Redfern Waterloo Authority uses a flat percentage levy;
   - development around North Sydney Railway Station imposes a $55 per sqm levy on additional floor space; and
   - the State Infrastructure Contribution in Growth Centres is $355,000 per ha (residential), and $150,000 per ha (industrial).

2. **Affordability**

   High levies are restricting development activity and creating further problems within major cities and across states.

   For example, across New South Wales, in 2006 alone there was an undersupply of over 11,000 dwellings, compared with Government’s growth targets.
Within Sydney there is an undersupply of more than 6,000 dwellings per annum.

This is eroding housing affordability, with individual households in Sydney paying up to $60,000 more in taxes than Melbourne households and over $50,000 more than Brisbane households.

3. Fairness

It is inequitable to place the burden of paying for widely used community infrastructure to a smaller group within society.

This is particularly unfair considering development charges are levied on new homes that are largely purchased by first home buyers, who can arguably least afford the extra tax burden.

4. Certainty

Development levy revenue is dependent on building activity and this makes it a volatile and uncertain revenue stream.

The use of development levies for the provision of services is inequitable because charges on developments are often used to fund unrelated capital works.

Stories abound of local governments spending revenue from development levies on operational costs such as the purchase of library books.

In some cases, local governments have been stockpiling development levies that should be spent on infrastructure for the community.

In 2007, unspent section 94 local government levies topped $620 million dollars in Sydney alone.

Why development levies are inefficient

The current approach to development levies violates core tax reform principles:

1. **Efficiency** – development levies distort consumption decisions through their significant impact on affordability and development costs;

2. **Transparency** – it is difficult for business to understand and anticipate the levies because there is no consistent process for establishing these charges;

3. **Equity** – it is inequitable to charge a small group of property owners to pay for widely used community infrastructure;

4. **Simplicity** – development levies are applied inconsistently and create confusion and complexity for property developers.
In line with good tax principles, in law there should be a direct nexus between the incidence and size (in dollar terms) of a development levy and the specific public infrastructure it is capitalising.

In the future, further infrastructure development should be funded through strategic government borrowing or the use of alternative financing such as Growth Area Bonds (or tax increment financing). (See section 5.2)

**Recommendations**

The Federal Government should, through COAG, work with its state and territory counterparts to:

1.2.1 increase the use of government borrowing, public-private partnerships (PPPs), Business Improvement Districts (BIDs), and Growth Area Bonds (or tax increment financing) to fund future infrastructure, in preference to inefficient mechanisms such as development levies;

1.2.2 establish a strategy to:

- minimise the use of development levies in the short-term and abolish them completely in the longer-term; and
- ensure that development levies are only levelled for public infrastructure specifically servicing the project being taxed – proportionate to the development and after taking account of community-wide and intergenerational benefits that should be funded by the broader society;

1.2.3 audit development levies collected by government and statutory authorities on an annual basis, and ensure unspent funds are returned if not spent within two years;

1.2.4 establish a formal framework for implementing the above reforms; and

1.2.5 commit to trial growth area bonds in three pilot studies in each state and territory.

**1.3 Reduce international withholding taxes**

The Government’s withholding tax reforms will progressively reduce the withholding tax rate on distributions from Australian managed funds to foreign investors over a three year period from 30 per cent to 7.5 per cent.

This vastly improves an A-REITs ability to raise equity capital from foreign investors.

The Property Council supports the Australian Government maintaining globally competitive withholding tax rates to attract foreign investment and help make Australia a lending and financial management hub for the Asia-Pacific.
Crucially however, interest withholding tax on debt is 10% although in some treaties, interest withholding tax has been reduced to 0% for certain bank and financial institutions.

This latter option should be more widely applicable to all debt, except related party debt.

This will facilitate the raising of debt capital by A-REITs from investors in treaty countries.

Equally, the rules surrounding the operation and application of the withholding tax regime need to be clarified to reduce investor confusion.

**Recommendations**

The Federal Government should:

1.3.1 establish a zero percent interest withholding tax rate for all debt raisings other than related-party debt; and

1.3.2 clarify the operation of the withholding tax regime for investors, including unregistered managed investment schemes.

**1.4  Eliminate foreign tax FIF and CFC attribution rules**

Australia has the second largest REIT market globally with approximately 70% of all Australian core property securitised through listed and wholesale REITs.

As a result, A-REITs are increasingly seeking investment in foreign assets but are impeded by attribution regimes.

We applaud the Government’s recent initiatives to simplify and reform the Foreign Investment Fund (FIF) and Controlled Foreign Corporations (CFC) rules, and look forward to the implementation of the reforms.

Attribution regimes are anti-avoidance measures broadly aimed at preventing entities from accumulating highly mobile income off shore to defer tax.

Where attribution rules are triggered the taxpaying entity must pay tax under Australian laws (in addition to any tax paid in the foreign jurisdiction).

For property investment, attribution regimes are not relevant anti-avoidance measures but significantly impede off-shore investment.

This is because returns from real estate income are caught under the CRC or FIF rules.

Property is a highly immobile, geographically-linked investment, which is governed by the asset itself rather than the tax features of the particular jurisdiction.
The regime rules do not appropriately influence individual property investment decisions, but create an unfair impediment to offshore investment in the Australian property industry.

There is a low risk of tax deferral from property income because it is taxed in the country in which it is sourced.

Returns from real property investment, in particular rent, should not be caught by the CFC and FIF attribution regimes. This will help level the playing field for offshore property investment.

Attribution reforms being considered by the Board of Taxation will need to be coordinated with the outcomes of the Board of Taxation MIT review.

Recommendations

The Federal Government should:

1.5.1 exclude property income from the CFC and FIF rules;

1.5.2 expand the listed country exemptions in the FIF rules to include foreign entities in CFC listed countries;

1.5.3 extend the FIF exemption for complying super funds to Australian unit trusts controlled by super funds;

1.5.4 extend the listed public company exemption to listed public unit trusts;

1.5.5 modernise FIF exemptions to include widely held unit trusts and not just companies, and activities such as property acquisitions, asset management, and development; and

1.5.6 implement the following technical amendments to the attribution rules:

- allow functional currency elections for trusts;

- ensure property entities do not pay tax on unrealised gains under the attribution regimes;

- allow Australian entities with interests in foreign trusts or foreign hybrids to elect to apply existing trust and partnership provisions instead of the attribution rules;

- apply similar rules for branch equivalent calculations under the attribution rules for foreign flow through entities and foreign branches;

- use the tax rules in each listed country as the basis for branch equivalent calculations; and
• use adjusted Australian tax law as the basis for branch equivalent calculations regarding unlisted countries.

1.5 Sources

Attribution Regime Submission, Property Council of Australia (20 June, 2008)

Australia’s Future Tax System Review Submission, Property Council of Australia (1 May, 2009)

Functional Currency Submission, Property Council of Australia (18 December, 2007)


“The Property Tax Squeeze: Even the Pips are Screaming – For the Senate Committee on State Government Financial Management”, Property Council of Australia (April, 2008)

2 Increase Liquidity

This chapter urges the Federal Government to:

- champion the growth of CMBS in Australia;
- improve the operation of the Basel II rules;
- equalise the bank guarantee charge between banking entities; and
- create a contingency rollover funding vehicle.

Fiscal implications – 2010 Federal Budget

*Increase liquidity* – no fiscal implications for 2010
2.1 *Diversify and deepen public and private debt markets*

The Australian property industry has outgrown the current funding capacity of local banks and the shortfall needs to be bridged by alternative funding sources.

Re-invigorating the Commercial Mortgage Backed Securities (CMBS) market through a government guarantee of AAA-rated securities will:

- boost investor confidence and reduce the cost of funding;
- stabilise the commercial real estate market; and
- relieve the pressure on banks for debt funding.

This guarantee could be expanded to include appropriate mortgage fund assets to broaden and deepen the availability of capital markets funding.

**The funding gap**

In the current economic environment:

- the capital debt markets (including CMBS) are virtually shut due to uneconomic credit spreads fuelled by investor uncertainty;
- offshore banks are repatriating capital from Australia which widens the funding gap; and
- local banks and non-banks are rationing credit and reducing exposure to commercial property due to capital ratio requirements and concentration limits.

Over the last two years both the bank and capital markets have seen:

- credit spreads balloon from 20 to 25 basis points over bank bill swap rates (BBSW) to about 350 basis points;
- funding for periods longer than three years virtually disappear; and
- transactions grind to a halt and immediate property development pipelines cancelled.

With the substantial repricing of risk, the commercial property sector has been forced to tap equity markets or refinance long term investments using short term debt facilities.

These strategies are costly to existing shareholders and potentially risky for the long-term financial health of property companies, resulting in debt mismatch and the cannibalisation of the investor base.
These strategies will not work forever.

In the near future, commercial property investors face a $50bn re-financing mountain that peaks in 2011. Bank debt ($32.5bn) and CMBS ($6.9bn) are the two largest types of debt to be refinanced.

Unfortunately, not all of this current debt will be easily refinanced because local banks are looking to cut exposure to commercial property, foreign banks are retreating, and capital markets debt is largely unavailable.

Equity raisings will eventually simply cannibalise existing investors.

The forecast shortfall for commercial property funding is $30bn over the next two to three years.

Unless capital markets can be restored, there will be significant instability in the sector.

**Champion growth of the CMBS market**

Government has an opportunity to act as a circuit breaker and kick start capital markets by guaranteeing very low risk AAA-rated CMBS securities.

A Government guarantee of AAA-rated CMBS securities will:

- boost investor confidence by reducing the perception of risk;
- reduce the cost of funding and ensure the current $7bn in CMBS is refinanced;
- free up cash flow and stabilise the commercial real estate market;
- promote new CMBS issues;
- relieve the pressure on the banks for debt funding; and
- free up bank balance sheets using CMBSs for their own commercial property portfolio to maintain prudential requirements.

**Diverse debt funding**

The guarantee described above could be expanded to include appropriate mortgage fund assets to broaden and deepen the availability of capital markets funding.

The Government could make a significant contribution to kick starting a broad and diversified debt market by implementing initiatives that:

- improve the operation of Basel II to rate risk better and improve commercial property leveling flows;
- equalise the bank guarantee charge for all banking entities; and
• create a contingency rollover fund vehicle as a secure backup.

**Recommendations**

The Federal Government should:

2.1.1 introduce a guarantee scheme for AAA-rated asset backed securities and property debt instruments;

2.1.2 work with ASIC to remove domestic and international regulatory barriers to corporate bond and CMBS markets;

2.1.3 through APRA:

- ensure the banks’ implementation of Basel II enhancements improves the flow of commercial property lending;
- ensure the banks better rate the risks associated with debt; and
- work with the banks to inject more science into capital adequacy risk assessments to different categories of lending (“slotting”);

2.1.4 establish a single, low flat rate charge for its wholesale funding guarantee for all banks regardless of their credit rating; and

2.1.5 create a contingency rollover funding vehicle – every system needs a secure back up in place.

**2.2 Sources**

*Attribution Regime Submission, Property Council of Australia (20 June, 2008)*

*Australia’s Future Tax System Review Submission, Property Council of Australia (1 May, 2009)*

*Functional Currency Submission, Property Council of Australia (18 December, 2007)*

*“Benchmarking Australia’s Tax System: the International Context”, Property Council of Australia (March, 2006)*

*“Australia’s Future Tax System: Ending the Property Tax Squeeze – For the Review Panel for Australia’s Future Tax System”, Property Council of Australia (17 October, 2008)*

*State Business Tax Reform – Seeding the Tax Reform Debate, Centre for International Economics, for the Business Coalition for Tax Reform (May, 2009)*

“The Property Tax Squeeze: Even the Pips are Screaming – For the Senate Committee on State Government Financial Management”, Property Council of Australia (April, 2008)

3 Slash Red Tape

This chapter urges the Federal Government to:

• deliver faster, more rational development assessment systems;
• tie Federal Government funding to state/local government reform;
• create one set of property rules across the country;
• create nationally consistent OHS rules;
• streamline and rationalise planning and building rules; and
• introduce rational disability access rules.

Fiscal implications – 2010 Federal Budget

*Reassessing regulatory impact assessments* – no fiscal implications, but will require reallocation of existing resources

*Development assessment reform* – approximately:

• $250,000 for additional staffing and resources, and
• $600 million over three years for incentives to state or local governments for DAF reforms.

*Uniform property law* - $300 000 to establish COAG property law reform project.
3.1 Reassess regulatory impact assessment

Australia needs a competitive economy.

To do this, greater emphasis needs to be placed on both the collaborative processes of COAG and a more effective approach to regulatory impact assessment.

When the Rudd Government came to power the Prime Minister stated he wanted to create a ‘seamless economy’, and appointed a Minister for Deregulation.

He also stated that the Government would pursue ‘evidence-based policy’.

It is industry’s experience that the desired seamlessness and evidence-based policy development has not been delivered.

The problems

Here are the problems we currently face:

- a lack of national consistency in policy and regulation;
- sub-optimal accountability and transparency;
- limited resources committed to ongoing reform and regulatory review;
- existing regulation is often treated as a starting point for further regulation, rather than a definitive obligation;
- little, if any, analysis of the effectiveness of previous regulatory changes and their impacts on industry;
- too much duplication;
- enormous compliance costs; and,
- regulatory impact statements (RIS) that are off the mark.

The Council of Australian Governments (COAG)

The Business Regulation and Competition Working Group, established under COAG, is ideally placed to identify and reduce regulation.

This entity needs to:

- identify opportunities for national uniformity;
- propose ways of reducing business red tape;
• suggest incentives that might be given to governments and the private sector for deregulation or better performance; and

• engage directly with the private sector to ensure that governments are helping, rather than hindering business.

The BRCWG should also be allocated the responsibility for reviewing, and recommending changes to, the current approach of conducting regulatory impact assessments.

Proposed regulatory reforms

The Property Council endorsed the Australian Government and COAG resolutions in relation to regulatory reform, particularly plans to:

• harmonise all key regulations imposed on businesses that operate across state and territory jurisdictions within five years;

• give the Productivity Commission responsibility for estimating the costs and benefits of regulation reforms;

• adopt a “one in, one out” principle for all new Commonwealth regulation; and,

• set a common commencement date for all new regulation.

However, only the last of these has been fully implemented and the first partially implemented – the “one in, one out” principle and a role for the Productivity Commission estimating costs and benefits of regulation reforms are conspicuously absent.

Why isn’t regulatory assessment working?

The current RIS regime has fallen short, due to:

• a lack of integration of RISs into the decision-making process;

• limited sanctions for non-compliance with RIS requirements – the more significant the proposal is, the lower the compliance rate will be;

• uncritical assessment of the quality and appropriateness of RISs by governments;

• an overall lack of transparency and accountability in the development of RISs;

• an apparent lack of understanding by many regulators, or their consultants, of the industry they are regulating, and the potential effects of their proposals;

• the poor average quality of the RISs prepared by regulators;

• a lack of standardisation and consistency in the format and content of RISs between governments and between departments;
• insufficient consideration, and limited quantification, of the costs created by regulation;
• over-estimations of the benefits of regulation;
• poor public consultation processes and limited consideration of feedback received; and,
• limited review of existing regulatory proposals to ensure they remain appropriate.

An example – commercial building energy efficiency regulations

The Property Council’s recent experience with the regulatory impact assessment Building Code of Australia energy efficiency changes is a case in point.

In order to justify the proposed changes, the consultants drafting the RIS for the Australian Building Codes Board understated the potential costs of the changes and overstated the benefits.

They achieved this by using a lower discount rate than recommended by the Office of Best Practice Regulation and by modelling a mere five buildings, totalling 9,958 sqm – compared to the 330 million square metres of office space alone.

These five buildings were completely unrepresentative:

• the total amount of space modelled is barely the size of a small office building;
• the largest office building and retail space modelled were only 2,000 sqm - at this size it is unlikely that the costly central services would be included in the construction;
• other types of buildings, such as industrial premises, hotels, large office buildings, and shopping centres were unmodelled, but total costs for the were extrapolated from the small sample anyway; and
• no attempt was made to assess the likely costs for existing buildings.

The RIS was prepared with no consultation with industry, beyond a small group of paid advisors.

Furthermore, no attempt was made to assess whether the previous regulatory changes had actually achieved their original target or were working effectively.

Yet, despite these obvious flaws, the Office of Best Practice Regulation has rubber stamped the RIS and consistently praises the ABCB for its assessment processes.

It makes no sense for the department that develops regulation to be responsible for overseeing the assessment of it.
This automatically means that the independence of the assessment is compromised, because the consultant writing the RIS is doing a job for a client and will always cater for their wishes.

The CRA International methodology

In 2006, the Property Council commissioned CRA International to develop a leading practice model for developing regulatory impact statements.  

CRA International recommended the following approach to regulatory impact assessment:

1. mandatory consultation with a minimum consultation period for all proposed regulations:
   a. above a minimum materiality threshold;
   b. differentiated according to the significance of the regulation in terms of its likely (direct and indirect) cost consequences; and,
   c. requiring the publication of a draft RIS at the start of the consultation period;

2. a requirement for the relevant Minister to certify that the RIS process has been followed, and that the RIS adequately assesses the impact of the proposed rule;

3. the regular secondment of Office of Best Practice Regulation (OBPR) staff to government departments to enable an improved ‘culture of compliance’;

4. the right of the OBPR to veto significant regulations judged to have been inadequately assessed under an RIS;

5. the removal of local government and planning legislation exemptions from RIS requirements, at least above a certain materiality threshold;

6. a greater degree of standardisation and consistency of RIS formats to highlight the conclusions that can be drawn from them, in particular a clear statement of the net costs and benefits of a proposed measure;

7. the full and transparent inclusion of assumptions, data, and analysis undertaken in any quantification performed;

8. the collation of improved databases to assess industry-specific administrative burdens;

9. the requirement for departments to adopt a rigorous analytical and quantitative technique and to justify the choice of analysis;

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10. the introduction of a two-stage approach to RIS requirements and consideration of a range of alternatives;

11. Legislating to require all government departments to make all their RISs available on their websites; and

12. ‘Scoring’ the RIS quality of government departments and consequently directing OBPR training towards the lagging departments with the aim of improving their future RISs.

Recommendations

The Federal Government should:

3.1.1 direct the Business Regulation and Competition Working Group to meet formally with private sector stakeholders to determine targets for deregulation; and

3.1.2 adopt the RIS methodology developed by CRA International for all new regulation.

3.2 Deliver faster, more rational development assessment systems

Good development assessment processes will improve Australia’s competitiveness, while poor practices will impede further growth.

For liveable and vibrant communities, the built environment must meet and reflect state and local policy objectives.

Development assessment has an important role in delivering this.

The DAF Leading Practice Model

There is a leading practice guide to world class development assessment.

The guide was developed by the Development Assessment Forum (DAF), which includes all states, territories, local government, property sector industry associations, professional organisations and the Australian Government.

The DAF model (see Appendix 2) outlines ten elements of an efficient development assessment process that will:

- depoliticise assessment;
- reduce development delays;

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3. A Leading Practice Model for Development Assessment in Australia, Development Assessment Forum (March, 2005)
increase certainty;
clarify the community’s requirements up front; and,
reduce costs and waste.

With the Government’s (and COAG’s) increasing recognition of the importance of planning and development assessment reform, there has been no better time to drive real reform and national consistency across all jurisdictions.

It has been almost five years since the DAF model was released, and since that time all levels of government have committed to planning and development assessment reforms.

While most governments have held the it up as the appropriate roadmap for reform, the level to which the DAF recommendations have been implemented has been highly variable.

Despite reforms that have occurred to date, in many cases systems are still not fully effective, due to:

- overly complicated codes or assessment processes;
- local political imperatives to retain control over development assessment;
- a lack of benchmarks against which to measure performance; and
- cultural and administrative constraints.

Recently, the Residential Development Council and the Property Council undertook a review to see how far governments had come toward achieving their commitments to reform.

The Development Assessment Forum Reform Implementation Report Card revealed that there is still much work to be done.

The Federal Government must demand more planning reform from states and territories if we are to improve our economic outlook.

Efficiencies in the approval and referral systems will slash costs for participants, reduce significant delays, and improve certainty of process and outcome for all participants.

**Recommendations**

The Federal Government should:

3.2.1 expand upon the COAG agreement for planning and development assessment reform and set a timeline for the implementation of the DAF Model in each state and territory;
3.2.2 work with the States to ensure that, by June 2011, at least 50 percent of all applications lodged in each local government area fall within the development assessment tracks of ‘exempt’, ‘self assessable’, or ‘code assessable’ as outlined under principle 4 of the DAF leading practice model;

3.2.3 develop a model template for track-based assessment to be adopted nationally by 2012, in consultation with all jurisdictions and industry;

3.2.4 seek commitment from the jurisdictions that each state and territory develop stand-alone codes for:

- single dwelling residential developments by June, 2010;
- multi-unit residential developments by June, 2011;
- industrial developments by June, 2011; and
- commercial developments by June, 2012;

3.2.5 continue support for the development and implementation of the Electronic Development Assessment (eDA) standards across the states and territories;

3.2.6 through COAG and the National Competition Commission, provide financial incentives to state, territory, and local governments to implement the DAF reforms, in line with programs already announced by the Australian Government (such as the Housing Affordability Fund); and

3.2.7 increase the resourcing of the DAF Secretariat so that it is serviced by at least one full-time project manager and has sufficient funds available for applied research.

3.3 Create one set of property rules across the country

“I am looking at ways to make our legal system more user friendly to corporations that operate in our region. It is inappropriate that they should have to spend thousands on advice about competing State and Federal jurisdictions even before a remedy is considered.”

The Hon Robert McClelland MP
Federal Attorney-General, 16 May, 2008

Harmonised laws are increasingly being recognised as the best approach to creating simplified, workable legislation across Australia.

Property law should be the next target for these nationwide reforms.

A CLERP-style (Corporate Law Economic Reform Program) approach to property law reform is needed to streamline legislation and remove inefficiencies.
The Federal Government’s desire for a “seamless, national economy” must be underpinned by tangible reform to property law.

Although the Torrens Title system is widely recognised as one of the world’s best approach to land titling, we have eight markedly different versions of it. This has an adverse impact upon trade and commerce.

If Australia is to continue to be attractive to international investors, our antiquated approach to property law needs to be overhauled.

While Federal, state, and territory governments have made moves to reform personal property laws and the national licensing of lawyers, little has been done to extend this to real property.

In an effort to achieve greater uniformity, the Property Law Reform Alliance – a coalition of industry groups from the legal and property sectors – has been drafting a Uniform Torrens Title Act (UTTA) for adoption by state and territory governments.

The UTTA will represent a best-practice approach to land titles for nationwide implementation.

It is the first step towards real property law reform – the Alliance is also working on reforms to the other areas of property law, such as:

- conveyancing;
- documentation;
- leasing;
- finance;
- powers of attorney; and
- professional standards.

The Property Council endorses the Australian Government’s commitment to provide incentives to states or territories that harmonise their regulations, based on a national competition policy model.

We believe that property-related laws and procedures should be included as priorities for harmonisation.

**Ten reasons for pursuing property law reform**

1. it will deliver on the Federal Government’s commitment to remove hindrances to business activity, because every company either owns or rents property;

2. it will ensure that a world-class 19th century system can be made relevant and effective for 21st century businesses;
3. it will enable states and territories to establish the most efficient, rigorous, and fair system for managing property transactions, making the Australian property industry internationally competitive;

4. it will enable local and overseas companies to expand their Australian operations beyond one state, opening up the possibility of increased investment and more jobs;

5. it will reduce the costs and transaction timeframes for vendors, purchasers, lessors, and lessees and create a nationally consistent system under which they can operate;

6. it will overcome a constitutional anachronism where companies are covered by national legislation, but their property transactions are beset with different state-based regimes;

7. it will continue the business regulation reform agenda that started with Corporations Law and the review of personal property, helping to deliver a seamless, national economy;

8. it will ensure that the National Legal Market creates a system where practitioners can be recognised in different jurisdictions, and also have the capacity and knowledge to represent interstate clients effectively;

9. it will ensure that the National Electronic Conveyancing System does not merely codify existing differences, but works to remove anomalies; and

10. it will put property investment on a level playing field with other asset classes.

**Recommendations**

The Federal Government should:

3.3.1 engage with the Property Law Reform Alliance over its draft Uniform Torrens Title Act to determine how best to achieve a nationally consistent property law system;

3.3.2 establish a COAG property law reform project for real property along the lines of the personal property law reform initiative; and

3.3.3 host a high-level ministerial meeting with state and territory authorities to discuss mechanisms to create a uniform property law system.

**3.4 Create nationally consistent OHS rules**

The Property Council has welcomed the release of the draft Safe Work Act 2009.

A nationally consistent approach to OHS is essential to the delivery of safer workplaces.
As the owners, managers and developers of most of Australia’s workplaces, the property sector has a profound interest in the national drive for reform.

The move toward a nationally consistent approach to OHS under the model Safe Work Act is commendable, but there is no point harmonising legislation unless it lays the groundwork for a simple and equitable system.

Our industry is keen to see proper protection for employees, but without abandoning employers’ rights to fair treatment.

However, further consideration is required on a number of issues if the aims of the Act are to be realised.

The Property Council of Australia recommends that Safe Work Australia:

• clarify the responsibilities of duty holders, so that property owners, managers and tenants are aware of their obligations in relation to the space they own and occupy;

• refine the definitions around key terms which attribute responsibility to particular parties, so that individuals and corporations understand the extent of their obligations;

• ensure that unions are not given excessive powers that should be restricted to the Regulator;

• amend the penalties for minor breaches of the Act to more appropriate levels; and

• give legal standing to codes of practice to encourage industries to create workable standards.

The Property Council urges the Government to address these issues and ensure that the Safe Work Act 2009 and supporting regulations deliver a fair, workable and efficient system.

Recommendations

The Federal Government should:

3.4.1 work with Safe Work Australia and state and territory regulators to ensure that model OHS legislation creates a clear, fair and equitable system;

3.4.2 ensure that the onus of proof for any incident is always placed on the prosecution, not on the defendant;

3.4.3 clarify the responsibilities of duty holders under the Safe Work Act 2009;

3.4.4 ensure that responsibilities of duty-holders are clearly defined;

3.4.5 remove the right of unions to prosecute safety complaints;
3.4.6 amend the penalties for minor breaches of the Act to more appropriate levels; and
3.4.7 give legal standing to industry codes of practice.

3.5 **Streamline and rationalise planning and building rules**

The built environment is the nation’s productivity platform.

Planning and building control shape the communities and structures in which all Australians live and work.

Metropolitan strategies, strategic plans, local environment plans (LEPs), development control plans (DCPs), and the Building Code of Australia (the Building Code), all work to determine what can be built, where it can be built, and how it will be built.

Yet, with no coordination between state, territory, and local jurisdictions, the rules governing development can only be inconsistent and contradictory.

**The need for planning reform**

Over the last twelve months, the Council of Australian Governments has taken a particular interest in planning reform.

The drive for reform has largely been influenced by a change in attitude and focus within the Federal Government.

In announcements such as “Building a Big Australia”, the Prime Minister has outlined his views about the importance of effective planning to ensure the ongoing and sustainable growth and productivity of Australia’s cities and towns.

Together with development assessment reforms, which are being implemented in each jurisdiction, a focus on planning reform will help to make business more efficient while delivering more reliable and acceptable outcomes.

Traditionally planning rules have not been subjected to cost-benefit assessment.

Where such rules amend or contradict building regulations, this has the potential to increase red tape for property owners without any consideration of the cost or benefits of those changes.

Although some degree of national consistency in construction has been achieved through the Building Code, the disparate policies and rules concerning planning reduce certainty for all stakeholders.

Undertaking regulatory impact assessment for general planning requirements may be impractical.
However, if amendments impact upon building rules they should undergo the same process as taken with the Building Code.

**The need for a National Construction Code**

Without the Building Code, Australia’s commercial and residential building sectors would today be characterised by uncertain and costly building control randomly spawned by three tiers of government.

Having one set of building regulations under the Building Code has delivered savings for both government and industry.

However, the recent experience of industry has been that:

- the ongoing use of variations to the Code under planning regimes has undermined the move to national consistency;
- other statutes frequently contradict the Building Code;
- regulatory standards are being used to drive good practice within the industry, rather than just removing poor practice; and
- the review and cost-benefit assessment of proposed regulations has not been independent, but has been carried out with an end result already determined.

The Property Council believes all regulations influencing the construction of a building should be located in the one National Construction Code, which sets both the minimum and maximum regulatory standard for construction.

The ability of practitioners to rely upon a single Code for all construction, plumbing, electrical, and telecommunications activities will make it much easier for companies operating in different states to conduct business.

The National Construction Code should:

- be nationally consistent;
- be cost effective and performance-based;
- respond to appropriate community needs;
- deliver minimum acceptable standards for health, safety and amenity;
- eliminate poor environmental practices;
- be developed through effective industry consultation;
- cover all building and construction activities, including:
  - plumbing;
o electrical work;
o the installation of telecommunications cabling; and
o health department regulations;

- integrate all agency reform activities;
- consolidate any mandatory requirements affecting buildings and ensure that more stringent requirements aren’t introduced through other avenues; and
- be implemented with only a short transition period, to minimise the potential for variations.

A lack of consistency in applying regulations, and the ongoing ability of state, territory, and local governments to introduce uncosted variations through planning regulation, could negate the benefits of a National Construction Code.

The Government needs to work with its state and territory counterparts to recommence the creation of the National Construction Code and provide a consistent framework for construction in Australia, backed by a binding Intergovernmental Agreement.

Recommendations

The Federal Government should:

3.5.1 ensure that planning rule changes that impact upon building regulations are subject to regulatory impact assessment; and

3.5.2 introduce a National Construction Code covering all aspects of building and construction to ensure consistent standards are maintained across Australia.

3.6 Introduce rational disability access rules

Australia’s buildings should be more accessible to people with disabilities.

At present, however, there is no way of ensuring such access has been provided to the degree required by the Disability Discrimination Act (DDA).

This is not a good outcome for anyone.

The Disability (Access to Premises — Buildings) Standards 2009 (Premises Standards) represents an important step in the history of the DDA.

The Property Council supports the introduction of Premises Standards, which will bridge the gap between the requirements of the DDA and the technical provisions of the Building Code of Australia (BCA).
This will provide certainty to industry and the community alike – owners and practitioners will understand what they need to do to comply with the law, while people with disabilities can be assured of greater accessibility within the built environment.

However, the costs involved in providing access under the Premises Standards must be reasonably commensurate with the benefits, where both are measured objectively.

We urge the Government, in responding to the House of Representatives Committee Report, to ensure that the certainty and cost-effectiveness of the Premises Standards is maintained.

Local, state, and territory governments should not be able unilaterally to increase access requirements above the Standards without undertaking the review processes outlined in the draft regulations.

It is our hope that, with some fine tuning and the reconsideration of a few obvious problems of the draft Premises Standards, industry and the community will finally get the certainty we all seek.

**Recommendations**

The Federal Government should:

3.6.1 amend the Premises Standards and the guidelines to emphasise that they represent absolute regulatory standards;

3.6.2 reinstate the ‘80th percentile’ circulation spaces currently used in the Building Code until such time as empirical evidence is provided to demonstrate a need for increased dimensions;

3.6.3 ensure that there is a fair test for unjustifiable hardship;

3.6.4 consider options that might protect owners from complaints about egress for people with disabilities until such a time as it is included in the BCA; and

3.6.5 revise the proposed Administration Protocol to ensure that Building Access Panels can make decisions fairly, equitably, and (above all) quickly.

**3.7 Sources**


*A Leading Practice Model for Development Assessment in Australia*, Development Assessment Forum (March, 2005)


4 Modernise Investment Management Rules

This chapter urges the Federal Government to:

- create flexible A-REIT unit holder distribution rules and eliminate uncertainty over ‘active/passive income’;
- end the thin cap rule penalty for property trusts;
- increase access to more foreign treaty tax benefits;
- remove the CGT penalty on trust restructures;
- create simpler, more meaningful capital raising documentation; and
- simplify GST rules and end the margin scheme confusion.

Fiscal implications – 2010 Federal Budget

*Reforming inefficient state taxes* – Redistribution of up to $17.2 billion in taxes with no net revenue impact.
4.1 Create flexible A-REIT unit holder distribution rules

The Property Council welcomes the Board of Taxation’s report to Government on its review of the taxation of managed investment trusts (MITs).

We look forward to the Government’s response, and applaud the down payment in the 2009 Budget to implement the interim recommendation on capital v revenue account treatment.

We support the Rudd Government’s objective to transform Australia into an Asia Pacific financial services and funds management hub.

This reform is vital for ordinary Australians as well as the property sector.

Australia has the second largest REIT market globally with approximately 70% of all Australian core property securitised through listed and wholesale REITs.

The REIT market has traditionally been the vehicle for ordinary Australian’s to invest in property directly or indirectly through managed funds and superannuation.

It aims to give all Australians the same investment opportunities as wealthy investors and corporations that invest directly in property.

The Property Council supports the Government’s view that ordinary Australians who invest in property through MITs deserve the same treatment and opportunities as wealthy direct property owners.

Crucially however, unlike direct investors, MITs including REITs have restrictions that impede their ability to:

- earn income from property investment; and
- manage capital effectively.

The current rules were not designed as a regime to facilitate a modern industry.

Many of today’s commonplace property investment opportunities simply didn’t exist when the REIT rules were first drafted.

The legislation acts more as anti-avoidance regime that impedes the efficient and internationally competitive operation of managed property funds.

Australia needs to modernise its MIT framework to foster the development of new property asset classes that deliver social dividends, such as affordable housing, retirement and aged care facilities.
Industry supports a simple, elective regime that is available to all MITs and expands the allowable investment activities.

Recommendation

The Federal Government should:

4.1.1 establish a dedicated MIT tax regime in Australian law that includes REITs but excludes discretionary trusts;

4.1.2 retain the classic features of a collective investment vehicle system, such as flow through status, tax deferred income, and CGT concessions;

4.1.3 allow MITs to undertake all forms of investment in property while retaining tax flow through status, including the ability to control taxable companies;

4.1.4 clearly define ineligible investment activities, to enable the scrapping of complicated and outmoded ‘active/passive’ rules;

4.1.5 allow fund trustees effectively to manage capital by retaining a portion of earned income;

4.1.6 modernise attribution rules to serve the long term interests of collective investors better;

4.1.7 enable Australian MITs to provide their unit holders with the treaty benefits applicable to inbound income that are generally lost to Australians who invest in REITs;

4.1.8 offer elective access to the proposed MIT regime to any entity that is widely held, either directly or on a trace through basis;

4.1.9 deem sovereign wealth and investment funds to be widely held as they represent the collective wealth of nations; and

4.1.10 retain the existing Division 6 as a fall back regime for trusts that do not qualify or elect not to enter the new MIT regime.

4.2 End the thin cap rule penalty for property trusts

Thin capitalisation provisions are designed to ensure that multinational entities do not allocate an excessive amount of debt to their Australian operations.

They prevent such organisations from taking advantage of the differential tax treatment of debt and equity to minimise their Australian tax.
This is achieved by limiting debt deductions where the debt exceeds an allowable amount, thereby preventing the use of excessive debt to fund a company’s Australian operations.

The thin capitalisation rules should not apply in any of the following circumstances.

**Trusts with offshore assets**

Unfortunately, thin capitalisation rules can unfairly treat trusts differently from companies.

In certain circumstances, the rules can stop debt deductions against assessable dividend income for a trust the dividend income remains assessable. This leaves the trust with a tax liability and no debt deductions.

A company in a similar situation would have access to an exemption under section 23AJ of the Income Tax Assessment Act 1936, which deems the dividend non-assessable.

This is a significant problem for A-REITs using debt funding to invest in a controlled foreign entity.

The thin capitalisation rules apply inequitably to trusts with offshore investments.

They should be aligned for companies and trusts to give them similar outcomes.

To achieve this, the method of calculating a trust’s permitted debt funding should be changed, to allow debt deductions where an outward investing trust is deriving non-portfolio foreign dividend income.

**Trust groups and stapled groups**

Trust groups and stapled groups are similarly disadvantaged because they cannot consolidate their thin capitalisation calculation.

They must instead work out individual calculations for each trust within a wholly owned group.

This burden should be removed to allow thin capitalisation calculations aligned to the economic relationships of trusts and stapled groups.

**Foreign partnerships, trust estates and foreign hybrids**

The thin capitalisation provisions should also be streamlined to remove the unintended outcome they apply to a partnership in a foreign jurisdiction, a non-resident trust estate, or a foreign hybrid.
Recommendations

The Federal Government should:

4.2.1 align the treatment of trusts and companies under thin capitalisation calculations;

4.2.2 allow wholly-owned trust groups to apply thin capitalisation rules on a consolidated basis;

4.2.3 allow stapled groups to apply thin capitalisation rules on a consolidated basis;

4.2.4 ensure thin capitalisation provisions do not apply to partnerships formed in foreign jurisdictions, non-resident trust estates, or foreign hybrid entities.

4.3 Increase access to more foreign treaty tax benefits

The Property Council of Australia strongly supports the Federal Government’s commitment to maintain and improve Australia’s position as a financial hub.

Australian Real Estate Investment Trusts (A-REITs) compete for investments globally and increasingly seek capital from offshore investors.

Well formulated tax treaties are essential for facilitating cross border capital flows. Australia’s tax treaty policy for A-REITs should focus on facilitating:

• raising equity and debt capital from offshore investors; and
• investing in foreign assets.

Ongoing work on tax treaties now needs to be coordinated with the Board of Taxation review of managed investment funds.

A-REIT investment overseas

A-REITs make substantial investments in offshore property mostly through interposed entities.

It is critical for competitiveness that these A-REITs are able to access treaty benefits that apply to distributions or interest payments from these interposed entities.

To date, A-REITs have been unable to obtain treaty benefits otherwise available to corporations and individuals because trusts aren’t a recognised entity.

The Government needs to clarify with foreign jurisdictions that trusts can be considered residents of Australia under tax treaties and beneficially entitled to income.
Equally, some foreign jurisdictions seek to levy higher withholding taxes on distributions to non-portfolio investors. This critically affects direct A-REIT investment in foreign assets and needs to be addressed.

Importantly, Australian tax treaty policy remains too concerned with protecting Australian taxing powers, including cases where no source tax is levied under domestic law in Australia.

By creating taxing rights under a treaty that do not exist in domestic law, Australia is creating a situation where the other country can tax Australian residents in situations where we would not tax their residents.

This is detrimental to Australia’s national interests.

**OECD Model Treaty**

On 17 July 2008 the OECD Council approved changes to the model treaty taxing foreign portfolio investors in REITs at the dividend withholding rate.

This is a landmark decision which narrows a nation's unfettered attempts to tax real estate and provides REITs with treaty protection.

Under the OECD model treaty, foreign portfolio investors are now entitled to withholding tax rates that apply between the country of origin for the REIT and the foreign investor’s country of origin.

Currently the withholding tax applied to a REIT investing in another foreign REIT or to an investor in direct foreign property is at the discretion of the country where the income is sourced.

At best, it is subject to a bi-lateral treaty, but very few treaties deal specifically with this issue. Around the Globe, the treatment of these investments is ad hoc.

The Australian Government needs to be proactive in adopting the OECD approach and adapting its tax treaty policy to cover all REIT issues. It should also remain closely involved with the REIT issues still to be resolved by the OECD.

**Priority jurisdictions**

Countries for priority treaty negotiations are those in which Australia has significant investment in commercial property and which are significant sources of investment in Australian commercial property and A-REITs.

These countries tend to coincide with common sources of capital inflows and outflows, and so priorities for the property industry will be similar to those for other sectors.

We recommend treaty negotiations and regular reviews for USA, UK, New Zealand, Germany, France, and Japan.

**Treaty negotiation advisory group**
The negotiation process requires significant resources. Treasury should convene a tax treaty negotiation advisory group to support Australian tax reform initiatives and OECD forums.

This advisory group would provide Treasury with invaluable technical expertise, practical experience, additional resources, and an open consultation channel to accelerate the treaty negotiation process for the benefit of Australia.

**Recommendations**

The Federal Government should:

4.3.1 continue to support the development of Australia as a managed funds hub with a competitive, flexible tax treaty policy;

4.3.2 implement the recommendations of the Johnson Report released by the Australian Financial Centre Forum (AFCF);

4.3.3 commit to the ongoing reduction of withholding tax rates;

4.3.4 establish a zero percent interest withholding tax rate for all debt raisings other than related-party debt;

4.3.5 resolve that a foreign investor in an A-REIT is not deemed to be taxable in Australia;

4.3.6 apply treaty dividend articles to A-REIT distributions;

4.3.7 eliminate double taxation where portfolio investment gains on disposals of “land rich” entities are taxed by the country of residence - ensure they are not also subject to capital gains in Australia;

4.3.8 enable Australian MITs to provide their unit holders with the treaty benefits applicable to inbound income that are generally lost to the ordinary Australians who invest in A-REITs;

4.3.9 prioritise tax treaty negotiations and regular reviews for countries that are major sources of inbound, and targets/destinations for outbound, Australian investment (commencing with USA, UK, New Zealand, Germany, France, and Japan);

4.3.10 convene a tax treaty negotiation advisory group, that includes representatives from business/sectoral groups, to support Treasury in Australian tax reform and OECD forums;

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*Australia as a Financial Centre, Australian Financial Centre Forum (January 2010)*
4.3.11 enact tracing provisions to “look through” widely held A-REITs in foreign jurisdictions that impose higher withholding tax rates on non-portfolio distributions; and

4.3.12 remove unnecessary “source rules” from tax treaties.

4.4 Remove the CGT penalty on trust restructures

There are currently no specific provisions that facilitate the transfer of assets between unit trusts under common ownership without incurring Capital Gains Tax (CGT) consequences.

The Property Council welcomes the Government’s current review of this area of law and looks forward to the implementation of our recommendations.

To date, trusts have relied on trust cloning provisions (sub-sections 104-55(5)(b) and 104-60(5)(b)) as the only limited form of CGT relief available.

These provisions allow a trust to “clone” itself and transfer assets to the new cloned trust without incurring capital gains tax.

The ability to access roll-over relief, such as cloning, is commercially vital to unit trusts, particularly large listed trusts, widely held trusts and unit trust groups. It enables them to:

- facilitate commercially efficient internal restructures; and
- ensure that CGT liabilities are determined by reference to the true economic gain on the sale of assets.

In the current economic environment, these activities will be used increasingly to restructure groups and move saleable assets into separate trusts.

The tax system needs to maintain the trust cloning provisions or provide a dedicated rollover relief provision for unit trusts.

CGT relief for foreign direct property investors

Currently, foreign direct property investors are unable to sell their real property assets CGT-free.

Yet, they can make a similar investment in non-land rich entities or invest up to 10% in land rich entities including securities, property-linked debt or businesses, and sell them CGT free.

This creates a distortion in foreign investment and skews capital allocation towards other investment classes.
This is a systemic inefficiency that could be addressed by providing CGT relief for direct property investors from foreign jurisdictions similar to other investment classes and other jurisdictions.

This will increase the flow of foreign capital into Australia and into the property market.

Recommendations

The Federal Government should:

4.4.1 maintain trust cloning provisions or provide a dedicated rollover relief provision for unit trusts; and

4.4.2 extend CGT exemptions to foreign direct property investors.

4.5 **Create simpler, more meaningful capital raising documentation**


Retail investors need shorter, plain English documents to make investment decisions and compare products. Issuers need simpler compliance and more focussed liability rules.

The Asia-Pacific region is growing rapidly, with massive pools of investable funds potentially available for Australian fund managers to access.

This is, to a large extent, an untapped opportunity for Australia as only a relatively small volume of offshore sourced funds are managed out of Australia.

Australian fund managers should also be able to manage funds in the Asia Pacific region using a simple, ASIC-lodged disclosure document.

Recommendations

The Federal Government should:

4.5.1 support the Treasury and Financial Services Working Group’s simple PDS recommendations; and

4.5.2 support the AFCF Johnson Report recommendation for a regional funds passport.
4.6  Simplify GST rules and end the margin scheme confusion

The Property Council welcomed the Government’s announcement of a Board of Taxation GST Review in June, 2008, and the subsequent consultations on critical GST issues.

We look forward to continuing our collaboration with the Government to eliminate the problems surrounding the operation of the GST.

The Government has committed to streamlining and improving the operation of the GST, reducing compliance costs, and removing anomalies.

The GST regime creates considerable cost and compliance burdens for taxpayers through:

- unnecessary administrative complexity;
- inconsistent provisions for dealing with GST issues; and
- unclear provisions that are difficult to interpret.

Many of the problems regarding complexity, inconsistency and clarity have been caused by attempts to fix specific, perceived flaws in the system, which create more issues or result in a “patch-work” of amendments.

GST reform must consider the impact of any changes across the whole system to ensure that complexity is stripped out and replaced by simple, clear principles.

Simplifying the current GST provisions is the easiest way to improve administrative efficiency and reduce compliance costs. In particular, reform needs to include:

- simplifying the margin scheme;
- clarifying and streamlining the margin scheme valuation rules;
- clarifying the rules for retirement villages; and
- cleaning up nuisance issues that unnecessarily burden the industry.

Recommendations

The Federal Government should:

4.6.1  Finalise amendments to simplify and improve the operation of the margin scheme.

4.6.2  Clarify the rules for Division 129 adjustments.
4.6.3 Amend Division 135 Going Concern and Farmland provisions to ensure adjustments under the division are consistent with:

- other GST adjustment provisions (such as Division 129); and
- GST provisions that result in taxpayers not being able to claim full GST credits (such as Division 11).

4.6.4 Revise the financial acquisitions thresholds as follows:

- exclude acquisitions made in the course of the commencement or termination of an enterprise from the definition of “financial acquisition”;
- extend the current exclusion for borrowings to any activity associated with raising equity capital;
- amend the period for test for exceeding the threshold to six months retrospectively and six months prospectively; and,
- increase such thresholds to 25% or $100,000.

4.6.5 Replace the “General Interest Charge” provisions with “Shortfall Income Charge” provisions for GST purposes.

4.6.6 Align the ‘five year’ period in section 40-75 to the “five adjustment periods” in Division 129 to simplify the interaction between the two provisions.

4.6.7 Identify “Commercial Residential Premises” using a test is based only on physical characteristics of the premises (which also determines the “use”).

4.6.8 The “consideration” associated with the purchase of a retirement village should include items that:

- are agreed between the vendor and purchaser;
- exhibit a nexus with the taxable supply of the premises; and
- are supplied for value.

4.6.9 Simplify the operation of Division 105 Mortgagee Sales.

4.6.10 Allow registered commercial or invoicing agents to be registered for GST purposes.

4.6.11 Allow tax law partnerships to account for their income and expenses through each partner’s own returns without lodging partnership returns.

4.6.12 Simplify the adjustment note provisions.

4.6.13 Increase the limits on all GST thresholds in the GST law in line with the scale and complexity of current business activities and provide a mechanism for periodic adjustment.

4.6.14 Allow a joint venture elect to be treated as a joint venture for GST purposes where it is already a Joint Venture for accounting purposes under IFRS.
4.6.15 Apply income tax self assessment style initiatives to the GST regime.

4.6.16 Modernise the GST law by adopting the following specific technical amendments:

- allow any eligible entity to join or leave a GST group at any time;
- amend recipient credit tax invoice provisions (RTCI), to allow the RTCI agreement to be included in the relevant tax invoice;
- expand on-line access to eliminate written communication;
- remove the requirement to identify and report on barter transactions where no net revenue would be collected from the transaction; and
- income tax self assessment style processes should be applied to the GST regime.

4.7 Sources

Australia’s Future Tax System Review Submission, Property Council of Australia (1 May 2009)

Board of Taxation MIT Review Submission, Property Council of Australia (19 December 2008)

Board of Taxation MIT Review Interim Submission, Property Council of Australia (28 November 2008)

Division 6 Submission, Property Council of Australia (1 October 2008) CONFIDENTIAL

Tax Treaty Negotiation Submission, Property Council of Australia (26 March 2008)

OECD CIV Submission, Property Council of Australia (4 March 2009)

OECD CIV Submission, Property Council of Australia (23 February 2009)

Division 6 Submission, Property Council of Australia (13 February 2008) CONFIDENTIAL

5 Increase Infrastructure Investment and Improve Strategic Planning

This chapter urges the Federal Government to:

• increase priority spending on ‘big ticket’ infrastructure, by developing a plan through the Major Cities Unit for investing in priority urban areas;

• increase spending on urban infrastructure by introducing innovative public finance techniques and PPPs; and

• secure long-term planning strategies for all urban centres.

Fiscal implications – 2010 Federal Budget

Building Australia Fund - $5 billion annually.

Urban Renewal Commissions - $1 billion over three years
5.1 Increase priority spending on ‘big ticket’ infrastructure

“The future of our cities will substantially shape the future of our nation.”

The Hon Kevin Rudd MP
Prime Minister, 27 October, 20095

Prime Minister Rudd’s vision for a ‘big Australia’ could see our population balloon to 35 million by 2049.

Australia’s cities and towns will be the focal point for this growth.

Cities will hold the key to determining the future prosperity of the nation.

Australia’s next productivity leap will be achieved by building efficient urban areas, optimising land use and minimising travel and congestion costs.

Carefully developed metro strategies will be needed to build productive, affordable, and sustainable cities that can cater for the needs of this increased population.

Government policies will need to focus on urban renewal, infill development, and the delivery of essential infrastructure to ensure that the populace can be properly accommodated.

Without the timely, cost effective delivery of infrastructure – transport, utilities, health and education facilities – our cities simply won’t work.

A basis for investment in infrastructure

The momentum established by the Rudd Government through its stimulus package and infrastructure initiatives needs to continue to prepare for the goal of a ‘big’ Australia.

The allocation of $22 billion of Federal funds on infrastructure was the centrepiece of the 2009 Budget, which was warmly welcomed by the Property Council.

The 2010 Budget is a unique opportunity to maintain funding for projects that have already been announced and set a course for future infrastructure delivery.

It must build on the Government’s commitment to create ‘world class infrastructure that enhances the amenity and productivity of our cities.’ 6

Dedicated funding should be allocated to the Building Australia Fund to create an investment base for future projects.

5 Building a big Australia: Future planning needs of our major cities, Prime Minister Rudd’s address to the Business Council of Australia, 27 October, 2009.
6 2009/10 Budget Strategy and Outlook, Budget Paper No.1
The Government should aim to invest at least $5 billion per annum into the Fund, which will be allocated accordingly to appropriate projects, based on long-term economic and community building needs and matched by commensurate funding by state, territory, and local governments.

Infrastructure Australia and the Major Cities Unit should continue to play a key role in 2010 to guide the Rudd Government’s role in its city building agenda.

Recommendation

The Federal Government should:

5.1.1 provide a minimum $5 billion injection of funds annually to the Building Australia Fund for future infrastructure projects;

5.1.2 direct Infrastructure Australia and the Major Cities Unit to develop five, 10, and 20 year infrastructure strategies for Australia’s urban areas; and

5.1.3 ensure that these strategies have key milestones and performance indicators to allow for independent assessment of their effectiveness.

5.2 Increase spending on urban infrastructure

“In many ways the competition for investment, skilled workers, international events and for business now occurs between cities, rather than countries.”

The Hon Kevin Rudd MP
Prime Minister, 27 October, 2009

Australia is one of the world’s most urbanised countries, with about 70 per cent of the population living in the 10 largest cities.8

These cities will continue to increase in size and share of population, if the Government’s anticipated 35 million people in 2049 is to be achieved.

Brisbane and Perth are anticipated to grow by 120 per cent over that period, while Sydney and Melbourne reach populations of at least 7 million.9

To cater for this increase, at least two thirds of all future Federal infrastructure investment should be directed at urban infrastructure projects.

In the 2010 Budget, $8.5 million of infrastructure funding was dedicated to road, rail and port projects, over half of which was earmarked for metropolitan rail projects.

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7 Building a big Australia: Future planning needs of our major cities, Prime Minister Rudd’s address to the Business Council of Australia, 27 October, 2009.
8 “Overview of Australia”, Austrade
9 Address to Partnerships 09 – Infrastructure and Investment Conference, Address by Minister Albanese, 7 Aug 2009
This funding for urban infrastructure, and the commensurate contributions by state, territory, and local authorities, will need to increase significantly in order to accommodate the Government’s predicted population growth.

**Introduce innovative public finance techniques and PPPs**

As well as direct allocations from governments, infrastructure strategies will need to draw on innovative funding solutions to ensure adequate resources are available.

Public-Private Partnerships (PPPs) have already been used to great extent in all spheres of government, and continue to be an effective mechanism for funding new infrastructure.

Research conducted for the Property Council has shown that government bonds are even more effective for sourcing finance and creating jobs.¹⁰

These options should continue to be used to accelerate the delivery of key infrastructure projects.

Another approach to funding infrastructure is Growth Area Bonds (GABs) (also known as tax increment financing).

*Figure 1: The Basic Growth Area Bond Model*

This model has been employed successfully in the United States and Europe for decades, and can be tailored to suit local needs.

Growth Area Bonds involve appropriating increases in tax revenue arising from an investment in infrastructure to amortise the cost of providing it.

The technique allows governments to draw on the financial dividend that infrastructure delivers over time to help fund up front costs, without the need for additional taxes.

The GAB model disciplines governments to guarantee the timely and rigorous provision of infrastructure and would prove to be very effective in delivering improvements to Australian cities and communities.

**Recommendation**

The Federal Government should:

5.2.1 direct two thirds of all future Federal infrastructure investment towards urban infrastructure projects;

5.2.2 use PPPs and other innovative funding mechanisms to accelerate the delivery of infrastructure projects; and

5.2.3 through COAG, work with state, territory, and local governments to adopt and implement Growth Area Bonds in areas needing renewal.

**5.3 Secure long-term planning strategies for all urban centres**

The Property Council strongly supports the COAG decision to link Federal infrastructure funding to the fulfilment of strategic planning criteria under state and territory metropolitan strategies.¹¹

The Commonwealth is in a unique position to influence outcomes in areas not traditionally part of its constitutional responsibility for the benefit of all stakeholders.

To help inform the COAG process, the Property Council is commissioning an independent audit of existing metro strategies against the criteria outlined by COAG. The report will be completed in March 2010.

Tying funding to the achievement of agreed, common objectives (or KPIs) provides the incentive many jurisdictions need to deliver urban renewal.

We note that from 1 January, 2012, the States and Territories will be required to have plans in place to meet these criteria.

However, more needs to be done to ensure the successful implementation of these city plans.

An independent authority should be established to undertake an ongoing role auditing the strategic planning performance of governments.

This should oversee the performance of dedicated urban renewal commissions in each major city, which would coordinate and facilitate projects, through: site amalgamation; infrastructure planning and provision; broad master planning; and community education.

¹¹ COAG Communiqué, 7 Dec 2009.
KPIs should be established to measure the annual performance of these commissions, with their performance used to determine future Federal funding assistance.

**Recommendation**

The Federal Government should:

5.3.1 develop a comprehensive population policy to back up the “Building a Big Australia” plan and identify the key growth areas requiring attention;

5.3.2 establish an independent authority to audit the strategic planning performance of governments; and

5.3.3 establish a dedicated Urban Renewal Commission in each major city to oversee and deliver urban renewal projects; and

5.3.4 link Federal financial support to the success of each Commission in meeting KPIs.

**5.4 Sources**

*Tax Increment Financing to Fund Infrastructure in Australia, PricewaterhouseCoopers* (2008)

*Building a big Australia: Future planning needs of our major cities, Address to the Business Council of Australia, Prime Minister Rudd, (27 October 2009).*


6 Increase Green Incentives

This chapter urges the Federal Government to:

- secure incentives for green developers and owners, such as:
  - accelerated depreciation and extended investment allowances;
  - a national market in tradable energy efficiency certificates;
  - an expanded Green Building Fund; and
  - a national building ‘tune-up’ program;
- ensure common sense reporting on energy and carbon;
- deliver sensible policies on climate change adaptation; and
- develop a viable market for renewable and distributed energy resources by securing gross feed-in tariffs for distributed energy.

Fiscal implications – 2010 Federal Budget

*Accelerated Depreciation for Retro-greening* - $90 million in year one.

*Energy Efficiency Certificates* – repackaging of existing programs.

*Green Building Fund* – an additional $100 million over four years.

*National Building Tune-up Program* - $51 million over four years.

*Green Precincts Fund* - $100 million over four years.
6.1 Secure incentives for green developers and owners

“...in order to make an overall longer term impact on drawing down carbon emissions...energy efficiency [is the] second plank.”

The Hon Kevin Rudd MP
Prime Minister, 19 August 2008

Buildings and their occupants account for 23% of Australia’s greenhouse gas emissions (GHG).12

The quickest way to achieve deep emissions cuts is to improve energy efficiency in existing buildings.

There are 330 million square metres of existing non residential property stock in Australia.

A climate change strategy that does not include the built environment will only achieve minimal results.

The built environment is a ready source of GHG savings

Research conducted by the Australian Sustainable Built Environment Council (ASBEC)13 showed that significant abatement can be achieved with properly targeted incentives.

Without complementary measures the building sector is expected to reduce emissions by around 8 Mt a year from the price signal received from the Carbon Pollution Reduction Scheme (that is, increased electricity prices).

With complementary measures and incentives, abatement of around 60 Mt per annum is achievable by 2030.

This works out to be a reduction of around 27-31 per cent against the baseline emission projections for the built environment.

The facts

A focus on building energy efficiency can:

- halve electricity use in commercial building stock by 2030 and 70% by 2050;
- reduce GHG emissions by 30% within two decades;

12 Capitalising on the Building Sector’s Potential to Lessen the Cost of a Broad Based GHG Emissions Cut (Centre for International Economics), September 2007
cut the cost of carbon abatement by 14% or $30 per tonne by 2050;

add back $38 billion each year to the GDP compared to conventional GHG abatement programs by 2050;

provide breathing space for the development of clean energy alternatives; and,

help the country to reduce its carbon footprint faster and with less fuss.

The ‘Second Plank’

The ASBEC/CIE paper proposed three specific policy measures that would allow energy efficiency in the building sector to deliver greater abatement opportunities:

• the provision of green depreciation;
• a national white certificate scheme; and
• public funding for building retrofits – aimed at both the retail (residential and commercial buildings) and wholesale (energy retailer) sectors.

Accelerated ‘green’ depreciation and extended investment allowances

‘Green’ depreciation is accelerated depreciation for buildings that meet a pre-determined environmental standard.

That standard, to be set by government, would be based on scientific and engineering advice.

The approach is not new – Australian governments have traditionally used accelerated depreciation to stimulate the economy.

In the 1992 One Nation package, then Prime Minister Paul Keating introduced an accelerated depreciation scheme to stimulate the economy:

“The Government has decided to provide substantial acceleration of depreciation deductions for plant and equipment for tax purposes....The tax preference....will encourage [domestic plant and equipment] investment relative to alternatives, including foreign investment abroad...The acceleration of depreciation for plant and equipment will be focussed particularly on assets with long lives.”

The Hon Paul Keating MP
Prime Minister, 26 February 1992

In the current economic climate, an accelerated depreciation scheme for green building retrofits will help to:

• stimulate the economy;
deliver sustainability dividends; and

- fast track efforts to rebuild existing stock to higher environmental standards.

Green depreciation would cost $2.3 billion over 10 years, starting with a $90 million annual outlay.

Such an investment would save 203 Mt of carbon over the first decade. That equates to removing 6.4 million cars from our roads every year.\footnote{Green Depreciation: A Preliminary Analysis, Centre for International Economics, (November, 2007)}

Green depreciation involves the provision of accelerated depreciation and amortisation allowances for building investments that install specific energy efficient fittings, fixtures and fabric or raise the overall energy performance of the building to a predetermined standard.

It would play a key role in overcoming timing gap problems, allowing investors to defer tax payments in exchange for bringing forward energy efficiency and GHG reductions.

The Property Council proposes accelerated depreciation be used to stimulate a massive investment in improved environmental performance.

**Secure a national market in tradable energy efficiency certificates**

A nationally consistent energy efficiency certificate regime will also help to deliver significant greenhouse gas emissions abatement.

Energy certificates (also known as ‘white certificates’) extend the logic of market-based approaches, such as the CPRS, to encourage greenhouse gas abatement (GHG) in the building sector.

Energy certificates impose an obligation on electricity/energy retailers that is measured in energy units.

To meet the target, energy retailers must achieve efficiencies in their own operations or purchase them from others, such as energy consumers.

In short, while the CPRS can be thought of as a wholesale approach to GHG abatement, energy certificates provide a retail, broad-based mechanism to reduce emissions.

White certificates are not the same concept as is being proposed by the Australian Greens in their Energy Efficient Non-Residential Buildings Scheme Bill 2009.

That scheme is effectively a baseline and credit emissions trading scheme for individual buildings, which will create reams of red tape at massive cost for minimal actual benefit.
In contrast, a white certificates scheme, while compulsory for energy retailers, is an opt-in scheme for property owners and managers, that encourages them to pursue energy efficiency projects for which they will receive an actual return on their investments.

This mechanism already has precedents both in Australia and overseas and provides a readily accessible approach to improve efficiency:

- **energy certificates increase the abatement potential of an ETF** by expanding its scope and more directly influencing market behaviour across a broader base;
- **Australia already has experience with energy certificates**, with white certificate schemes already established in New South Wales, Victoria, and South Australia; and
- **Italy, France, the UK and several US states** already use variations of energy certificates to lower energy demand and improve efficiency.

A national energy efficiency certificate framework would provide customers with a consistent and valuable incentive to pursue energy efficiency, minimise differences between existing schemes, and enable a broad market to be established on a larger, more efficient scale.

**Expand the Green Building Fund**

The Green Building Fund has proved to be a great success within the property sector, with many of the largest property owners seeking financial support for significant projects.

One of the outcomes of this funding has been to identify and test innovative sustainability solutions for the built environment, while funding allocated to industry bodies has bolstered educational programs.

The Fund is, however, too limited in its scope: at present only projects to improve office buildings can be submitted for consideration — retail, industrial, and tourism assets are excluded.

The Property Council believes that the Fund should be expanded and provided with additional resources, to ensure it continues to provide owners and managers with a worthwhile opportunity to improve the built environment.

**Secure a national building ‘tune-up’ program**

Energy efficiency does not provide the only opportunity for the built environment.

A focus on eco-efficiency in buildings could deliver significant additional sustainability dividends, including reduced water consumption, less waste, and better quality indoor environments.
As noted earlier, it is in retrofitting existing stock that much of the impact of built environment and its occupants can be reduced.

With the right set of incentives, retrofitted existing commercial buildings could achieve at least half the efficiencies of new buildings over the next decade.

While the Green Building Fund helps to reduce the cost of new innovations, a national building ‘tune-up’ program is needed to help improve the general performance of other buildings.

An example of this type of program is already operating in South Australia, while similar schemes are being considered in the ACT and Tasmania.

These schemes see joint contributions by government and building owners to initiatives that can both improve individual buildings and serve as a template for other commercial properties.

Matched funding underpins the schemes to ensure the Government is not asked to put funds into any project the private sector is unwilling to support and it also allows for a high degree of ownership by property owners.

Funding is only called upon where a property owner can demonstrate that the refurbishment will deliver savings.

The scheme would be open to any buildings of 2,000 sqm or more, to align it with the mandatory disclosure regime.

It would cost $101 million over four years, of which $50 million would be allocated by the Government towards projects, and $1 million towards administering the scheme nationally (covering a dedicated full-time employee, travel, and workshops and seminars to promote the initiative).

The property sector would provide the other $50 million in matched funding.

A cap of $100,000 Government funding would be available per building, which means that at least 500 buildings would be covered in every city and major town in Australia.

A national scheme would allow the Australian Government to take a direct and active role in improving the average performance of individual buildings, rather than merely focussing on the market leaders.

**Recommendations**

The Federal Government should:

6.1.1 introduce accelerated depreciation for buildings that retrofit (retro-green) to meet higher environmental standards.

6.1.2 work through COAG to transform existing energy efficiency (white) certificate schemes into a national framework.
6.1.3 extend the life of the Green Building Fund, by allocating an additional $100 million dollars to it;

6.1.4 expand the coverage of the Green Building Fund to include retail and industrial property, as well as office buildings; and

6.1.5 Implement a national building tune-up program to improve the performance of individual buildings across Australia.

6.2 **Ensure common sense reporting on energy and carbon**

The number of energy and carbon reporting tools in Australia is continuing to increase.

Property owners and occupants are subject to a range of compulsory reporting requirements. At a federal level, this includes:

- the National Greenhouse and Energy Reporting System (NGERS);
- the Energy Efficiency Opportunities Act (EEO); and
- the National Australian Built Environment Rating System (NABERS) and Building Energy Efficiency Certificates (BEECs) as part of mandatory disclosure commitments from 2010.

These regimes are all operated by different government agencies, and apply different methodologies.

Additionally, members are being asked to respond to surveys conducted by the Australian Bureau of Statistics, while the Department of Environment, Water, Heritage and the Arts is undertaking an environmental baseline study to determine of individual buildings.

Members are also reporting under voluntary schemes like the Carbon Disclosure Project.

Under each of these reporting regimes, companies must commit resources to measuring and collecting data in different ways. Data collected for one reporting tool usually does not comply with the methodologies of other tools.

Compliance with these incompatible regulatory frameworks requires unreasonable time, cost, and effort which divert resources from programs that actually improve environmental performance.
Recommendations

The Federal Government should:

6.2.1 revise existing reporting regimes and responsibilities to identify areas that may be streamlined and simplified;

6.2.2 introduce a Federal moratorium on additional compulsory reporting requirements for at least two years, pending the outcomes of the above review; and

6.2.3 through COAG, seek a similar moratorium from state and territory governments.

6.3 Deliver sensible policies on climate change adaptation

“In integrated urban design and development now needs to recognise climate as a variable factor that has implications for how design, materials, structures and human behaviours are adapted for future Australian communities.”

National Climate Change Adaptation Research Framework

The Intergovernmental Panel on Climate Change has predicted significant changes to Australia over the next several decades as a result of climate change, for example:

“The AR4 model projections (with a 90% confidence range) are for a sea-level rise of 18–59 cm in 2095 ... plus an allowance of another 10–20 cm for a potential dynamic response of the ice sheets ...”

If true, these changes will have considerable implications for planning and constructing buildings and communities.

Increasing temperatures, storm surges, and rising sea levels will irreversibly change our concept of sustainable development.

The House of Representatives Climate Change, Water, Environment and the Arts Committee’s inquiry report (Managing our Coastal Zone in a Changing Climate: the Time to Act is Now) highlights the importance of early action to prepare Australian communities for changing conditions.

However, there is only value in acting early if we get it right.

16 National Climate Change Adaptation Research Plan: Settlements and Infrastructure, National Climate Change Adaptation Research Framework, October, 2009

17 BRIEFING: a post-IPCC AR4 update on sea level rise, Antarctic Climate and Ecosystems Cooperative Research Centre (2008)
While new construction will undoubtedly face challenges, the implications of climate change will be even more severe for existing buildings, which are greatly restricted both economically and technically in adapting to changing conditions.

Adaptation policies will need to recognise the complexity of retrofitting buildings to a higher standard.

The Property Council supports the goal of the National Climate Change Adaptation Research Facility to create a structured research framework to drive adaptation efforts.

Adaptation policies should be:

- innovative;
- evidence-based;
- cost-effective; and
- monitored for effectiveness.

Governments must act quickly to ensure that the built environment is able to adapt appropriately and cost-effectively to changes in our climate and minimise the negative impact on communities.

However, their responses must be appropriately measured and considered, rather than attempting to introduce a ‘quick fix’.

**Recommendations**

The Federal Government should:

6.3.1 prioritise a research program to identify the implications of climate change and possible sea level rises on buildings and communities;

6.3.2 introduce a policy that ensures no new regulations can be proposed in this area without strong scientific evidence; and

6.3.3 give priority under the proposed National Building Tune-Up program for buildings being retrofitted to adapt to climate change conditions.
6.4 Develop a viable market for renewable and distributed energy resources

“. . . we fully recognise that there is a much broader set of measures to be embraced by both households and by businesses in order to make a significant contribution to drawing down overall energy use, and therefore greenhouse gas emissions.”18

The Hon Kevin Rudd MP
Prime Minister

Buildings and precincts of the future will generate their own energy, harvest their own water, mine their own waste, and provide a plug-in point for electrical vehicles.

This level of self-sufficiency will improve efficiency and reduce the environmental footprint of the built environment.

But this future is still some way off.

Despite the increasing availability of renewable energy sources and distributed generation through cogeneration and trigeneration technology, owners and managers are still reluctant to take up these opportunities.

State and federal regulatory regimes have created barriers to these solutions and energy generators and retailers are generally unwilling to support the roll out of the technology or to pay a fair price for energy fed back into the grid.

Distributed generation solutions which are economic in design and represent low cost reductions in emissions through the deployment of existing technologies are readily available – but require the right policy settings from governments.

Greater support for, and use of, renewable energy sources will further help to reduce environmental impacts.

Most importantly, the adoption of an appropriately structured gross feed-in-tariff is needed to make generation at a building and precinct level more cost-effective and increase investment certainty.

Governments have a unique opportunity to encouraged distributed generation at a precinct level and achieve significant reductions in greenhouse gas emissions, reduce pressure on ageing infrastructure, and move the property sector towards a more self-sufficient future.

To do so, they will need to place as much emphasis on the built environment as the electricity generation industry is receiving through the proposed CPRS.

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18 Speech by the Prime Minister, 4th Australia and New Zealand Climate Change and Business Conference, August 2008.
Recommendations

The Federal Government should:

6.4.1 through COAG, work with its state and territory counterparts to:

• reduce regulatory impediments to the generation and use of renewable and distributed energy;

• ensure that operators who generate energy are able to achieve appropriate commercial returns by introducing a national system for gross feed-in-tariffs; and

• make it easier for buildings and precincts to harvest water and mine waste; and

6.4.2 relaunch and expand the Green Precincts Fund as an equivalent investment to the National Energy Efficiency Initiative, with a focus on:

• distributed energy generation;

• water harvesting;

• waste mining; and

• the establishment of an electric vehicle recharging network.

6.5 Sources

Capitalising on the Building Sector’s Potential to Lessen the Cost of a Broad Based GHG Emissions Cut, Centre for International Economics (September, 2007)

Green Depreciation: A Preliminary Analysis, Centre for International Economics (November, 2007)


Building Energy Efficiency: the role played by white certificates to combat GHG emissions, Centre for International Economics (November, 2007)

Capitalising on the Building Sector’s Potential to Lessen the Cost of a Broad Based GHG Emissions Cut, Centre for International Economics, (September, 2007)

National Greenhouse and Energy Reporting System, Property Council of Australia submission to the Department of Climate Change (March, 2008)


BRIEFING: a post-IPCC AR4 update on sea level rise, Antarctic Climate and Ecosystems Cooperative Research Centre (2008)

National Climate Change Adaptation Research Plan: Settlements and Infrastructure, National Climate Change Adaptation Research Facility (October, 2009)
7 Improve Housing Delivery

This chapter urges the Federal Government to:

- ensure availability of funding for development;
- secure a future for multi-unit residential housing;
- increase the supply of zoned/serviced land;
- commit to a balanced response to environmental initiatives;
- continue the public stimulus for housing and the growth of the community housing sector; and
- support the establishment of finance mechanism to get Australians on the homeownership ladder.

Fiscal implications – 2010 Federal Budget

Secure a future for multi-unit residential housing –

Increase supply of zoned/serviced land - $250 000 for development of a harmonised land supply data collection system.

Continue the public stimulus for housing – continued commitment to the $6.4 billion stimulus package for social and public housing


7.1 Ensure availability of funding for development

Funds for housing construction have dramatically declined in response to the global economic climate over the last eighteen months.

The industry now faces a situation where it is unable to meet continued and increasing demand for housing without access to further finance.

The lack of available finance cannot be linked solely to the drying up of international funds.

Banks that are willing to lend find that they are unable to do so, due to regulatory constraints on the finance sector.

Undoubtedly, the fiscal conservatism of the Australian Prudential and Regulatory Authority (APRA) has played a strong role in ensuring the banking sector in Australia maintained its strength in the wake of the GFC.

However, policy decisions by the regulator over the last year have restrained financial institutions from exposing themselves to property sector risk.

Development occurring today comes at a significant increase in cost, especially with the loss of second tier players in the marketplace to provide finance.

The impacts of APRA’s policy have been strongly felt and substantially altered bank lending practices, which had already become inherently conservative in the wake of the GFC.

This will continue to impact on the delivery of housing supply to the market in the medium term, and will be result in decreases in housing choice and availability.

Industry has had to postpone projects or significantly delay starting dates as banks require developers to achieve higher pre-sale targets to secure funds.

Effectively, the ability to deliver supply to market has been significantly hampered.

At a time when Australia already has a housing supply issue, further undersupply is now a certainty.

Projects postponed, cancelled or abandoned all represent housing not being delivered to meet demand. This can only further exacerbate the housing affordability issues we currently face, with house prices and rents set to escalate.

Choice in housing will continue to be limited, as multi-unit residential housing is seen as too risky by banks and developers alike.
With a high level of competition for funds resulting in the market, only the ‘sure things’ with the lowest risk profile and the highest profit margins will be brought to market.

At a time when housing has become a central focus, it is imperative that the Government examine ways of ensuring finance is available to facilitate the diversity of housing supply and choice in the marketplace.

**Recommendations**

The Federal Government should:

7.1.1 explore the potential for a government guarantee to ensure supply can continue to be brought to market;

7.1.2 examine the risk profile of residential housing as distinct from other sectors and develop policy appropriate to it;

7.1.3 engage with the banking and development sectors to understand the key road blocks in current financing and possible government responses; and

7.1.4 create a more transparent environment regarding APRA decision-making, including publishing the minutes of APRA meetings publically.

7.2 **Secure a future for multi-unit residential housing**

Across the country, every jurisdiction is pursuing policies of greater consolidation and increased urban density.

The widely held view is that if you increase the density target of any metropolitan strategy, then infill development will follow.

This is simply not the case.

Metropolitan strategies in capital cities around Australia consistently fail to achieve their targets.

This is for two reasons.

Firstly, setting an arbitrary target is not enough. Metropolitan strategies and their density targets must underpin every policy and government decision.

These decisions, made across jurisdictions by both state and local governments, must ensure that these strategies are not just committed to, but are upheld and facilitated.

Too often, well developed and well consulted strategies have held a vision for cities that have never been properly engaged with at the coalface.
This has resulted in cities across the country coming up short in relation to density targets.

The second reason, one not widely understood, is that the delivery of multi-unit residential housing is difficult, expensive, time intensive and high risk.

While jurisdictions across the country have strong proponents for cities to “grow up, not out”, that is rarely what is supported when applications are lodged to develop.

On average, it costs three to four times the amount per square metre to deliver a higher density product. This is due to higher costs of construction, safety regulations, and requirements for parking garages and elevators and retro-fitting of essential service piping.

This is in addition to the significant difficulty and cost in securing and amalgamating sites and the long and arduous road to overcoming council and community objections to the planning application.

With the tightening of finance, multi-unit developments have become a risk not worth taking for many in the industry.

This is not an issue reserved for the inner city.

Middle-ring suburbs offer significantly less density due to the lack of targets and commitment to density across the metropolitan region.

If the Federal government is indeed committed to a “Big Australia” policy, then the issues of urban consolidation and the facilitation of infill development must be addressed.

**Recommendations**

The Federal Government should, through COAG, work with its state and territory counterparts to:

- 7.2.1 recognise that current metropolitan strategies are not being achieved and commit to strategies for growth which have measurable, annual targets for the delivery of housing supply;

- 7.2.2 develop a streamlined process for multi-unit residential development assessment to fast-track the delivery of housing;

- 7.2.3 support a harmonised approach to development assessment and adopt a national template for applications to ensure that the approvals process is not unduly delayed by questions of sufficient detail; and

- 7.2.4 engage with key stakeholders to identify ways to better educate the community about sustainable urban growth.
7.3 **Increase the supply of zoned / serviced land**

The National Housing Supply Council has identified land supply as a key component in ensuring the delivery of affordable housing to Australians.

This is not a silver bullet, but it is a key aspect of improving the delivery of supply to market.

Land supply is a long term issue. It must be:

- part of a long-term planning strategy;
- linked to future plans for the delivery of infrastructure; and
- balanced against realistic delivery of infill development.

It is not something that can be looked at in isolation.

State governments across the country have varied ways of identifying the level of available land supply. However, information is poor, scarce, and inconsistent.

This failure was conceded by the Federal Government’s own Supply Council in its first land supply report.

Even in jurisdictions where there is some robustness to the data, it is clear that planning overlays and other policies are often not taken into account.

Once overlays for environmental commitments, land use commitments (such as peri-urban or agricultural), and future infrastructure are applied to land supply maps, much of the supply is no longer able to be applied against forward projections.

It is essential that land supply become a key focus of any Government response to housing.

The only way affordable, sustainable housing linked to infrastructure can occur is when there is a long term plan for delivery of both housing and services.

**Recommendations**

The Federal Government should:

- **7.3.1** continue to support the National Housing Supply Council and its work into identifying the key issues needed to improve affordability and delivery of supply;
- **7.3.2** facilitate the development of a harmonised system of data collection by the states on land supply and ensure that an independent review of the data is undertaken;
7.3.3 support the orderly release of land, synchronised with the provision of infrastructure, to facilitate urban consolidation and reduce the cost of land development;

7.3.4 set national, regional and local targets for housing supply which facilitate growth and are tied to demographic indicators;

7.3.5 target the coordination of land release with a focus on areas of higher demand growth;

7.3.6 recognise the inherent balancing act that must take place in the delivery of housing between greenfield and brownfield sites;

7.3.7 require that states provide 25 year plans that identify both serviced land and future land supply, to accommodate growth projections; and

7.3.8 commit to the release of Commonwealth Government crown land and ensure that it is competitively available for the market.

7.4 Commit to a balanced response to environmental initiatives

The residential industry has long been a leader in the development of sustainable homes and communities.

As such, there is an ongoing commitment to continuing to improve the built form to ensure the minimum impact on our environment.

However, environmental sustainability comes at a cost and most be balanced against social and economic drivers to ensure the best outcomes.

The industry is fully in support of policies that ensure these three key features in decision-making.

It is imperative that government regulation in this area:

• is flexible enough to allow for innovation;

• does not add unreasonable cost to the development of new homes; and

• captures established housing (which encompasses the majority of housing within Australia).
**Recommendations**

The Federal Government should, through COAG, work with its state and territory counterparts to:

7.4.1 ensure early engagement with the industry in the development of regulation and policy that will impact the housing industry;

7.4.2 review the timeline for six star development for apartment buildings and reconsider a phase-in period for this segment of the market;

7.4.3 consider strongly the adoption of recommendations in the EPBC Act Review that provide for early engagement by the Federal government and allow for joint assessments with state governments;

7.4.4 commit to engage with the industry to ensure a streamlined and efficient system for mandatory disclosure in residential properties; and

7.4.5 develop a strategy for improving the energy of efficiency of established homes.

**7.5 Continue the public stimulus for housing and the growth of the community housing sector**

Public and social housing have long been underfunded.

The stimulus package provided for the much needed replenishment and expansion of public housing stock which has long been undersupplied.

The $6.4 billion of the $42 billion stimulus package committed to public and community housing is essential to the future of housing for Australians in need.

It demonstrates the government’s commitment to tackling the chronic shortage of housing supply – in particular public and community housing – that exists in Australia.

This stimulus money will put over 19,000 homes on the ground by the end of 2011.

As an industry, we are in strong support of this stimulus to continue in its current form without further alteration to the level of funding.

In addition to the public stimulus, the Federal Government should continue to build the capacity of the sector and commit to ongoing funding to the sector.
Recommendations

The Federal Government should, through COAG, work with its state and territory counterparts to:

7.5.1 recommit to the public stimulus package for social and public housing at its current level;
7.5.2 continue to increase the supply of affordable housing; and
7.5.3 implement sector capacity reform, which will ensure greater national consistency of the social housing sector’s regulatory environment, to allow developers to partner with the community sector to deliver better outcomes.

7.6 Support the establishment of a finance mechanism to get Australians on the homeownership ladder

Housing has long been viewed as the cornerstone to social health and wellbeing.

As housing continues to increase in price, more Australians are being locked out of the marketplace.

The Government has been committed to delivering innovative housing solutions to address the current housing demand, including the introduction of programs such as the National Rental Affordability Scheme.

As such, it is recommended that further innovative programs be considered and supported to ensure that are battlers are able to access housing.

Recommendations

The Federal Government should through COAG, work with its state and territory counterparts to:

7.6.1 investigate whether state programs such as Key Start in Western Australia are an appropriate way of supporting home ownership and review whether they have a national application;
7.6.2 consider the provision of a financial guarantee for states that establish such programs; and
7.6.3 coordinate a review of the benefits of shared equity schemes and the role of governments in their establishment.
7.7 Sources

Australia on the Move, Residential Development Council (August, 2009)

Beyond Reach: Defining the New Aussie Battler, Residential Development Council (January 2009)


Infrastructure Charges: Comparative Study on the cost of developing new homes, Residential Development Council (February, 2010)

State of Supply Report, National Housing Supply Council (March, 2009)
8 Introduce More Reform

This chapter urges the Federal Government to:

- maintain law and order on construction sites, by ensuring the ‘construction cop on the beat’ survives post-ABCC;
- liberalise shopping centre trading hours;
- develop sensible contract and leasing laws; and
- deliver simpler and fairer rules for insurance.

Fiscal implications – 2010 Federal Budget

Law and order on construction sites – maintain current funding levels to the ABCC or its replacement.

Insurance reform - $300 000 for a review of current state and territory approaches to insurance and compensation.
8.1 Maintain law and order on construction sites

Several inquiries into the construction industry, from Commissioners Gyles to Cole, revealed serious and unacceptable industrial practices that disrupt development and add to community costs.

The Cole Royal Commission showed that without proper safeguards the commercial construction industry is at risk of lawlessness and industrial action.

This comes at the expense of productivity and safety.

The Australian Building and Construction Commission (ABCC) was established to ensure the rules of civil society were applied to the construction sites.

A Cop on the Beat

Since its inception, the ABCC has successfully reduced unlawful behaviour within the sector and improved industry efficiency.

While there has been significant opposition to the ABCC from construction unions, continuing successful prosecutions of both union officials and employers has demonstrated the importance of this type of authority.

The Property Council believes that Government needs to:

- retain a strong cop on the beat in the construction industry; and
- ensuring it has the powers to do so by maintaining the Building and Construction Industry Improvement (BCII) Act.

Removing or watering down the current compliance powers under a new inspectorate would undermine the effectiveness of the body.

ABCC Works

The ABCC’s presence within the industry has resulted in:\n
- an estimated increase in labour productivity by 9.4%;
- a 1.5% increase in the national GDP; and,
- a decrease in unlawful practices within the construction sector.

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Recommendations

The Federal Government should:

8.1.1 preserve the current structures, powers, and operations of the Australian Building and Construction Commission in the proposed Office of the Fair Work Building Industry Inspectorate; and

8.1.2 maintain the provisions of the Building and Construction Industry Improvement Act.

8.2 Liberalise shopping centre trading hours

Most Australians take for granted the benefits of seven day shopping.

In those states and territories that allow Sunday trading, this day has become the second most popular trading day of the week.

Customers are the lifeblood of retailing and the industry must be able to cater for when and where they want to shop.

Yet, there are still places in Australia where stores are still closed on Sundays.

Inconsistent trading hours between suburbs in the one city result in harm to retailers as customers take their business to areas where they can shop when it is convenient for them.

Selective changes to weekday trading hours, as occurred recently in Perth, highlight a lack of commitment to liberalised trading hours at a state government level.

There is no justification for governments to continue to dictate when and how constituents can shop.

Recommendations

8.2.1 The Federal Government should work with state and territory counterparts to remove government regulation of trading hours.

8.3 Develop sensible contract and leasing laws

This legislation is specifically designed to protect consumers, and the inclusion of business-to-business contracts would have undermined the intentions of the regulatory reform.

Governments should continue to ensure that business dealings are not undermined by regulation targeted toward consumer protection.

There are fundamental differences between commercial and consumer transactions, and these need to be reflected in lease legislation.

It is nonsensical to apply further layers of regulation without expecting a considerable increase in the costs and compliance burdens on small businesses.

Governments should instead seek to streamline and consolidate existing legislation.

The Property Law Reform Alliance’s Lease Legislation Matrix provides some recommended reforms to commercial leases.

**Recommendations**

8.3.1 The Federal Government should continue to reinforce the separation of commercial contracts from legislation designed to protect consumers.

### 8.4 Deliver simpler and fairer rules for insurance

Australia’s insurance system needs an **overhaul**.

Some of the huge potential reform benefits include:

- lower cost, more reasonably priced coverage for consumers;
- greater legislative consistency across the country;
- greater choice and more flexible options for policyholders;
- reduced litigation and an increased emphasis on individual responsibility; and,
- clearer information on the level of coverage available to the insured.

Reforms to this market will make it more attractive for individuals and businesses to commit to appropriate insurance coverage.

**A consistent approach**

Tort law reforms were the first step to consolidating insurance and liability legislation.

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However, many other laws and processes remain inconsistent, leading to confusion when it comes to complying with regulatory requirements.

It is time to rationalise the inefficient differences in insurance systems between jurisdictions.

**Taxes and levies**

Levies, taxes, and charges on insurance add significantly to the cost of premiums.

In country Victoria it has got to the stage where taxation on insurance premiums constitutes 44.9% of the total cost of the premium.

GST on insurance is applied on the total cost of the policy, including stamp duty and fire services levies. Thus it becomes a tax on a tax, which places an unfair impost on the policy holder.

Similarly, fire services levies create an unfair burden on policy-holders, who are funding an essential community service.

Fire and emergency services must be funded out of consolidated revenue, not through a tax on insurance premiums or property values.

Just like police and ambulances, government has a responsibility to provide this service to protect the community.

A fire brigade operates to protect people and control fire, not to provide a service solely to the property owner and should be funded out of the public purse.

**The Terrorism Insurance Scheme**

Australia has a world class terrorism insurance scheme.

This has enabled businesses to obtain affordable cover against potential terrorism events.

The Property Council welcomes the results of the 2009 review of the Terrorism Insurance Act (TIA), but we believe more can be done to improve the Act’s operation.

The TIA was last reviewed in 2006. By comparison, the US TRIA legislation has been extended to 31 December, 2014. The UK Pool Re has even more longevity.

This suggests that Australian insureds lack the certainty of their US and UK counterparts.
Recommendations

The Federal Government should:

8.4.1 commit to a strategy for improving the insurance market in Australia, through:

- allowing continued access to the Australian market by foreign insurers, provided they are licensed in a jurisdiction that has a comparable prudential regime or with which Australia has a double tax treaty;

- exempting single parent captive insurers from APRA regulation, because they only have one client. APRA’s prudential regime should be applied to premiums that require a prospectus – wholesale insurance should automatically be exempt; and

- abandoning the insurance exemption criteria proposed by the last government;

8.4.2 through COAG’s Business Regulation and Competition Working Group, review current state and territory approaches to insurance and compensation, particularly:

- the retention of the key elements of the 2002 tort law reforms, including proportionate liability and the defence of contributory negligence;

- the development of a matrix to guide compensation decisions;

- a review of the law of negligence; and

- the potential for aggregating taxes and levies on insurance premiums into a single charge, calculated with a standard formula, with any taxes levied only on the cost of the untaxed premium; and

8.4.3 amend the Terrorism Insurance Act to allow for reviews of the Act every ten years, rather than every three. Current deductible rates should be retained until this new review date has been reached.

8.5 Sources

Proposed Building and Construction Division of Fair Work Australia, Property Council of Australia submission to the Treasury (December, 2008)


Draft Table of Contents for Uniform Torrens Title Act, Property Law Reform Alliance (2009, forthcoming)


The Move to eDA, Development Assessment Forum (September, 2007)

Benefit Cost Analysis for Electronic Development Assessment, Development Assessment Forum (May, 2004)


Terrorism Insurance Act Review, Property Council of Australia submission to the Treasury (May, 2006)

Terrorism Insurance Act Review – Supplementary Information, Property Council of Australia submission to the Treasury (June, 2006)

Appendix 1 – The DAF Leading Practice Model

Stage 1: Policy

1. Effective policy development

Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.

2. Objective rules and tests

Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.

3. Built-in improvement mechanisms

Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.

Stage 2: Assessment

4. Track-based assessment

Development applications should be streamed into an assessment ‘track’ that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track is standard.

A track-based assessment approach provides greater certainty for all stakeholders. The rationale for the different tracks should remain consistent with the model if used.

5. A single point of assessment

Only one body should assess an application, using consistent policy and objective rules and tests.

Referrals should be limited only to those agencies with a statutory role relevant to the application. A referral authority should only be able to give direction where this avoids the need for a separate approval process.

Referral agencies should specify their requirements in advance and comply with clear response times.
6. Notification

Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.

7. Private sector involvement

Private sector experts should have a role in development assessment, particularly in:

- Undertaking pre-lodgement certification of applications to improve the quality of applications.
- Providing expert advice to applicants and decision makers.
- Certifying compliance where the objective rules and tests are clear and essentially technical.
- Making decisions under delegation.

Stage 3: Determination

8. Professional determination for most applications

Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either:

Option A – Local government may delegate determination power whilst retaining the ability to call-in any application for determination by council.

Option B – An expert panel determines the application.

Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.

Stage 4: Appeals

9. Applicant appeals

An applicant should be able to seek a review of a discretionary decision.

A review of a decision should only be against the same policies and objective rules and tests as the first assessment.
10. Third-party appeals

   Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests. Opportunities for third-party appeals may be provided in limited other cases.

   A review of a decision should only be against the same policies and objective rules and tests as the first assessment.

**Source:**

*A Leading Practice Model for Development Assessment in Australia*, Development Assessment Forum (March, 2005)
GREENING THE BUILT ENVIRONMENT
Existing Buildings Initiative – v6 October 2008

CARBON POLLUTION REDUCTION SCHEME

COMPLEMENTARY MEASURES

RE-LIFE BUILDINGS

Measure + disclose

Tune-up programs

Retro-greening programs

R&D, Innovation, Capacity Building

Planning System Reform

Set KPIs

Launch CEO Commitment Program

Launch National Tune-up Re-lifing Program

Initiate Incentives Program

Undertake Regulatory Reforms

Build Skills Capacity

Rationalise Reporting

+ 30%-35% efficiency improvement by 2020

+ Pledges by top property CEOs, AXE leaders and governments

+ Performance metrics
  - Diagnose faults
  - Leading practice guides
  - Hero profiles and studies
  - www.yourbuilding.org
  - smart metering

+ Green depreciation
  - Energy efficiency certificates
  - Green building fund
  - State incentives

+ NRM reform
  - RCA modernisation
  - PCA Red tape agenda
  - Labelling/MAPI

+ R&D schemes/Innovation Council
  - Skills gap analysis

+ Meaningful disclosure
  - Raising bar rationalisation
### Australian Government/COAG Sustainability Programs for the Built Environment

**Version 4.2: 16 January, 2010**

#### Appendix 4 – Government Programs

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<tr>
<td>Upgrade BCA energy requirements for residential buildings.</td>
<td>Establish new mandatory energy disclosure regime covering energy/damages and water for residential buildings.</td>
<td>Enhance NABERS.</td>
<td>Establish energy efficiency homes package and homeowner education, low emission assistance plan for homes and solar hot water rebates.</td>
<td>Implement energy efficiency in government operations (EEO) targets.</td>
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<td>ESP energy efficiency data project (Baseline Study).</td>
<td>Maintain Green Building Fund.</td>
<td>Implement guidelines for improving procurement practices.</td>
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<td>ABS energy, water and environment survey.</td>
<td>Institute an energy efficiency savings pledge fund.</td>
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<td>Climate Change Action Fund (CCAF) – establish an established energy program designed to identify energy efficiency opportunities.</td>
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<td>CCAF – roll out a business information package.</td>
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<td>CCAF – launch capital investment grants for community organisations.</td>
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<td>Energy efficient housing schemes – demonstration homes and Your Home.</td>
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<td>Establish the Australian Carbon Trust, including an energy efficiency fund.</td>
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<td>Roll out Green Projects Fund.</td>
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#### 6. Appliances
- Expand MSIPs.
- Phase-out inefficient lighting products.
- Phase-out inefficient greenhouses and hot water systems.
- Mandate the requirement for star rating of appliances.
- Develop a high efficiency HACR strategy.
- Green Building Fund.
- Built Environment Industry Innovation Council.
- R&G Tax Credits.

#### 7. Innovation
- Establish the Clean Energy Initiative, including solar flagship program.
- Continue with solar citrus program.
- Launch Smart Grid, Smart City program.
- Establish national forum on GHG issues in the commercial building sector.
- Conduct a “demand-side-participation” review through the Australian Energy Market Commission.
- House of Transformers into smart infrastructure.
- National Climate Change Innovation Community of Interest.
- National Climate Change Acceptance Research Framework.
- Major Cities Unit urban strategy.
- Capital Cities/Kiwis for climate.
- Metropolitan Governance Convention.
- Department of Climate Change proposed cities policy.
## Industry Sustainability Initiatives for the Built Environment
### Version 4.2: 18 January, 2010

### Appendix 5 – Industry Initiatives

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<td>• 2nd plank update – ASBEC.</td>
<td>• Corporate responsibility template.</td>
<td>• Precedent tool – GBCA.</td>
<td>• Green incentives.</td>
<td>• St James Ethics Centre Sustainability Plan.</td>
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<td>• Cities GRI (G4) accounting – ASBEC.</td>
<td>• Global CR standard – GRI REESA.</td>
<td>• Common carbon metric – UNEP-SEBIC</td>
<td>• Business case – ASBEC.</td>
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<td>• German strategy – ZIA.</td>
<td>• Investor Group on Climate Change Property Working Group.</td>
<td>• Modernize energy utility billing processes.</td>
<td>• youtbuilding.org.</td>
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<td>• United Nations Environment Program’s Sustainable Buildings and Climate Initiative (UNEP-SEBIC).</td>
<td>• NGERS guidelines.</td>
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<td>• Building tune-ups.</td>
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<td>• Distributed Renewable Taskforce – ASBEC.</td>
<td>• Distributed Resources Taskforce.</td>
<td>• Distributed Resources Taskforce – with the SECGA</td>
<td>• BREEAM curriculum for green trade skills.</td>
<td>• Model market commissions.</td>
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<td>• Steel City Business Roundtable – ACLE.</td>
<td>• Net zero energy homes – ASBEC.</td>
<td>• Smart Cities Business Roundtable – ACLE.</td>
<td>• PCA PD sources.</td>
<td>• KPMG study into metro strategies.</td>
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<td>• Net zero energy homes – ASBEC.</td>
<td>• Net zero energy homes – ASBEC.</td>
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<td>• FMEA course.</td>
<td>• Constructing Cities of the Future – ASBEC.</td>
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