06 June 2025

# Property Council of Australia submission to the Productivity Commission's 5 productivity inquiries

## Pillar 1 – Creating a more dynamic and resilient economy

### 1.1 Support business investment through corporate tax reform

**Q - What features of the Australian business environment have encouraged or restrained investment over the past 10 years?**

The world is changing, and competition for attracting skills, investment and talent to Australia will only increase.

Better financing, planning, connecting and supplying the commercial, industrial and residential assets our cities need is essential to Australia growing well over the next decade.

Our skills and planning systems are not yet match fit for this century. More than 30 per cent of the cost of a new home is government taxes and charges. East coast states have varying foreign investment taxes and surcharges that are toxic to overseas institutions wanting to invest to help Australian companies build the assets our cities need.

The least cost answer is for indebted states to modernise antiquated planning systems and put measures in place to boost the proportion of skilled workers coming into the country. Federal environmental approvals need to be brought forward, and power and water providers must be forced to stop delaying the delivery of new homes, industrial and commercial assets that our communities need as they grow.

Foreign investment regime

Investment into the Australian property market does not exist in a vacuum. In the globalised and increasingly competitive international capital markets, investors allocate funds where the risk and return balance is both attractive and stable, and where the regulatory environment provides long-term confidence.

Several reforms have recently eroded confidence in Australia as a destination for international investment, including from private credit, equity and direct investment into property. Amendments to thin capitalisation rules have diminished Australia as a stable, safe market. Coupled with investment-limiting state and territory taxes such as the absentee owner surcharge (AOS) in Victoria or the surcharge land tax for foreign owners in New South Wales, international investors are having a crisis of confidence in the Australian market.

Recent changes for the worse include:

- Victoria's doubling of the Absentee Owners Surcharge to four per cent, directly impacting international investors who may not maintain continuous physical presence in Australia and impacting both commercial and residential assets.
- Queensland's Additional Foreign Acquirer Duty (AFAD) – an additional eight per cent of stamp duty, and Foreign Land Tax Surcharge (FLTS) – an additional three per cent.
- Victoria's Additional Foreign Purchaser Duty – an additional eight per cent on top of standard stamp duty rates, creating one of Australia's highest entry costs for international capital seeking to invest in property.

Foreign investors, including private equity and credit, consider the ever-changing and negative regulatory environment in Australia as a sovereign risk.

The systemic outcome of this is that Australia will see less development and less investment into the property industry and broader economy.

Australia cannot risk any slowdown in capital generation for the property industry, which will put at risk not only the National Housing Accord target of 1.2 million homes by 2029, but also critical productivity-enhancing projects in our commercial and industrial precincts.

Construction productivity

In the words of the Productivity Commission's own Chair, Danielle Wood, construction is the only sector of the economy where productivity has gone backwards over an extended period of time.

While the Property Council supports necessary regulation around design and quality control, ever increasing regulatory complexity is slowing down productivity in the sector.

Master-planned communities on the edges of our cities now require more than 20 approvals or gateways to be cleared by developers. Often, there are no or very loose regulatory time frames for approvals, nor any restrictions on third-party input regardless of merit. Taken end-to-end, these processes have become fiendishly complicated and lengthy, only adding to costs that are ultimately borne by homebuyers.

Equally stifling are the difficult industrial relations environments in the construction sector for commercial and residential projects across the country. The CFMEU's construction division has long been the single biggest blocker to advances in construction technology and productivity like prefabrication. Furthermore, there is now clear evidence that in jurisdictions like Queensland, the CFMEU is being paid for five days work a week and delivering less than three. That is an extraordinary handbrake on the productivity of construction of not just new housing, but projects across all property types as well as major state infrastructure builds.

We acknowledge and support the Productivity Commission's inquiry into residential construction productivity and suggest its recommendations feature in this review. We also encourage this review to take into consideration the outcomes of the current Queensland Productivity Commission's first inquiry into construction productivity in that state.

Declining labour productivity on work sites around Australia is of critical importance within the complex environment of construction productivity. Industrial relations reform must feature in every conversation about business investment and the delivery of housing across Australia.

**Q - What elements of the corporate tax system encourage and/or discourage investment and risk-taking?**

Australia is competing in a global market for international institutional investment.

The commercial property industry is particularly sensitive to changes in the taxation settings at all levels of government, as they have a direct correlation with attractiveness as an investment destination, the value of property and the liquidity of the market. These factors have knock-on effects including on the value, volume and frequency of transactions which take place across the spectrum of residential and commercial assets.

Australia's tax system has increasingly come under scrutiny for contributing to economic inequality. The current tax system is often criticised for its complexity, leading to inefficiencies that can stifle economic growth. It is seen as a convoluted system that places a heavy administrative burden on both taxpayers and government.

Foreign Investment

Foreign investment is crucial to Australia's prosperity and needs to remain a core part of any government's economic policy and investment strategy.

Since the establishment of the Foreign Investment Review Board (FIRB) in 1975, the foreign investment framework has been mostly successful in maintaining Australia's attractiveness as an investment destination while managing risks to the national interest.

However, over the past several years Australia's reputation as a stable economy with low sovereign risk and a strong rules-based system that provides the opportunity to safely and consistently invest capital has been undermined by increasingly complex and costly regulatory and tax regimes for overseas institutional investment in real estate.

Current FIRB settings are wider in scope and more stringent than other well-developed markets, with significantly higher application fees imposed on top of opportunistic and counterproductive state taxes on overseas investors.

The property industry is capital-intensive. It needs substantial up-front investment to deliver projects that take many years to launch, across all asset classes.

In the face of growing global uncertainty, investors are screening countries for the best, most stable, risk-adjusted returns. Australia may have good growth and demographics on its side, but it exists in a competitive environment for capital and institutional investors and the many federal and state-level barriers to investment are eroding its competitive edge.

The complex and at times punitive tax regimes for overseas institutional investment in real estate continue to be a significant deterrent, putting an unnecessary barrier in the way of the delivery of the housing, offices, retail centres, industrial sites, retirement living, student accommodation, hotels and community, cultural and sporting precincts essential to boosting our economic growth and prosperity.

**Recommendations**

- Incentivise states and territories to remove foreign investor repelling surcharges on residential and commercial property. These can add up to nine per cent to the purchase price upfront and increase annual land taxes by a further five per cent.
- Review and streamline requirements for FIRB exemption certificates, including application costs, to lessen the regulatory burden for foreign investors delivering housing in Australia.
- Exclude passive or non-controversial commercial real estate investment opportunities from national security screening processes and legislate the exemption of FIRB application fees on purpose-built student accommodation (PBSA) as a priority, to encourage institutional investment in new homes.
- Review the *Your Future Your Super* performance benchmarking requirements (particularly RG97) and remove stamp duty costs from the calculation of fee adjusted returns to better equip superannuation funds to invest in the delivery of housing – including retirement villages, PBSA, land lease developments and build-to-rent (BTR), to meet our 1.2 million new home target.
- Allow developers to reclaim input tax credits on expenses for PBSA, retirement villages, land lease developments and BTR, and remove another hurdle to both financiers' and developers' ability to claim credits for genuine costs to development.

<u>State Taxes</u>

The property industry is the nation's largest collective taxpayer, contributing around $130 billion across the three tiers of government. Property accounts for over 18 per cent of Australia's total tax take, compared to an OECD average of just five per cent.

Stamp duty is particularly pernicious in its effects. It distorts business decisions, locks families out of housing choices and reduces mobility, penalises divorcees and victims of family and domestic violence, worsens housing affordability, suppresses economic activity and leaves governments with highly volatile revenue streams. It is a tax that is a relic from our colonial past, representing a stamp of the state's authority over property transaction that has no economic relevance in modern Australia.

The misalignment between federal and state and territory taxation policies plays havoc with confidence in the property sector. For investment to be made, investors need to know what it costs, what the return will be, and whether the asset will retain and/or grow in value over the period to guarantee a buyer when they plan to exit.

Over the past decade there have been 24 new or increased taxes on property in Victoria alone. This erodes confidence in the market. A recent MSCI report on transaction volumes highlights that out of 140 cities across the globe, Melbourne ranks 137th. Through Victoria's current tax system, property contributes almost 50 cents in every dollar of state government tax revenue. Yet Victoria is not alone in creating an ever-higher taxing environment for the property industry. While comparing favourably to Victoria, property taxes still comprise upwards of 47 per cent of New South Wales's state taxation revenue and 32 per cent of Queensland's.

Such over reliance on property taxes is unsustainable.

**Q - Which parts of the corporate tax system do you find the hardest, or most time or cost-intensive to comply with? How could the compliance burden of the corporate tax system be reduced?**

Thin Capitalisation and Debt Structuring Rules

Property developers often rely on significant external financing, making them sensitive to thin capitalisation limits. Constant changes to thin cap rules, such as the recent replacement of traditional 'safe harbour' rules with earnings-based tests, increase compliance costs. Complex calculations and extensive documentation requirements for historical related-party loans are also burdensome.

The following must be addressed to reduce the regulatory and compliance burden:

- Provide clear and consistent definitions of an 'Australian entity'
- Provide allowance for hedging and swaps
- Provide allowance for captive MITs
- Provide clear and transparent timeframes for the release of guidance
- Extend the time to amend a 'choice', as guidance changes eligibility for tests after the required choice has been made.

Land Tax, Stamp Duty, and federal income tax interactions

Most companies deal with multiple overlapping federal and state government tax obligations (e.g. land tax, stamp duty, GST, CGT, income tax). Different timing, bases, and definitions for similar concepts such as asset value compared to market value create confusion and duplicated work. Complexities in state-by-state variations, particularly stamp duty rules and surcharges for foreign investors, are hard to manage in multi-state operations.

Consolidation regime and trust structures

Property groups often operate with layered unit trusts, companies, and partnerships, complicating tax consolidation and loss utilisation. Trust streaming and distribution rules are highly technical and change frequently. Compliance with Division 6 and Division 7A (in company-trust hybrids) are minefields and present ample opportunities to streamline and simplify reporting and compliance requirements without compromising integrity of the system.

Complex and changing tax legislation

There are increasingly frequent changes to laws, their interpretation, and the guidance or directions that give effect to them. This is particularly the case in international taxation and digital services taxes. There is also a high complexity to calculating taxable income across jurisdictions, including the recently introduced global minimum tax. With cross jurisdictional rules changing at various times and in myriad ways, entities operating across more than one face significant challenges and expense remaining up-to-date and interpreting ambiguous rules or interactions between them.

Filing and reporting requirements

In purely practical terms, the cost in resources and time required to undertake the multiple filings required across federal, state, and international laws is increasingly onerous. Each lodging requires unique forms, inputs and formats, they are due at multiple various points throughout the year, and any failures to comply with either format or filing deadlines incur steep penalties. This review must consider the standardisation of filing requirements and harmonisation of filing timelines that allow entities to streamline the production of reporting.

## 1.2 Reduce the impact of regulation on business dynamism

**Q - How has your regulatory burden changed over time?**

Despite our national lifestyle ideal, Australia is accidentally pursuing a low amenity and low liveability model of growth. This is a consequence of coordination and policy failures that have not addressed the need for population growth to be sequenced with infrastructure, housing supply and services.

There have been numerous efforts over the decades to put more discipline into strategic planning, land use zoning, planning approvals and infrastructure alignment but all have been short lived.

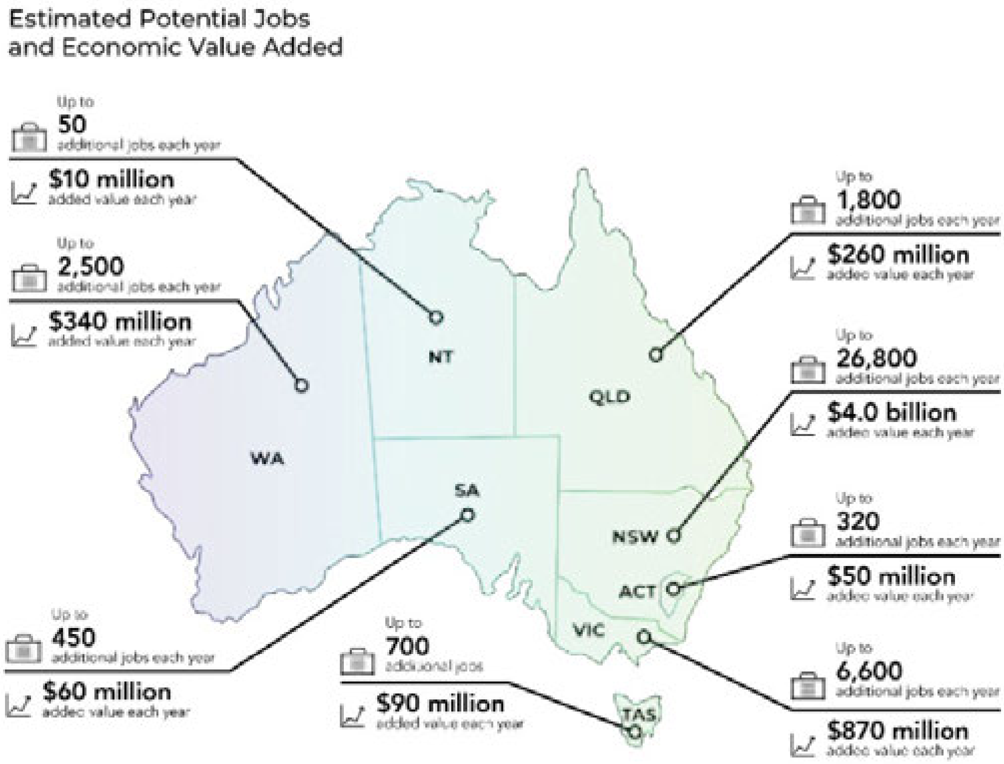
Planning systems across all states and territories are plagued by inefficiencies and uncertainties. While planning systems are a major drag on productivity across many facets of the commercial property industry, none is more severely impacted than the delivery of new housing. This compromises state and territories' abilities to meet their housing targets and worsens unaffordability.

The Productivity Commission in previous work, has outlined some of the side effects of inefficient planning systems, including:

- estimates that detached housing prices were 73 per cent above the marginal cost of supply in Sydney, 69 per cent in Melbourne and 54 per cent in Perth because of rezoning restrictions.
- analysis by Better Regulation Victoria that reducing unnecessary development delays could deliver between $400 million and $600 million per year in benefits.
- modelling by the Property Council of Australia (2017) suggesting improvements to the efficiency of the agency referral process across jurisdictions could be worth as much as $360 million per year in additional economic value.

In 2020, the Property Council commissioned Urbis to analyse regulatory reforms that would improve the performance of planning systems and housing markets. The available options spanned better strategic planning processes, more efficient assessment pathways and streamlined environmental assessments.

The Property Council Urbis research, graphic summary below, found that there were three strategic reform areas that would help city productivity across Australia.




- Transparent processes around rezonings. These are a major pain point for delivering housing in areas close to transport where it should have the strongest benefits for liveability and urban productivity.
- Accountability of agency referrals. These remain an issue in multiple states and territories as a process that desperately needs more transparency and accountability in decision making timeframes.
- Ensuring simple proposals undergo simple assessment processes utilising complying development and private certification pathways.

Additionally, there is no institutional framework to foster best practice planning. In fact, with the move to a 'National Cabinet' model the willingness of States to 'go it alone' on regulation has been evident across a wide-variety of policy areas.

We have observed there is generally a low commitment to achieving regulatory and policy consistency, evidenced by the National Construction Code (NCC).

Since the early 1990s, the adoption of a single building code by state and territory governments has been a national project grounded in productivity and efficiency, to save businesses money from unnecessary and confusing duplication between states and territories and undue regulation, focusing on reforms that have a net benefit to society.

Much of the productivity gain in having a single building code remains unrealised as state and territory governments continue to overlay their own variations, and increasingly, adopt its publication on varying timelines. In its inquiry into residential construction productivity, the PC noted this in its findings.

The Property Council continues to support the NCC and urges a recommitment from all governments to its uniform adoption. Breaking this convention could result in state and territory governments pursuing their own approach to local buildings codes, increasing compliance costs for industry and leading to further fragmentation of building standards across the country.

The Australian Building Codes Board (ABCB) must also be resourced to deliver cost benefit adjusted, highly consultative regulatory impact statements to improve the coordination of the NCC.

In general, weak institutional processes and temporary political advantage sometimes encourages governments to act against the interests of other states and business. As articulated by a former chair of the Productivity Commission:

*"In broad terms, [productivity] comes through fostering flexibility so that labour and capital can move easily across industries and firms, by having even-handed policy settings that avoid locking in an inefficient or just a rigid allocation of resources, having strong credible public institutions to set the rules of the game and deliver public goods efficiently, creating the right incentives for innovation and risk taking and boosting the capability of the workforce through general education and targeted skill formation as well as physical and mental health…*

*Productivity growth is ultimately about living standards, broadly conceived. In other words, better outcomes at lower overall cost to the community."*[1]

The efficient deployment of labour and investments in the built environment across the country, across our cities, industries and firms is undermined by Australia's low productivity planning systems. This occurs when state planning systems are not properly tuned to their role as enablers of liveability, connectivity, mobility and job creation across geographic areas. There are many instances where planning systems are inefficiently taxed and neither designed or administered with a culture of meeting community demand for well-planned cities, including least-input cost development, that are highly commercially productive and support the maximum possible number of jobs.

Most new developments for the many people moving to Australian cities are now situated in ex-urban areas that require lengthy commutes to centres of services and places of work. Most of the fastest growing areas are now outer suburbs at the end of growth corridors, locations which attract key workers but often have limited access to education, health and social services, and cultural facilities

**Recommendations**

To boost housing choice and affordability, policy makers need to think innovatively, act rapidly, and make better use of existing institutions and processes. At a minimum, governments should consider:

- Unlocking the over 40,000 new homes currently waiting on assessment decisions while the Environment Protection and Biodiversity Conservation Act (EPBC Act) is under review. Immediate improvements should include:
    - Priority fast-tracked determinations on a pay-to-play basis
    - Establishing a Housing Accord related fast-track pathway with dedicated resources, experts and agreed decision making timeframes for applications that

[1] Productivity Chair, Speech to CEDA 8 June 2021

    - relate to residential development projects that will have homes complete by 30 June 2029
    - Requiring assessment using the original referral material (which was also publicly exhibited) avoiding an arduous and duplicative process that has added 12 months to some processes
    - Short-term third-party, independent decision-making using delegation of Ministerial powers
    - Resolving post-approval delays with a set 60-day timeframe to endorse management plans and strategies.
- Doubling the committed $3 billion performance-based New Home Bonus and the $500 million Housing Support Program for states and territories that surpass their targets under the National Housing Accord.
- Committing to bring forward the New Home Bonus and Housing Support Program payments with appropriate trigger mechanisms to reward states and territories who put in place a robust and genuine plan to surpass their targets under the National Housing Accord, rather than waiting until 2029 to make those payments.
- Introducing best practice benchmarks and incentives to improve the location and diversity of new housing supply. These should include clear housing targets at a national, city and local government level, alignment between land use and infrastructure plans within and across jurisdictions, and strategic plans for supply of well-located housing that matches population growth.
- Redesigning infrastructure and growth compacts between state and local governments that better align housing delivery with economic and social infrastructure. Integrated metropolitan planning and integrated transport authorities are also important governance reforms.
- Unlocking investment in PBSA to provide greater housing choice for students and reduce pressure on the rental market, including by working with states to identify PBSA as an 'asset-class of priority' and to reduce barriers for growth that exist at state government level.
- Unleashing more age-friendly housing supply that keeps older Australians out of taxpayer funded aged care facilities by:
    - Exempting a portion of home sale proceeds from the age pension asset test to reduce the financial disincentive for those considering 'rightsizing' while ensuring the security of their pension long term
    - Removing incoming purchase price benchmarks for Australians living in retirement villages to allow deeper access to Commonwealth Rental Assistance.

<u>Residential Tenancies Acts</u>

Residential Tenancy Acts (RTAs) govern the relationship between landlords and tenants and are regulated at the state level. In recent years, these Acts have been reformed across Australia to strengthen tenant protections in response to the national rental affordability and availability crisis. However, these reforms have often been implemented without adequate consideration of the Purpose-Built Student Accommodation (PBSA) sector—a professionally managed, institutionally owned asset class that has emerged in Australian cities over the past fifteen years.

Despite the professional nature of the sector, the large number of leases signed (tens of thousands per year), the limitations on their resident cohort (students only) and the short-term nature of the leases (ranging from a few weeks to a year) PBSA operators are not defined in RTAs, regulated like mum and dad landlords, and are severely impacted by regulations that are not fit for purpose for the sector.

Recent legislative changes in South Australia, Queensland and Victoria have effectively abolished fixed-term leases. Residents are no longer required to sign a new agreement at the end of their lease, nor to vacate the premises upon its expiry. This has created significant operational uncertainty for PBSA providers, who can no longer confidently plan for occupancy, align booking periods with the academic calendar, or commit to head-lease agreements with university partners—given there is no guarantee that a resident will depart or re-sign within the timeframe needed to re-market the room.

Further, amendments to the NSW Residential Tenancies Act have allowed students in purpose-built student accommodation to break fixed-term leases with only one- or two-weeks' notice and minimal financial penalty. This has led to widespread lease breaks – particularly before university holidays—leaving rooms empty for extended periods with no opportunity to re-let, due to PBSA restrictions on renting only to enrolled students.

As a result, operators are facing substantial revenue losses. A provider with 5,000 beds is losing over $10 million annually, while smaller operators with 450 beds are losing more than $1.1 million. These losses are severely undermining the financial feasibility of PBSA developments in NSW, stalling new projects and deterring investment at a time when student housing is urgently needed to relieve pressure on the broader rental market.

Other, smaller changes to Residential Tenancy Acts such as the introduction of default rights for tenants to keep pets, further illustrate the mismatch between standard rental regulations and the operational realities of PBSA. High-density, shared living environments are not suitable for animals, and such provisions highlight the broader issue: Residential Tenancy Acts were not designed with the unique characteristics of purpose-built student accommodation in mind.

**Recommendations**

Given the unique nature of the PBSA asset class, the Productivity Commission should consider recommendations that either:

- All state and territory governments formally and consistently define Purpose-Built Student Accommodation (PBSA) for the purposes of Residential Tenancy Act provisions and exempt such assets from those provisions that are incompatible with the operational model of this asset class—particularly those provisions related to fixed-term leasing and break lease conditions; or
- The Australian Government develop a nationally-applicable definition of Purpose-Built Student Accommodation (PBSA) and a nationally consistent regulatory framework for PBSA, recognising it as a distinct and essential form of student housing. This would ensure that PBSA is governed by fit-for-purpose legislation that supports its continued growth, viability, and contribution to easing pressure on the broader rental market.

**Q - Can you share any specific examples of where you think a regulator has done a good or bad job of understanding and reducing regulatory burden on businesses and why?**

Planning system complexity and variability remain the biggest barriers to the delivery of all forms of property across all jurisdictions. However, some states have been more ambitious than others in their recent reforms, implementing changes that speed up approvals processes and improve transparency and accountability for assessment timeframes. These are highlighted below.

<u>New South Wales</u>

In late 2024, the NSW Government launched its Housing Taskforce, which has helped unlock over 13,000 homes by resolving delays in the approvals process, particularly where conflicting department requirements and requests for additional information are the cause. The Taskforce is not only speeding up pre-determination approvals, but also post-determination approvals, meaning more homes can move from approval to construction more quickly. This represents welcome step towards better coordination across agencies and tiers of government.

To further strengthen this, the NSW Government has also launched new State Agency League Tables developed by the Taskforce to track the performance of 22 government agencies, state-owned corporations, and electrical supply authorities in processing Concurrences, Integrated Development approvals, and Referrals (CIRs). These measures improve transparency and accountability, with six-monthly performance data published and agencies required to meet legislated timeframes in 90 per cent of cases. The League Tables apply a similar level of scrutiny and accountability to State Agencies as the Council League Tables do to local governments across NSW, and, provided there continue to be consequences for failures in delivery, are welcome mechanisms to help smooth the approvals process for housing development.

To even further enhance approvals projects for major residential projects that go towards helping NSW meeting the national Housing Accord targets, in November 2024 the state government established a Housing Delivery Authority (the Authority). The Authority reviews residential development projects lodged through an Expression of Interest (EOI) process for progress through a new State Significant Development (SSD) pathway and a fast-track rezoning process. The SSD pathway also includes industry-specific Secretary's Environmental Assessment Requirements (SEARs) to provide a simplified and consistent approach to assessment requirements. The Authority has been meeting fortnightly to make recommendations to the Minister for Planning and Public Spaces, with 265 EOIs considered, and 116 projects declared SSD since January 2025.

Changes to the Planning Systems SEPP removed referrals to the Independent Planning Commission for less contentious SSD applications for projects using the infill affordable housing bonuses under the Housing SEPP. These changes also resulted a range of development types in the City of Sydney will now be considered as local development instead of SSD, including hotels, seniors housing, data centres, certain manufacturing industries, and warehouses and distribution centres.

While faster approvals are one important step to provide greater certainty to get large-scale housing projects out of the ground, and are to be encouraged in other jurisdictions, the impost of government taxes, rising construction costs and skills shortages continue to present barriers to the delivery of more housing.

Western Australia

Over the past five years, Western Australia has undertaken a comprehensive reform of its planning system, aimed at enhancing efficiency, streamlining decision-making, and expediting development approvals.

Building on temporary measures introduced during the pandemic, the government has created a new Significant Development Pathway, with the WA Planning Commission as the decision maker, open to projects valued at over $20 million.

At the same time the existing Development Assessment Panel system, introduced by the former government, has been streamlined and improved including:

- reducing the number of DAPs from five to three (Metro-inner, Metro-outer and Regional)
- appointing qualified panel members on a fixed term basis
- removing most exclusions on applications including allowing all multiple and grouped dwelling developments over $2 million to be determined by a DAP
- allowing development by any community housing provider to opt into the DAP system regardless of size or value (excluding single homes).

The WA Government has also mandated local government delegate decision making for single houses to planning staff, significantly reducing any opportunity for political interference and professionalising decision making. Subsequent reforms also established 'deemed to comply' provisions for single detached dwellings, new or renovated, and minor developments like patios, meaning developments of this nature can no longer be referred to or 'called in' for determination by a Council's elected members, except where the property is on a local or State heritage list or in a designated heritage area.

In a similar vein, regulations came into effect in 2025 clarifying that that only the CEO or delegate can prepare a responsible authority report (which goes to a DAP for consideration) and in the performance of that function the elected members of a council or a committee of council cannot direct the CEO or delegate in any way.

Similar transparency boosting measures have been applied at the state and DAP levels, with the meeting documents of the WAPC and all DAPs are now publicly available, enhancing accountability in decision making and timeframes. The government has also been pushing for uniformity in local planning schemes to drive consistency across the state.

Considered as a whole, these reforms have been broadly welcomed by industry, providing alternative pathways for most developments, and largely removing or diminishing the influence of highly politicised councils from decision-making.

At the more operational level there are still improvements to be made to processes and timeframes, which the government is actively developing with Property Council and our members.