

# MSA Act Frequently Asked Questions

## MSA Act Frequently asked questions – Version 4

### Q. What is the *Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2020*?

A. The *Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2020 Act* commences on 1 July 2020. The Act establishes a Victorian legislative framework for the existing Melbourne Strategic Assessment program that has operated since 2010 under Commonwealth *Environment Protection and Biodiversity Conservation Act* approvals.

### Q. What is the Melbourne Strategic Assessment program?

A. The Melbourne Strategic Assessment (MSA) program ensures that urban development within Melbourne's growth areas complies with State and Commonwealth environmental laws in an efficient and effective way. The MSA program does this by streamlining the assessment and approval processes and providing long term planning certainty while delivering important and necessary conservation outcomes.

The MSA program applies to urban development that occurs within Melbourne's urban growth areas, which were created following the significant expansion of the urban growth boundary in 2010. These areas are affected by certain Commonwealth Government approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

A strategic assessment under Part 10 of the EPBC Act enables the Commonwealth Minister for Environment to 'globally' approve developments under an endorsed policy, plan or program. The practical effect of this is that 'project-by-project' approvals are not required for actions taken in accordance with that endorsed policy, plan or program.

The strategic assessment also enables mitigation and offsetting efforts to be considered and effected in a more meaningful way. It allows Melbourne's growth to follow a strategic, long-term plan. For example, the endorsed policy, plan or program can provide for consolidated habitat as opposed to more 'scattered' habitats that may result from 'project-by-project' mitigation measures.

### Q. What are the key changes to the existing MSA program?

A. The Act introduces a number of important changes including:

- The MSA levy is imposed by Victorian law.
- The levy rates are adjusted annually according to a tailored composite index which is composed of CPI and wages index which reflects general inflation and wage growth.
- Introduces a requirement for an annual report to be completed and made available each year.
- Introduces a requirement for a review, every 5 years, of the overall cost base of delivering the program through a public process.
- The number of events that trigger the requirement to pay an MSA levy on freehold (private) land are minimised and made clearer for both the development industry and DELWP to identify when a MSA levy event has occurred.
- Infrastructure and utility providers are no longer required to pay an MSA levy if they undertake actions associated with urban development on freehold (private) land.

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- There will be an effective compliance framework with administrative 'hold points' whereby subdivision lodgements and building permit applications will be held until an MSA levy liability has been paid.
- The implementation of the MSA program will be made more transparent by expanding the role of the Commissioner of Environmental Sustainability to undertake strategic audits of the program.

## Q. Does the MSA Act Replace the existing Biodiversity Conservation Strategy (BCS)?

**A.** No. The MSA Act will support the program's streamlined and simple approach. The primary purpose of the BCS is to identify the 36 conservation areas within the UGB and to establish the relevant conservation objectives and planning controls which all remain relevant.

## Q. Will component levy amounts still be based on timestamping?

**A.** Yes. A key part of the strategic assessment process was to 'lock in' a baseline against which future impacts can be measured. For the Melbourne Strategic Assessment, this baseline was set in 2010.

This approach means that the program's conservation commitments can be determined in advance and provides important price stability and certainty to proponents.

## Q. Does the Act change the area that is subject to a levy?

**A.** The Act does not change the area subject to the current habitat compensation fee scheme. Under the Act, levy liabilities do not apply in BCS conservation areas.

## Q. Does the Act apply retrospectively?

**A.** Liability to pay the environment mitigation levy only arises when a levy event occurs, as described in the Act. This only applies to events that occur after 1 July 2020.

However, the Act deems payments made under the habitat compensation scheme which has operated since 2013 as being payment of the environment mitigation levy. Where such a payment has been made, the levy liability is taken to be wholly discharged for that relevant area of land.

In addition, the Act deems any staged obligations agreement made under or in relation to applicable Commonwealth approvals before 1 July 2020 as being a staged payment approval for the purposes of the Act.

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## Q. Have the fees changed?

**A.** Yes, the levy rates set out in the Act replaces the Biodiversity Conservation Strategy (BCS) Habitat Compensation fee pricing.

The Act requires that the levy rates are adjusted annually according to a tailored composite index. the composite index is composed of one third Consumer Price Index, and two thirds Wage Price Index.

In addition to annual indexation, the legislation provides for an additional factor to be applied for the first five years of the operation of the Act. This will bring the program back to full cost recovery by the 2024/25 financial year. From 2025/26, only the composite index will apply.

The levy rates are set out below:

Levy Type	Rate per hectare from 1 July 2021
Native Vegetation patch	\$136,688.00
Scattered Tree (per tree)	\$18,999.00
Growling Grass Frog	\$8,257.00
Golden Sun Moth	\$12,773.00
Spiny Rice-flower	\$9,244.00
Matted Flax-lily	\$11,625.00
Southern Brown Bandicoot	\$4,309.00

## Q. Are there any events excluded from levy payments?

**A.** Any relevant event, undertaken in the levy area will trigger a levy liability. The liability is triggered regardless of who undertakes the activity.

However, there is a series of excluded events, including:

- Subdivision that solely realigns common boundary between to lots, and area of either lot is reduced by no more that 5% of its original area.
- Subdivision that solely creates a lot not exceeding 2 hectares to excise an existing dwelling from the land.
- Subdivision along levy area boundary, that creates 2 lots, one wholly within the levy area, the other not within the levy area.
- Subdivision which excises area subject to the Outer Metropolitan Ring Road E6 public acquisition overlay.
- Subdivision to excise land which will be an extractive industry buffer zone.
- The demolition of a building or part of a building.
- The construction of a single dwelling.
- The repair or reinstatement of an existing building.
- Additions or alterations to an existing building that do not change or increase the floor area of the building.
- Variation of a work plan if an excluded event certificate has been issued in relation to the works.

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- Telecommunications works constructed in accordance with a Facilities Installation Permit issued under the *Telecommunications Act 1997 (Cth)*.
- An event to which an approval under Part 9 of the EPBC Act that is in force applies.

For full details of exemptions see sections 5, 6 and 7 of the Act.

## Q. Can staged obligations agreements under the Act still apply?

**A.** The Act provides for staged payment of the levy through an agreement with the Secretary of DELWP. Existing staged obligation agreements made under the current habitat compensation scheme will be 'converted' into a staged payment approval for the purposes of the Act.

## Q. Where and how will levy funds be spent?

**A.** The levy revenue will be spent on mitigation and offsetting actions for biodiversity, which are required by the Commonwealth Approvals of urban development in Melbourne's Growth Areas, these are:

- the protection and management of 36 areas of high biodiversity value within the urban growth boundary;
- the creation and management of the 15,000-hectare Western Grassland Reserve, the 1200-hectare Grassy Eucalypt Woodland Reserve and other reserves;
- the protection and improvement of habitats for threatened species such as the Southern Brown Bandicoot and Growling Grass Frog.

Full revenue and expenditure details can be found in the MSA program's annual progress reports available at <https://www.msa.vic.gov.au>.

## Q. Do MSA levies apply for infrastructure works located within the MSA Act levy area?

**A.** The construction of utility infrastructure (infrastructure for water, sewerage, drainage, gas, electricity or telecommunications services) on private land is not a 'levy event'. No MSA levies apply for the construction of utility infrastructure on private land.

The construction of utility infrastructure is only considered a 'levy event' when it occurs on Crown land. If a project crosses both Crown land and private land, MSA levies are only payable for the portion of the works footprint which is on Crown land.

## Q. When are payments of levies for subdivisions due?

**A.** For un-staged subdivision cases, payment due dates are set at 3 months after the issue of a statement of compliance – like GAIC. For stages under a staged payment approval, there is greater flexibility to set due dates for the payment of stages under staged payment approvals, but common practice will be to set due dates at 3 months after the issue of a statement of compliance for that stage.

The framework under the MSA Act allows for broad flexibility in setting payment due dates for future stages, including an ability to set due dates in relation to particular future events. For example, instead of saying that 'payment for Stage 14 will be due on 17 June 2025', the approval may say 'payment for Stage 14 will be due three months after the issue of the statement of compliance for Stage 14'. A staged payment approval holder may apply to amend these dates (or any other approval condition) at any time.



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## Q. When are payments of levies for other levy events due?

A. MSA levies are not required to be paid prior to a planning permit being issued, or as a condition of a planning permit. However, the application for building permits is one of the levy events that will trigger the requirement to pay MSA levies. The construction of buildings located within MSA Act levy area will require a building permit, and the application for that building permit will be a levy event under the new MSA Act.

Under new changes to the Building Act 1993 (see section 18D), the building surveyor is required to notify DELWP of the application within 14 days. DELWP will calculate the applicable MSA levies for the land and send an assessment notice to the landowner. The building surveyor may not issue the building permit until the landowner has been issued a certificate from DELWP demonstrating that the relevant levies have been paid.

## Q. Where can I view the Act?

A. The Act can be viewed at <https://www.legislation.vic.gov.au/>

Further information on the MSA Act 2020 can be found at <https://www.msa.vic.gov.au/melbourne-strategic-assessment-act-2020>