Submission to Economics Legislation Committee

Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 – Build to Rent matters

CHIA, National Shelter and PowerHousing Australia

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Summary

The Community Housing Industry Association (CHIA), National Shelter and PowerHousing Australia welcome the opportunity to make this short response to the Senate Economics Legislation Committee on the Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 – Build to Rent matters.

All three organisations see value in an expansion of the market Build to Rent (BTR) sector. With the right policy settings this sector could provide better quality accommodation and services together with improved security than the current private rental market dominated as it is by small-holding investor landlords and real estate agent property managers. Further, an expansion in market BTR sector will both support the government's target to increase overall housing supply by 1.2 million homes over the next five years and also potentially over time, moderate rental rises in the private rental sector.

We are generally supportive of the proposed legislation but believe that the requirement for BTR developments to include **10% affordable housing should be strengthened to ensure that the homes are genuinely affordable, allocated to households on low and moderate incomes, and are managed by registered, not-for-profit community housing organisations (CHOs).**

We therefore recommend that the legislation is amended to:

1. Revise the definition of affordable tenancies to ensure that these are affordable to both low and moderate income earners. This would require that income eligibility limits were specified as is common for other affordable rental schemes and that rents were up to 74.9% of market rent or no more than 30% of household income, whichever is the lower. It should also be clear that renters of affordable tenancies should not be required to pay additional service charges for amenities such as gyms or swimming pools

2. Recognise the affordable tenancies would result in lower rental income than anticipated in the current legislation, consider increasing the size of the Withholding Tax concession allowable for qualifying developments, and

3. Require that affordable tenancies are allocated and managed by registered not-for-profit CHOs.

As one benefit claimed for market BTR is that it provides more security for renters, we also recommend that a requirement for accessing the Withholding Tax concession is that BTR operators commit to not using 'no grounds' clauses to gain possession.

There should be a firm commitment to a review of the Withholding Tax framework for BTR after three years to ensure it is functioning as intended.

Finally our submission suggests that a more effective and simpler mechanism for creating affordable rental tenancies as a spin-off from market BTR development, would be to achieve this through a broader 'inclusionary zoning' approach via the land-use planning system that placed affordable housing contribution obligations on all market residential development. This remains our preferred approach to secure affordable rental tenancies in market developments.

About our organisations

CHIA is the peak body representing not-for-profit community housing organisations (CHOs) across Australia. Not-for-profit CHOs are regulated organisations that develop and manage rental homes for the long-term, primarily to assist low-income households disadvantaged in securing suitable homes in the private market. They invest financial surpluses in building homes, enhancing landlord services, and implementing property improvements instead of shareholder profits. Our 160+ members collectively manage more than 130,000 homes, valued at over $40 billion for the benefit of our residents and their communities.

National Shelter is a non-government peak organisation that aims to improve housing access, affordability, appropriateness, safety, and security for people on low incomes. National Shelter is supported by the work of State Shelters and members in all jurisdictions, as well as national member organisations, associate members, and sponsors.

PowerHousing Australia facilitates a national network of 38 tier 1 registered Community Housing Providers (CHPs) responsible for over 90,000 social and affordable homes , with assets worth over $35 billion and 150,000 tenants nationally, the majority being low to moderate income earners and vulnerable Australians. PowerHousing members are committed to addressing housing need through growth of supply, best practice in housing and community development, and excellence in tenancy and asset management.

Introduction

All three organisations are supportive of an expansion in the market BTR sector in Australia. Residential developments designed and built for long term rental, where ownership is with a single entity and investors are primarily motivated by the desire for stable returns from rental income. Theoretically this should lead to a higher standard of accommodation, a more renter focused management and greater security of tenure than is typical with small scale landlords where investment is typically more motivated by capital gains. The National Housing Supply and Affordability Council (NHSAC) also argued that a rental sector in which BTR is more substantially represented '*may mean that the creation of [BTR] assets may not be as tied to the general housing cycle, shifts in monetary policy and shocks to the supply of materials and land. Smoothed housing supply through cycles would have further benefits in terms of greater stability in associated labour and materials markets, promoting efficiency.'* [i]

Further, an expansion in market BTR sector will both support the government's target to increase overall housing supply by 1.2 million homes over the next five years, an objective which we support.

However, the Australian BTR sector is currently small and has tended to be a premium product, with rents generally higher than median market rents. It has not, to date, had a moderating impact on market rents and is generally unaffordable to households even those on moderate incomes. Given the extent of rental stress experienced by lower income households we believe it is critical that tax or regulatory concessions to enhance residential supply come with obligations to meet demand from these groups.

In addition, while we are generally positive about the advantages of market BTR, the NHSAC has also identified there have been negative experiences elsewhere '*some institutions have also been criticised for purchasing discount housing stock and renovating it to justify a significant uplift in rents*.' The NHSAC has recognised that there are risks that need to be mitigated by appropriate regulation.

We are also conscious that, in itself, the tax changes envisaged in this legislation may be insufficient to evoke a significant increase in BTR output.

Our response is focused on the requirement for eligible market BTR projects to include affordable tenancies.

Definition of Affordable Tenancies

The proposed definition in the legislation (s1.55) '*To be an affordable dwelling, the rent payable under the lease for the dwelling must be 74.9 per cent or less of the market value of the right to occupy the dwelling under that lease (i.e., the rent otherwise payable for that dwelling in an open market*)' is likely to exclude many essential workers such as those employed in the aged care, disability, early education or retail sectors earning low and moderate incomes.

While the legislation gives the Minister scope to set eligibility criteria for the affordable tenancies, we strongly recommend that a rationale or model for the setting of income limits is specified in the legislation. To avoid lower income households being excluded we also suggest that the definition of affordable tenancy is modified to '***up to 74.9% of market rent or no more than 30% of tenant household income***'.

Equally important is to **ensure that tenants of the affordable units are able to opt out of service charges for on-site facilities such as gyms and pools. This should be made clear in the legislation.** It should also be clear that 'services' in common areas such as communal gardens should be included in the rent.

One issue faced by community housing organisations in their efforts to develop affordable BTR projects is that they are unable to compete for land against the build to sell (BTS) developers who dominate the market. While market BTR providers will not be at such a disadvantage it is important to ensure they can be competitive with BTS rivals on site acquisition. In recognition that the affordable tenancies as we have specified would result in lower rental income than anticipated in the current legislation, we believe the government should consider increasing the size of the Withholding Tax concession allowable for qualifying developments.

Community Housing Organisations as Managers of Affordable Tenancies

It is critical to put in place robust arrangements for (1) ensuring that the units designated 'affordable' for compliance with the concessional Withholding Tax rate conditions represent a fair mix of homes, (2) allocations to the affordable tenancies meet the income eligibility requirements, (3) monitoring tenant compliance with continuing eligibility rules, (4) providing assurance that the homes remain affordable and (5) providing assurance that tenancy services received by these tenants are equal to the market rentals. At the same time there is a cost to government and the providers to administering this assurance.

We recommend the legislation requires that allocation and management of affordable tenancies within qualifying schemes is delegated to registered not-for-profit CHOs. The not-for-profit community housing sector already owns and/or manages over 130,000 social and affordable rental tenancies across Australia. The nascent market BTR sector, with circa 5,000 units being completed by 2023, with 9,000 under construction and another 24,000 in the pipeline[ii] could find it expedient to make use of the regulated sector's experience and expertise.

Many CHOs already report as required to the ATO on behalf of investors providing affordable housing via MITs, they maintain waiting lists for affordable rental tenancies and have a track record in reporting under the National Rental Affordability Scheme. The fact that they are also registered as part of community housing regulatory schemes will provide additional assurance and potentially reduce the need for considerable extra bureaucracy otherwise required for compliance policing in relation to the affordable rental tenancies requirements. There are existing examples of CHOs managing below market provision in a mixed tenure block - such as the Super Housing Partnerships / Assemble / Housing Choices partnership in Melbourne.

Further, a growing number of CHOs also operate 'for purpose' real estate agents[iii] and have the skills, experience and qualifications to manage both market and affordable tenancies at scale.

An Alternative (Longer Term) Approach to including Affordable Tenancies

While it is outside the scope of this Committee, a more effective and simpler mechanism for creating affordable rental tenancies as a spin-off from market BTR development would be to achieve this through a broader 'inclusionary zoning' approach via the land-use planning system. As explained elsewhere[iv], there is a strong case for a comprehensive system that places modest 'affordable housing contribution' obligations on all market price residential developments above a minimum threshold size in capital cities and other high land value locations. By comparison with the current proposal this would broaden the scope of such requirements beyond the market niche involving BTR projects financed via foreign investment. If implemented on the responsible and moderate model we recommend, the cost would be effectively borne by the land value and would not compromise development project feasibility; the affordable housing requirement would be factored into the price paid for the land. The Federal Government could play a leadership role by supporting and incentivising States to introduce inclusionary zoning along these lines.

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[i] Barriers to Institutional Investment, Finance and Innovation in Housing (nhsac.gov.au)

[ii] JLL (2024) Australian Apartment Market Overview Q4 2023 https://www.jll.com.au/en/trends-and-insights/research/australian-apartment-market-overview-q4-2023

[iii] Property With Purpose Network (PWPN) – Community Housing Industry Association

[iv] Constellation Project Submission to the NHHP- MIZ national framework 2023.