

Treasury Laws Amendment (Build to Rent) Bill 2024 and Capital Works (Build to Rent Misuse Tax) Bill 2024 [Provisions].

Response to Hearing

Dear Ministers,

I hope you are all well.

I watched today's hearing on Treasury Laws Amendment (Build to Rent) Bill 2024 and Capital Works (Build to Rent Misuse Tax) Bill 2024 [Provisions]. I am addressing this to the office of each of the ministers present.

You may have seen my name on the schedule to give evidence - I was listed to appear but didn't. This was because I had been contacted very late (and wasn't aware of this legislation until Friday), and then it turned out more senior researchers from my area at RMIT would attend instead.

However, upon viewing the video now and hearing Ministers questions to respondents, I think it is a shame I did not make a submission. And I think some (or all) of you may find it helpful to consider a number of points I outline in the pages below.

Kind regards

-Ani Landau-Ward

My capacity to speak to this:

I am a Researcher and Lecturer at RMIT University in the Sustainability and Urban Planning discipline, and the Centre for Urban Research, and a PhD candidate in a cognate field. I have a background in architecture and a Masters in development studies, and I currently teach Urban Policy Research. I make the comments below on the basis of having been involved in a series of research projects and activities associated with research teams in the Centre for Urban Research at RMIT on; digital innovations in housing tenure and provision; urban governance; the emergence of the build to rent sector in Australia; and expertise gained through my PhD research on the meeting of land and tenure law with international standards and regulation.

This research experience includes that I recruited and undertook over 100 professional interviews on Australian Build to Rent in 2021-2022 (on Dr Megan Nethercote's ARC DECRA project - she attended the hearing in session 3). In these interviews, and in associated informal conversations, I spoke at great length with many of the key corporate and institutional investors, developers, fund managers, technical system innovators, building staff, tenants, planners, development consultants, real estate actors, valuers, and industry lobbyists associated with Australian BTR emergence. And, I also developed a strong network, and have since maintained some good relationships in the sector.

While I have not published on BTR, and obviously cannot draw specifically on Megan's unpublished data (I would strongly urge anyone interested in that specific project to contact her for further comment as she is the preeminent expert on this in Australia, and she also gave some brief but important comments at the hearing). I do have general knowledge about the sector that I think will be useful to on the basis of what I saw in the hearing, and my broader scholarly work and interests.

What follows:

- 1) The hearing and evidence given – some gaps and concerns
- 2) BTR as a housing typology and regulatory gaps and risks
- 3) Tentative policy recommendations
- 4) Final Thoughts

1) The hearing and evidence given – some gaps and concerns

In my view there were some significant omissions across the hearing, and these were furthermore compounded by the Department of Treasury's responses in the final panel. And there were some areas that Ministers should further seek clarification or questions.

I think Ministers were correct to ask questions about why incentivise this? and also in particular what sort of long-term housing offering is actually being proposed for Australians in BTR. But many respondents giving evidence across the hearing sidestepped this latter question and instead directed their responses back to questions of supply only. This perhaps simply reflects current expertise and housing policy focus in Australia. But left a gap that Ministers should continue to interrogate before incentivising BTR. Some of the remarks from Treasury in the final panel responded to queries on this. But often reflected what I would characterise as quite shallow industry talking points around the attractiveness of the model. One example was the point made by treasury that housing diversity in itself was a reason to incentivise BTR. While a diversity of housing typologies could provide benefits to housing systems in Australia (and research has shown this), it does not do so simply because it is diverse. Another example was the evidence given around attractive elements of BTR in regard to aspects of tenant security, and improved amenity. Much of this is representative of the brochures, and market research put out by industry lobbyists as the sector in recent years, but are much less reflective of the realities of BTR we see expressed in emerging empirical work on BTR around the world and in Australia, where various forms of insecurity, and poor provision of amenity over time (especially where affordable housing is present) are evident. This body of evidence should be more thoroughly considered by treasury in my view.

Anecdotally, in my experience many Australian industry players do not believe many of these talking points about BTR anyway. They see them simply as a way BTR interests try to sell the model to policymakers and especially city planners. Serious discussion around these points with industry experts and proponents instead paints a much more complex picture. Highlighting the various reasons for example that people may need to seek shorter term tenancies, or that exorbitant rent increases tied to market conditions can hamper security, even where a longer lease is present. As well as that amenity provision in affordable BTR is unlikely to be better than any other affordable typology, and that in many overseas cases amenities are club goods, with membership linked that they may include further costs, beyond rentals. So, I do think there is a need for significantly more care by the Treasury team in this regard, and I did not find the Treasury arguments about the BTR typology's desirability convincing at all. I think Ministers should be asking for more rigorous justification, and a clearer body of evidence around real benefits for residents, and their guarantees, - if this is something they are concerned about.

Lastly, the numbers presented for BTR assets in Australia were either partial, misrepresentative, or vague in definition. Firstly, they did not demonstrate the extensive current development pipeline, including numerous assets that have finance and are under construction or nearing completion (which is significantly larger than the number of assets flagged by treasury). Secondly, the number given (11) seemed either outright incorrect, or only representative of an extremely narrow definition

of BTR. There are potentially a great many more assets and tenancies being managed in this way in Australia, and I suspect (upon only a cursory reading of the proposed legislation) a much larger amount than discussed might potentially seek eligibility for concessions. So I think Ministers should be asking for greater clarity on this, and seeking to understand and define more fully what existing stock, or pipeline stock this legislation would or could actually apply to, and whether existing stock that does not currently call itself BTR might rebrand. As well as if there are many operators that basically provide this but fall outside of the definition employed (for example due to scale), why? and is it justified? Should it be encouraged, and why exclude certain operators from incentives?

2) BTR as a housing typology and regulatory gaps and risks:

In particular I think it would be worth further considering the following points about the typology, and about regulatory gaps and risks associated with BTR in Australia, which I think this legislation could respond better to. These are outlined at some length below. Followed by a list of tentative recommendations.

Beyond the question of whether government should incentivise BTR as a way to increase supply. There is also obviously the question of whether the legislation is incentivising sustainable, quality, housing typologies (as raised by various Ministers in various ways). And how to ensure it might. While often mentioned in the hearing in some form or another, as mentioned above I do not think that what this actually looks like and how it might impact regulation and legislation, is sufficiently considered in the submissions, or the hearing. And I think this is because an insufficient understanding of the way the BTR model operates informed much of the discussion in the hearing.

As a starting point it is crucial to understand that BTR should be seen as a housing typology that differs from traditional housing in Australia in that it provides, manages, and receives active income, from housing provision over time. So it cannot be seen as simply involved in supply (ala Build to Sell, or as equivalent to commercial leasing (which does not provide an essential service like housing). Furthermore, the BTR model (put simply) creates value/income across the building's and tenancy's lifecycles, and across a range of what we might call housing provision activities. Currently this does (and will) occur in ways that are in many respects disruptive, and under-regulated. Because this form of provision has not been part of how we have understood mainstream housing in Australia previously, and has not been legislated.

For example, BTR is owned and managed by complex platform entities that often have various separate and integrated corporate structures and a business model based on tenancy and building management and services (industry generally refers to this as the "operational" aspect). Within this management ecosystem revenue streams from BTR rentals and assets are maximised, through for example: "curating a community" that is attractive to specific target demographics (hence fostering premium rents which are NOT only attracted through building quality but through management of "community"); maximising efficiencies across building maintenance, security, and tenancy systems; using common areas for ancillary revenues, which may even include making them unavailable to residents, or to certain residents; maximising rental increases across collective buildings, and leveraging agglomerated tenant data to achieve this. And various other housing provision, and asset management activities. And, all of these are built into reporting frameworks overseen by investors and fund managers, and create a key component in the attractiveness of buildings to investors, and attract careful scrutiny for efficiencies and profit maximisation.

So in this model, the provision of housing becomes not just a key experience outcome for tenants, but also crucial to the success of the investment model. I will make no judgment here as to whether or not this model is intrinsically positive or negative. There is an argument (and some evidence) that

this potentially creates better housing outcomes for residents through market mechanisms, and there is also substantial evidence to show the opposite emerging especially from the UK, including some horror stories. So, the jury is still out... but my position is that these outcomes may well depend on what I outline below as the need to identify and overcome a range of associated regulatory gaps and risks around these forms of housing in Australia.

So, what I want to outline here is that this operational/provision aspect of BTR means that current BTR in Australia operates (and models its value proposition) across a range of regulatory gaps. Which introduce a range of new risks in terms of its sustainability as an offering, and its capacity to provide quality, long term, housing solutions. As compared to traditional Build to Sell, typologies, which are much more closely regulated within private property and strata law. So, these regulatory gaps and risks need to be understood and considered by government when incentivising the model. But are currently completely under-considered. Including in the legislation in question in today's hearing.

Specifically there are, in my view, gaps;

- in the regulation of building management practices and systems which (particularly in the absence of body corporate structure) are left up to individual investors, fund and building managers to design, with serious risks ranging from maintenance and security, to data breaches or discriminatory practices (if my understanding of the current practices is right this is an area likely to be opened up to litigation by tenants, and probably class actions, in future - as is occurring overseas), my understanding is that we currently have extremely diverse approaches in this regard and investors and managers see it as a kind of wild west of tech innovation to come up with the best systems;
- in the financial reporting of building and tenant data to investors - where there are diverse incentives for various parties across the management and ownership structure to frankly fudge the data, as well as a serious lack of standards specific to housing provision specifically (which underscores the need for federal government to more broadly support the development of such standards in the context of an expanding sector of long term tenancies and single owner/multiple dwelling buildings (including social housing) - and there are many international examples of this).
- collective tenant/resident representation where the promise of a long term tenure is within a building where tenants have no say whatsoever over common areas, or building management practices (again their are international examples that can contribute to a discussion of what this looks like and serious learning that could be had from European social housing models and perhaps North American BTR, that have been doing this kind of thing for decades, RMIT researchers have done some work on this);
- staffing practices and professional standards, where there are various built in incentives for on-site and off-site staff to discriminate, and sort tenants, and their behaviours, in some extremely intrusive ways that are not covered by tenancy law. Again, I think a lack of regulatory direction and/or standards around this will lead to future litigation or class actions. I can also say that in my understanding BTR operators are recruiting from hospitality, and hotels, and there is a serious skills gap, felt by the staff themselves, the tenants, and the building managers. I think on-site staff are very much in need of best practice standards around the management of collective housing tenures, and residents - to protect themselves professionally and to protect residents. I think current tenancy law protections, and real estate qualifications, are manifestly insufficient.

All of the above gaps are not adequately addressed in the regulatory environment in which BTR is being developed in Australia. This is perhaps within the context of a long history of private ownership, where property law (not housing law) has provided both protection to owners, and a way to clearly allocate risk and responsibility/liability. Most of the above having variously been provided for (although often imperfectly where rentals are concerned) in private property and strata law previously. As the BTR model expands (if it does - like it has in other jurisdictions), and as the provision of housing by large scale investors expands as it currently is in other typologies, the bigger picture is that we should be seriously asking what protections and affordances people living in these sorts of housing typologies need, in order to be provided with the dignity and experience that other housing typologies in Australia (such as single owner dwellings) afford.

But beyond these bigger picture questions in Australia, I also believe the regulatory gaps outlined above open up a risk to the BTR financial model itself, and to the outcomes of incentivization ostensibly sought in this legislation (although what it actually seeks to incentivise (supply or affordability?) is a little unclear as mentioned by a number of those who gave evidence). This is because while BTR models currently exist in the context of these regulatory gaps, there is an imminent risk. Future regulation may well need to introduce standards that then undermine or add costs to some (or many) of the ways that revenues are currently modelled and generated, and that valuation and investment rely on.

So as well as asking why not look at this now? It is also very important to ask - *If we don't look at it now who will pick up that tab later?* Will it be government? And what if the offering becomes unviable? Have we ensured they have been designed, maintained, and managed in ways that allow for transition to other housing typologies? Or continue to have value in the housing system? I do think there are provisions in this bill that can help ameliorate this last issue, but that they should be strengthened.

It might for example be worth conditioning incentivisation to BTR offerings that are constructed to the standard of other housing typologies. I say this in the context that many of BTR investors developers and operators (including some buildings that have been approved and are under construction) actively seek (and get) planning concessions around for example apartment size or amenity, and seek not to meet minimum standards for apartment design. Promising in return a vague offer of increased common area or high quality amenities (as mentioned in the Treasury panel as a reason to support BTR). But that there is currently no reliable regulated guarantee around the maintenance or accessibility of these common areas, no reliable oversight or auditing mechanisms, and they are unable to be monitored by councils or anyone else! And, a big question around what would happen if these dwellings needed to revert to a different typology?

3) Tentative recommendations:

- Overall. I wholeheartedly agree with Dr Liam Davies' evidence in the hearing, that some kind of conditionality needs to be built into this legislation. Government needs to reserve the right to end it, until more is known, or at the very least to create further legislation around it. Perhaps this can be a pilot? or have a time frame?
- If gov does decide to incentivise BTR then I believe it should at the very least, also be building into this legislation the opportunity/ability to link it to the construction of future regulation around a number of regulatory gaps and risks presented by BTR and other Living Sector offerings more broadly (as outlined above and below).
- In particular I suggest that this specific piece of legislation may already have further scope to build in the capacity for the minister to later regulate some of the obvious gaps, and in doing so to link tax incentivisation to best practice standards in relation to building and tenancy

systems and management. etc. As such using this legislation to both seek to incentivise the development of a best practice conversation, and associated regulatory innovation, as well as incentivising supply. A good outcome for housing in Australia more generally.

- This should include at the very least linking it to standards/best practice/ future regulation around:
 - data collection, storage, management and use (including beyond individual privacy to look at agglomerated data);
 - maintenance/upkeep of building overall and common areas (the common claim this is provided for by market mechanisms repeated throughout Industry should be approached with circumspection when considering real development and investment timelines);
 - meaningful collective tenant representation at building level OR recourse to some kind of ombudsman linked to specific legislation around tenancies in single owner buildings and collective rights/complaints (perhaps considered alongside reforms to Strata legislation which is urgently needed where rental tenures becomes more prevalent);
 - clear provisions around access and use with relation to common areas for residents;
 - professional standards for onsite and offsite staff behaviour, including around the privacy and dignity of tenants as cohorts, and individually.
 - apartment design standards/ guidelines in line with other dwelling types
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- Lastly, I do wonder if ministers, particularly in Treasury, should follow investors and consider BTR as part of the emergence of broader 'living sector' investment types. Including student housing, co-living, retirement living, and others (even perhaps some social housing). In the same way that international investment funds group these as an investment type. Because together these are starting to make up a more and more significant sector, and collectively differ from private ownership in their role as providing housing and housing services over time. More well developed minimum standards and best practice frameworks do exist in some of these than in BTR. So there may be important opportunities for good policy making looking across these typologies.

4) Final comment:

The conversation around what long term rental should look like for citizens living in buildings managed and owned by institutions and single owners in Australia, and how that should be regulated, is highly underdeveloped, and urgently requires federal leadership.

Furthermore, across all these sectors (and in my view also large-scale social housing) there are regulatory gaps as outlined above, which are becoming basic to the financial modelling and valuation of emerging housing typologies like BTR and as such present a possible future liability to government. Which makes this an urgent conversation for both the sake of housing futures, but also risks to the public purse.

As one final point I want to emphasise that I believe many operators, investors, developers, and real estate interests, especially those with truly long-term interests in quality housing provision, would welcome the protections and certainty that clearer regulation around the aspects of BTR would bring. As it currently stands the gaps open up risk in the investment models. The development of standards would help to identify which operators actually do want to provide a long-term housing solution, compared to those that are more predatory, or fleeting, in their interest in BTR.