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Committee Secretary
Senate Economics Legislation Committee
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Parliament House
Canberra ACT 2600

By email only: economics.sen@aph.gov.au

To Whom It May Concern

Submission on the Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024

The Property Council of Australia (the Property Council) welcomes the opportunity to respond to the Senate's inquiry into the *Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024* (the Bill).

The Property Council is the peak body for owners and investors in Australia's \$670 billion property industry. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private.¹

The property industry is highly sensitive to changes in the mergers and acquisitions control regime due to three factors: the value, the volume and the frequency of transactions which take place across the spectrum of residential and commercial assets.

The government's announced amendments to the Bill have been welcomed by industry and represents the first step in achieving a fit-for-purpose merger control regime that promotes competition whilst supporting business certainty. This submission will cover a number of outstanding matters and commentary on the broader reform package.

Land acquisitions exemption for property industry

The Treasurer announced that land acquisitions involving residential property development and certain commercial property transactions would not be included under the regime. This exemption covers any business that is primarily engaged in buying, selling or leasing property, and which does not intend to operate a commercial business other than leasing (on the land in question).

This exemption will be given effect through subordinate legislation, and as such will not be explicitly exempted through the Bill.

¹ Property Council commentary in no way applies to shopping centre or retail matters, only to other commercial assets.

The urgent drafting and consultation on this subordinate legislation is critical for industry's support of the legislation through the parliament. The Property Council is ready to engage with the government on behalf of industry to ensure the appropriate regulation or ministerial instrument meets the government's stated intent and provides the appropriate exemption for benign land acquisitions.

The implementation of this exemption is pivotal to ensuring the government's National Housing Accord target of 1.2 million new homes by 2029 can be achieved and to ensure a significant number of low-risk property transactions are not delayed by mandatory reporting and assessment by the regulator.

Recommendation 1: that Treasury engage with the property industry on subordinate legislation prior to the parliamentary debate and passage of the Bill, to appropriately meet the government's commitment to exempt land acquisitions involving residential property development and certain commercial property acquisitions.

Deeming provisions

In our submission on the exposure draft legislation, we argued that a perverse incentive exists for the regulator to refer transactions from Phase 1 to a further, in-depth Phase 2 assessment, if it is not properly resourced to make its assessments during the suspensory period.

Progressing a transaction to Stage 2 will provide the regulator more time, resources and an additional fee from the notifying entity, whereas doing nothing (i.e. not making a determination) will lead to a deemed determination that the acquisition may be put into effect.

The Property Council supports these provisions, on the basis that 'clock stoppers' are limited in order to maintain the integrity of the review timeline.

However, in its response to consultation, the government has not amended the process for considering substantial public benefits applications, where there is no deeming provision unlike Phase 1 and Phase 2. For substantial public benefits applications, if the regulator does not make a determination within the timelines, it is deemed to have refused the application.

This is a perverse outcome and could incentivise the regulator to continue referring applications onto the next stage of assessment, collecting an additional fee. This is further compounded by the decision to set the standard for the regulator's decision as 'satisfied'.

Recommendation 2: that Treasury should amend the process for considering substantial public benefits applications to align it with the proposed provisions in *Schedule 1, item 39, subsections 51ABZB(2) and (3)* of the CAA, where if the ACCC does not making a determination within the appropriate period, the acquisition may be put into effect.

It is not yet clear how the recent Budget announcements by the government regarding funding for the regulator will impact on its ability to deliver on the timeframes it has set out, however this will have been significantly improved by the land acquisitions exemption for the property industry outlined earlier in this submission.

The government must ensure that the regulator is appropriately resourced and educated on the key property-related matters of interest, such as concerns around access to markets and land banking.

Other issues

Notification waiver

In our December 2023 submission to Treasury, we outlined our support for a robust notification waiver process which would allow non-contentious mergers to be cleared by the regulator expeditiously, with a reduced timeframe, less onerous reporting and adjusted fees.

The Property Council welcomes the reintroduction of this provision which will provide greater certainty to business and stakeholders, and ensure that low-risk and non-contentious mergers and acquisitions are not held up by the regime.

Recommendation 3: that Treasury consult on the details of the notification waiver process, including associated fees and reporting requirements, as soon as practicable.

Transitional arrangements

The Property Council welcomes the decision by Treasury to extend the transitional period to six-months, to support business to graduate to the new system, with the option to participate under the new regime.

The longer transition period is appropriate, and we welcome the decision to exempt entities approved under the current system during that same period, subject to the acquisition being implemented within one year.

Timing of the reforms and drafting of subordinate legislation

As outlined previously in this submission the timely drafting of subordinate legislation, including the exemption for residential property development and certain commercial property transactions, is critical.

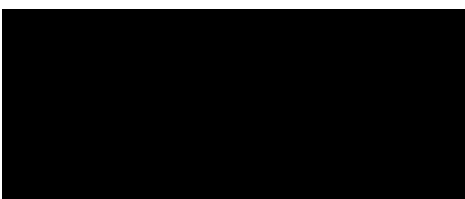
This work should take place concurrently with the passage of the legislation to enable maximum time for consultation, and to provide certainty to industry.

To meet the government's stated goal of a 1 January 2026 start-date for the new regime, and a voluntary opt-in transition period from 1 July 2025, the parliament must pass these reforms before the end of this year.

The Property Council is ready to assist the government in its engagement with industry and the committee in forming its recommendations, in order to achieve a merger control regime that is fit-for-purpose, supports business confidence and meets the government's aims.

The Property Council would welcome the opportunity to discuss this submission in more detail. Please contact Dan Rubenach, Policy Manager at [REDACTED].au to arrange a meeting.

Yours sincerely



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