

CEH SUBMISSION TO THE TREASURY LAWS AMENDMENT (BUILD TO RENT) BILL 2024 AND CAPITAL WORKS (BUILD TO RENT MISUSE TAX) BILL 2024

Per Capita Centre for Equitable Housing
July 2024

The Centre for Equitable Housing at Per Capita (CEH) welcomes the opportunity to provide this submission to the Economics Legislation Committee for their inquiry into the Treasury Laws Amendment (Build to Rent) Bill 2024 *and* Capital Works (Build to Rent Misuse Tax) Bill 2024.

In April 2024 CEH made a submission to the Treasury's consultation into the Treasury Laws Amendment Bill 2024: Build-To-Rent developments and Capital Works (Build-To-Rent Misuse Tax) Bill 2024, exposure draft. Our submission is attached below. In response to this inquiry and the revised legislation introduced to Parliament in June 2024 we make some additional comments.

Key changes to the legislation since the circulation of the exposure drafts include:

- The reduction of the MIT withholding tax rate from 30% to 15% will now apply to capital gains derived from the disposal of eligible BTR dwellings and from capital gains derived from disposal of membership interests in BTR developments.
- Eligibility for the 15% withholding tax rate now extends past the 15-year BTR compliance period, however the misuse tax for non-compliance with eligibility criteria is only applicable to the first 15-year period.
- Dwellings will be considered affordable if the rent payable is 74.9% of the comparable market value of the rent otherwise payable on the "open market". The Treasury's exposure draft's explanatory memorandum states that affordable dwellings would be determined based upon "comparable market rents".¹
- The new legislation does not require affordable dwellings within BTR developments to contain the same "amenities" as comparable non-affordable dwellings. To be eligible for concessions, a development's comparable non-affordable dwellings (determined based upon floor area and number of bedrooms) must be greater or equal to the number of comparable affordable dwellings.

¹ Australian Treasury, 'Build-to-Rent Tax Concessions I' (April 2024) <<https://treasury.gov.au/consultation/c2024-487657>>.

The CEH supports the provision of taxation concessions to eligible build-to-rent developments. In tying eligibility for tax concessions to the provision of lease options of at least three years in duration, eligible Build-to-Rent developments can offer renters an alternative to the insecurity of the private rental sector. In 2023, 90% of private rental leases in Australia had a fixed term of 12 months or less in duration,² offering little certainty to tenants that they will be able to remain in the same dwelling in the medium to long term. Dwellings commonly “churn” through the private rental sector within five years of entrance, increasing the likelihood of involuntary moves for tenants upon sale or re-occupation of the property.³

As stated in our April 2024 submission, the Build-to-Rent model in Australia currently caters to higher-income renters, with rents in Build-to-Rent developments advertised at premium price points. While the Bills’ affordable housing requirement may expand access to some moderate-income earners, dwellings offered at 74.9% of their value on the open market would likely remain unaffordable to many low- and very-low-income earners given the rental premium attached to Build-To-Rent developments.

The CEH also notes that tenure insecurity within the private rental sector is encouraged by federal tax concessions for property investors. In particular, the 50% Capital Gains Tax discount on the sale of investment properties incentivises the speculative churn of properties through the private rental sector. The realisation of capital gains has been reported as the primary reason for sale of properties by investors.⁴ In addition, lending to property investors more than tripled in the decade following the introduction of the Capital Gains Tax discount, crowding first-homebuyers out of the housing market.⁵ Reform of these concessions is a crucial step towards cooling the competitive housing market and moving towards tenure security for all.

The below submission also highlights the important role played by social housing in providing secure and affordable housing for low and very-low-income earners. Government retreat from social housing provision has left many Australians with no housing options outside the private rental market. The CEH reiterates the need for sustained increases in social housing investment to meet the ever-growing social housing shortfalls across the country.

While the Build-to-Rent tax concessions can support the welcome development of a more secure model of private renting, broader reform is needed to increase housing affordability and security across Australia.

² Fred Hamner and Michelle Marquardt, *New Insights into the Rental Market* (Bulletin, Reserve Bank of Australia, 24 April 2023) <<https://www.rba.gov.au/publications/bulletin/2023/jun/new-insights-into-the-rental-market.html>>.

³ Chris Martin et al, ‘Regulation of Residential Tenancies and Impact on Investment’ [2022] (391) *AHURI Final Report* <<http://www.ahuri.edu.au/research/final-reports/391>>.

⁴ *Ibid.*

⁵ Centre for Equitable Housing, *The National Housing and Homelessness Plan: A Historic Opportunity Not to Be Missed* (October 2023) <https://centreforequitablehousing.org.au/our_work/the-national-housing-and-homelessness-plan-a-historic-opportunity-not-to-be-missed/>.

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TREASURY BUILD-TO-RENT CONCESSIONS

Per Capita Centre for Equitable Housing

The Centre for Equitable Housing (CEH) at Per Capita welcomes the opportunity to participate in the consultation process for the Exposure Drafts of the *Treasury Laws Amendment Bill 2024: Build-To-Rent developments* and *Capital Works (Build-To-Rent Misuse Tax) Bill 2024*.

The CEH is in favour of increased government support for the emerging Build-To-Rent sector.¹² CEH believes that expansion of Build-To-Rent housing has the potential to improve the private rental market in Australia, which is currently dominated by smaller investors, or ‘hobby’ landlords. Small-scale investor profiles are often linked to a high degree of rental ‘churn’. A significant proportion of properties exit the private rental sector within five years of entry, with landlords leaving and entering the sector in pursuit of capital gains from rising property values, a process which increases insecurity and uncertainty for private tenants.³⁴ This may be contrasted with larger institutional investors who have longer-term investment horizons seen within the BTR sector.

Exposure Drafts

The CEH welcomes the Government’s announcement that investment in the Build-To-Rent sector would be supported through tax concessions.

Requiring lease terms in any new BTR development to be offered for terms of at least three years is particularly welcome given the high degree of tenant churn currently present in the private rental sector, with as many as one in five tenant relocations being involuntary.⁵ Additionally, as the number of tenants renting long-term grows, both due to lifestyle choices and the growing number of people unable to afford to buy a home in Australia’s inflated housing market,⁶ the need for longer-term, secure rental options is becoming more urgent.

Halving the final withholding tax rate on payments from eligible MIT investments would address the current discrepancy in withholding tax rates between investment in Build-To-Rent developments and

¹ Matthew Lloyd Cape et al, *Regulating Rentals in Australia: What Works?* (Centre for Equitable Housing, August 2023)

² Center for Equitable Housing, *Submission to the Inquiry into the Rental and Housing Affordability Crisis in Victoria* (July 2023).

³ Chris Martin et al, ‘Regulation of Residential Tenancies and Impact on Investment’ [2022] (391) *AHURI Final Report* <<http://www.ahuri.edu.au/research/final-reports/391>>.

⁴ Matthew Lloyd-Cape et al, *Housing Affordability in Australia: Tackling a Wicked Problem* (Per Capita and V&F Housing Enterprise Foundation, May 2022) <https://percapita.org.au/wp-content/uploads/2022/04/VF_Housing-AffordabilityReport_Final.pdf>.

⁵ Productivity Commission, *Vulnerable Private Renters: Evidence and Options* (No Research Paper, September 2019) <<https://www.pc.gov.au/research/completed/renters/private-renters.pdf>>.

⁶ Alan Morris, Kath Hulse and Hal Pawson, ‘Long-Term Private Renters: Perceptions of Security and Insecurity’ (2017) 53(3) *Journal of Sociology* 653 (‘Long-Term Private Renters’).

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investment in other property assets, including commercial real estate.⁷ This should reduce disincentives for prospective overseas BTR investors, a cohort identified as a “likely” source of initial BTR investment.⁸

Affordable Tenancies

The CEH has proposed legislating affordability requirements for a proportion of Build-To-Rent units in conjunction with tax concessions.⁹ Low- to moderate-income earners, single parent households and older households face an increased likelihood of tenure insecurity and involuntary relocations while renting in the private sector,¹⁰ and would greatly benefit from longer-term leases. Without a degree of rent subsidy, access to BTR models may be constrained for these groups given that many high-profile existing BTR developments have not been an affordable option for moderate and low-income earners. Recent case study analysis of advertised rents in the Sydney Olympic Park suburb found that rents for one-bedroom apartments in a BTR development were 19% higher than in nearby build-to-sell developments, while this gap grew to 27% for two-bedroom apartments.¹¹

The CEH supports the draft *Build-To-Rent Developments* legislation’s requirements for a variety of dwelling types to be provided as affordable housing within each development. This is an encouraging development towards addressing concerns over bad-faith compliance with affordable housing requirements, whereby affordable units can be of poorer quality and smaller size than market-rate units.¹²

Defining Affordability

As raised by the Treasury, Australia lacks a consistent national definition of ‘affordable housing’, with variation existing between jurisdictions. A single definition of affordable housing would be a welcome development in order to limit confusion and inconsistency between jurisdictions.

When considering the definition of affordability as set out within the draft legislation, it is not clear that units provided as affordable would be accessible to low and very low-income earners.

Table 1 shows median rents for several capital cities discounted to 74.9% of their total value. When compared with median weekly earnings (main job) for these capital cities, it is evident that discounted rents are close to or above 30% of weekly earnings.

⁷ Victoria State Government, *Build-To-Rent Working Group* (Report to the Treasurer and Minister for Planning, 15 October 2021) <<https://www.dtf.vic.gov.au/sites/default/files/document/Build-to-rent%20Working%20Group%20Report%20to%20the%20Treasurer%20and%20Minister%20for%20Planning.pdf>>..

⁸ *Ibid.*, p. 17.

⁹ Center for Equitable Housing (n 2).

¹⁰ Productivity Commission (n 5).

¹¹ Charter Keck Cramer, *Build-To-Rent Rental Premium* (6 April 2022) <<https://charterkc.com.au/build-to-rent-rental-premium/>>..

¹² National Shelter, *Inclusionary Zoning* (27 March 2019) <<https://shelter.org.au/national-shelter-inclusionary-zoning-report/>>..

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Table 1: Median Weekly Unit Rents (discounted) and Median Weekly Earnings

	Sydney	Melbourne	Brisbane	Perth
Median Weekly Unit Rents, December 2023 ¹³	\$680	\$528	\$554	\$538
Median Weekly Unit Rents, discounted to 74.9%	\$509.32	\$395.47	\$414.95	\$402.96
Median Weekly Earnings (Main Job), August 2023 ¹⁴	\$1,400.00	\$1,341.00	\$1,347.00	\$1,346.00
Median Weekly Earnings (Main Job) as a Percentage of discounted rents	36%	29%	31%	30%

While these calculations do not take into account local variations in market rents, it should be noted that the majority of BTR approvals and constructions, particularly in Victoria, have occurred on sites within five kilometres of the CBD.¹⁵ This indicates that actual local market rents may be higher than metropolitan medians. While discounted rents within BTR will widen the accessibility of this housing model to moderate-income earners, it is not likely that low- and very low- income earners will be able to access affordable dwellings provided within these developments.

When considering the housing needs of the lowest income earners, only greater investment in social housing is the appropriate solution. Long-term, secure housing offered within social housing by housing providers without profit motives can meet the needs of low-income, insecurely housed and homeless individuals in a way privately- owned and operated housing cannot.

Conclusion

The CEH broadly supports this draft legislation. Build-to-rent housing offers an alternative to the short-term, insecure experience of renting from small, ‘hobby’ landlords. Including an affordability requirement for tax concessions will broaden the accessibility of BTR housing, however, is not comparable to the social function of the declining social housing sector in Australia.

The CEH recommends that a standardised national definition of ‘affordable’ dwellings is developed to increase coherence of affordable housing policy across jurisdictions. The CEH also notes that private provision of affordable housing cannot replace the significant investment in social housing required to meet the housing needs of low- and very low-income earners.

¹³ Corelogic, *Quarterly Rental Review* (December 2023)

¹⁴ ‘Employee Earnings, August 2023 | Australian Bureau of Statistics’ (13 December 2023) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings/latest-release>>. Capital Cities selected based on data availability.

¹⁵ Franklin St., ‘The BTR Database: Q1 2024’ (January 2024) <<https://www.franklinst.com.au/news/build-to-rent-january-2024/>>.