

Submission on Build to Rent Concessions CHIA, National Shelter and PowerHousing Australia

22 April 2024



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Introduction

The Community Housing Industry Association (CHIA) and National Shelter welcome the opportunity to make this short response to the Australian Treasury consultation on the proposed Build to Rent (BTR) Concessions.

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 150+ members collectively manage more than 125,000 homes, valued at over \$40 billion for the benefit of our residents and their communities.

PowerHousing Australia facilitates a national network of 37 tier 1 registered and growth Community Housing Organisations (CHOs) who provide most of the social and affordable housing in the sector. The majority being homes for low to moderate income earners and vulnerable Australians. Our 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.

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.

All organisations see value in an expansion of the market BTR sector. With the right policy settings this sector could provide better quality accommodation and services 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.

Clearly, market BTR will not solve the much bigger challenge of rental affordability for lower income households, specifically those in the bottom two income quintiles. An expansion of the market BTR sector therefore needs to take place alongside continued growth in affordable BTR provision. We therefore commend the draft legislation in its inclusion of measures aimed at linking these twin objectives.

We are also conscious that, in itself, the tax changes envisaged in this legislation may not be sufficient to evoke a significant increase in BTR output.

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

Minimum Affordable Tenancies

We have assumed that in developing the legislation, Treasury will have undertaken modelling to determine an appropriate minimum percentage of affordable tenancies so that it does not impact on project feasibility. One issue faced by affordable BTR providers is that they are unable to compete for land against build to sell (BTS) developers. While market BTR providers will not be at such a disadvantage it is important to ensure they remain competitive with BTS rivals on site acquisition. **We recommend that the legislation incorporates a review after one year to assess its impact on project feasibility.**

Given the importance we attach to including affordable tenancies, rather than see the percentage decreased or indeed removed in the face of likely industry resistance, we are open to a transition period to achieve the 10% target and / or a moderate additional reduction in the withholding tax rate to facilitate such provision.

The legislation envisages affordable tenancies only needing to remain as such for 15 years. We can envisage a scenario where a development project carrying such an obligation might be put forward for other forms of government support – e.g. subsidy under the Housing Australia Future Fund. No such bid should be funded without a commitment to enhancing the project's offer regarding the inclusion of affordable housing – this might involve expanding the proportion of affordable tenancies in the scheme and/or designating such tenancies as affordable in perpetuity.

However, where there are existing planning concessions available (or scope to negotiate voluntary planning agreements) which do not require affordable housing to be maintained in perpetuity we assume these could be used by market BTR developers to enhance project feasibility. Another option is for market BTR providers to partner with community housing organisations (CHOs) to enable a GST concession to be claimed for the affordable homes to be built as part of the scheme.

Over the longer term, perhaps via the National Housing Accord process or through the Planning Ministers national planning blueprintⁱ, there could be merit in implementing the National Housing Supply and Affordability Council recommendation in their *Barriers to Institutional Investment, Finance and Innovation in Housing Report*ⁱⁱ. This recommends that BTR is a 'separately defined development type Commonwealth, state and territory governments should develop nationally consistent planning provisions under which large-scale build-to-rent projects are a separately defined development type subject to expedited planning and development assessment.'

The draft legislation stipulates a range of different sizes of apartments to be designated as affordable rental. **While ensuring the standards of the apartments - energy performance and room size - are comparable it is perhaps important to allow some flexibility on size, to reflect the need in different locations.**

Definition of Affordable Tenancies

The proposed definition seems reasonable given the proposed income eligibility limits are fairly high - substantially above those for the government's proposed Help to Buy Scheme, and, for a single person household, double the National Rental Affordability Scheme income limit. These affordable tenancies are clearly a product aimed at moderate and even higher income earners.

While there may be a concern that many current market BTR properties are at the premium end of the market, we hope that a wider range of products will be constructed and thus the intention to charge 74.9% of a rent for a similar unit (as set out in the Fact Sheet) in the same development also seems reasonable. However, the legislation **specifically Subsection 43-152 (3d) should specify the definition of market rent** as this currently leaves it open to interpretation. More 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.**

Compliance

It is critical to put in place a strong and fair process for (1) ensuring a fair mix of homes (2) allocations to the affordable tenancies, (3) ensuring tenants remain eligible, (4) providing assurance that the homes remain

affordable and (5) 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 include using registered CHOs for the tenancy management of (at least) the affordable tenancies – i.e. requiring that the latter are CHO-allocated and managed. 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. 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.

Further, a growing number of CHOs also operate ‘for purpose’ real estate agentsⁱⁱⁱ and have the skills and experience to manage both market and affordable tenancies at scale.

Other Potential Considerations

Other issues to consider possibly as part of the recommended review after the first year are:

- Whether the affordable tenancy requirement could be delivered via a cash equivalent payment that could be used for affordable tenancies elsewhere in the same local government area. In some circumstances this might be more cost effective and a better outcome particularly if the tenancies remain as affordable for a longer duration
- Whether a lower percentage of affordable tenancies could be agreed if these are designated affordable in perpetuity.
- Whether the 50 unit threshold for eligibility might discourage investment in market BTR in regional centres or in class 1 buildings (houses). Experience in the UK is that both these types of development have become more common as the UK’s build to rent sector has matured over the past decade.

An Alternative (Longer Term) Approach to including Affordable Tenancies

While it is outside the scope of this consultation, 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.

ⁱ [Planning Ministers’ Meeting February 2024 Communiqué | Ministers for the Department of Infrastructure](#)

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

ⁱⁱⁱ [Property With Purpose Network \(PWP\) – Community Housing Industry Association](#)

^{iv} [Constellation Project Submission to the NHHP- MIZ national framework 2023.](#)