TENANTS' UNION
OF NEW SOUTH WALES

Tenants' Union of NSW
Gadigal Country
PO Box Q961 QVB Market St NSW 1230
ABN 88 984 223 164

P: 02 **8117 3700**
F: 02 8117 3777
E: contact@tenantsunion.org.au
tenants.org.au

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Director
Corporate Tax Policy Unit
Corporate and International Tax Division
Treasury
Langton Cres
Parkes ACT 2600

Re: Exposure Draft Legislation for Build-to-rent tax concessions

To whom it may concern

Thank you for the opportunity to provide this brief feedback regarding the proposed build-to-rent tax concessions.

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the state-wide network of Tenants Advice and Advocacy Services (TAASs) in New South Wales.

The TAAS network assists more than 35,000 tenants, land lease community residents, and other renters each year. We have long-standing expertise in renting law, policy and practice. The Tenants' Union NSW is a member of the National Association of Renters' Organisations (NARO), an unfunded federation of State and Territory-based Tenants' Unions and Tenant Advice Services across Australia. We are also a member of the International Union of Tenants.

We aim for a rental sector that supports safe, affordable and healthy homes. Build-to-rent can play a part in this but has not yet begun to deliver on marketing promises. Commercial build-to-rent is a fledgling part of the housing sector. If the intent is to grow development in this area, then the actual experience must begin to match.

For more information on this submission, contact Leo Patterson Ross, CEO on ceo@tenantsunion.org.au.

Effective building lifespan

The bill proposes to increase the capital works tax deduction from 2.5% to 4%. This changes the effective lifespan of capital works from 40 years to 25 years, creating an incentive in the form of greater tax deductions for the period.

The theory of build-to-rent is that the relationship between provider, property and renter changes because the properties will be kept as a long-term rental rather than sold back and forth between owner-occupation and investment sectors. Concessions should apply only to developments that demonstrate that the purpose of the development was to rent out the premises and keep the incentive. The median holding period for investors in NSW is nearly 9 years, however one in three will still ordinarily hold a property 15 years after purchase.[1] This suggests that 15 years is too short a time to indicate a different approach than what may be expected in the usual course of events.

The reduction of depreciation to an effective lifespan of 25 years suggests this should be the minimum timespan, however we recommend that 40 years is a more reasonable expectation that the building remains in single-ownership and available for rent. We note that ownership can change hands during this period, allowing owners to liquidate and exit if required, but without disturbing the integrity of the build-to-rent development.

We acknowledge that this longer period may mean that a developer may determine that it is commercially attractive to entirely redevelop the building. It may be appropriate for this to be an exemption within an extended 40 year compliance period.

Recommendation

1. Extend the compliance period requiring a development remain in single-ownership and available for rent as defined for 40 years.
2. Consider other consequential amendments if time is extended, such as redevelopment.

Estimation of market rent

The Bill determines that the affordable premises must be 74.9% of similarly sized properties in the development. This is inconsistent with affordable housing definitions in other instruments, such as NSW's Affordable Housing Guidelines, which generally set market rent with reference to the local median.

We note that Affordable Housing may not deliver genuine affordability outcomes and should be considered distinct from housing which is affordable. We are aware of Affordable Housing in Sydney which cannot be inhabited by an eligible person without being in rental stress.

[1] Bandeira, G., Malakellis, M., and Warlters, M. (2022) *Holding periods of residential property buyers in NSW*, NSW Treasury. Accessed 22nd April 2024 at https://www.treasury.nsw.gov.au/documents/trp22-13-holding-periods-residential-property-buyers-nsw

Many build-to-rent developments have been priced at the higher end of the relevant local market. A reduction to 74.9% may not create rent levels that are affordable to the intended cohorts.

Our analysis of new rents as measured by bond lodgings in NSW suggests that the top quartile of rents would result in rents above 30% of income for people eligible under the proposed income limits. This is especially true for 3 bedroom apartments which are likely to be housing families.

	Rents at 75th percentile for January-March 2024		If rents reduced to 74.9% of reference as % of income for eligible family	
Sydney SA4	2 bedroom units	3 bedroom units	Percentage of income for 2 bedroom	Percentage of income for 3 bedroom
City and Inner south	$1,250	$1,600	34.27%	43.87%
Eastern Suburbs	$1,100	$1,696	30.16%	46.50%
Inner South West	$750	$890	20.56%	24.40%
Inner West	$880	$1,200	24.13%	32.90%
North Sydney and Hornsby	$900	$1,300	24.68%	35.64%
Northern Beaches	$903	$1,400	24.76%	38.38%

Table 1. TUNSW Analysis of Rental Bonds data. SA4 approximations using conversion from postcode level data.

We note that the Australian Bureau of Statistics has statistical capacity to provide rent price information alongside wages information and this could be utilised in this purpose.

Recommendation

3. Develop a nationally consistent definition of “Affordable Housing” that considers the affordability outcomes.
4. Alternatively, housing under the Bill to be delivered using the relevant definition in each local jurisdiction, but no more than 74.9% of median rent in the relevant Greater Capital City Statistical Area to be determined by the Australian Bureau of Statistics and amended in the legislation alongside income requirements.

Leasing requirements

We welcome the inclusion of requirements concerning the leasing and tenancy management aspects of build-to-rent, notably the requirements that properties are to be rented for 3 year periods. We welcome the attempt to ensure improved stability. We note that occupancy below 6 years is associated with worse mental health outcomes for renters than owner-occupiers, and so a 5-6 year occupancy should be the target.[2]

Longer leases should not come with onerous break fees that act to decrease renter's mobility choices, whether to pursue other opportunities or act to find a better deal. We recommend that if build-to-rent developers are using long leases they should commit to no break-lease penalties, and charging penalties for the renter to leave should be non-compliant activity. This encourages a consumer-centric approach appropriate for the build-to-rent sector who claim to be offering a superior experience and greater financial security than small-holding landlords, while guaranteeing residents stability and mobility choices.

Given that build-to-rent developments are owned with the intent of ongoing rental, within the compliance period use of certain eviction reasons should be non-compliant activity. Use of eviction notices which are incompatible with the build-to-rent approach should be determined as non-compliance alongside failure to offer long-term leases. Incompatible grounds include 'no grounds' or 'no cause' evictions whether at the end of fixed terms or during periodic agreements as well as use of 'reasonable grounds' such as sale of property,

An alternative approach may be for the Minister to be given the ability to determine leasing requirements and publish these as regulations. We note a regulatory power relating to income and eligibility is already included in the bill.

Recommendation

5. During compliance period, require lease offerings of at least 5 years, with no break-lease penalties.
6. During compliance period, require no usage of incompatible eviction grounds.

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[2] Li, A. Baker, E. and Bentley, R. (2022) *Understanding the mental health effects of instability in the private rental sector: A longitudinal analysis of a national cohort*. Social Science & Medicine, Volume 296, March 2022.