



Australian Government



Australian
Charities and
Not-for-profits
Commission

15 July 2024

Dr Sean Turner
Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Submitted online: [Treasury Laws Amendment \(Build to Rent\) Bill 2024 and Capital Works \(Build to Rent Misuse Tax\) Bill 2024 – Parliament of Australia \(aph.gov.au\)](#)

Our reference: ACNCSUB2024-009

Dear Dr Turner

Inquiry into Treasury Laws Amendment (Build to Rent) Bill 2024 and Capital Works (Build to Rent Misuse Tax) Bill 2024

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to comment on the Treasury Laws Amendment (Build to Rent) Bill 2024 and Capital Works (Build to Rent Misuse Tax) Bill 2024.

About the ACNC and the charity sector

2. The ACNC is the national regulator of charities established by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**). The objects of the ACNC Act are to:
 - a. maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
 - b. support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
 - c. promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.
3. Many charities provide housing to further their charitable purposes, including to advance social or public welfare. On the Charity Register, 353 charities and charity groups currently list the provision of social housing, including Aboriginal housing, community housing and public housing, as one of their charitable programs. This does not include the provision of temporary accommodation or supported housing.

Schedule 1 – Build to rent developments

4. The proposed s 43-153 in Schedule 1 of the Treasury Laws Amendment (Build to Rent) Bill 2024 sets out the eligibility requirements for developments to be considered an



“active build to rent development”. Sub-section 43-153(3) states that the Minister may determine by legislative instrument, the income requirements for the tenants.

5. The development must meet the criteria for a relatively long time. The Commissioner of Taxation has a discretion as to whether to accept the development has met the criteria, per s 43-153(7), and the factors to be considered include whether the entity took “all reasonable steps to ensure that the dwellings would satisfy the eligibility criteria as soon as practicable”.
6. Notably, the draft legislation does not include any safe harbour for the housing provider should a tenant’s income increase beyond the eligibility requirements during the tenancy. Given the obligation on the provider to ensure that the dwellings would satisfy all eligibility criteria as soon as practicable, we consider that housing providers will be expected to move those tenants out.
7. We accept that continuing to provide housing to such tenants may fulfil the charity’s charitable purpose, and as such we do not expect charities to require these tenants to move out. Reasons for this include that:
 - a. Stable housing can improve a beneficiary’s ability to succeed in obtaining and retaining employment. Removing the housing may be counterproductive.
 - b. There may be other factors that mean the beneficiary remains in distress or disadvantage such that they need relief through the provision of housing.¹
 - c. The increase in income may be temporary.
8. We suggest amending the draft bill to clarify this issue.

Next steps

9. If you have queries about this submission, please contact Joanna Austin, Director, Legal and Policy, joana.austin@acnc.gov.au.

Sue Woodward AM
Commissioner
Australian Charities and Not-for-profits Commission

¹ ACNC, *Commissioner’s Interpretation Statement: Provision Of Housing By Charities* (5 November 2021) <https://www.acnc.gov.au/tools/guidance/commissioners-interpretation-statements/commissioners-interpretation-statement-provision-housing-charities> at [24].