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CONSULTATION ON INCREASING THE SUPPLY OF AFFORDABLE HOUSING

Thank you for the opportunity to comment on the Treasury Laws Amendment (Reducing Pressure on Housing Affordability No. 2) Bill 2017 and the Income Tax (Managed Investment Trust Withholding) Amendment Bill 2017.

The Community Housing Industry Association welcomes the measures contained in these two Bills and the recognition that delivery of affordable housing via the regulated community housing organisations is the best way to ensure that the objective of the measure will be met.

We endorse the provisions in the Bills which limit tax concessions to affordable rental housing targeted at people on low to moderate incomes. It is well-documented that addressing rental stress among lower-income households requires an increase in the supply of affordable housing product, not simply an increase in overall supply.¹ We would not support extending these concessions to investors in 'build to rent' accommodation unless it is affordable to those on low to moderate incomes. Further, we note that the expanding purpose built student accommodation sector is clear evidence that the build to rent sector is able to thrive in Australia without such concessions.

Through this consultation, you have sought feedback on four key matters.

The proposed criteria for affordable housing – i.e. tenant eligibility to be assessed using

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¹ See for example, Hulse et al (2015) Supply shortages and affordability outcomes in the private rental sector, short and longer term trends. AHURI Final Report, No. 241. Melbourne.

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relevant State/Territory social and affordable housing policies.

For reasons of simplicity, consistency and transparency, it would be preferable to express the tenant eligibility conditions and rules around eligible rental in this legislation rather than by reference to state and territory policy settings. If there are reasons to pursue a policy-based scheme rather than a legislative one, then as a minimum we suggest that a single set of policy rules be tabled in the Federal Parliament.

The Explanatory Memorandum describes the objective of this legislation as being to address housing affordability for people ‘earning low to moderate incomes’. Broadly speaking, the terms ‘low and moderate incomes’ are used to describe people or households in the bottom two and three income quintiles respectively. We consider targeting affordable housing to people in the bottom 60% of household incomes is appropriate, given that housing stress falls most sharply on people on the lowest incomes. However, jurisdictions do not use the same definitions of income, nor apply the same income limits in their affordable rental housing policies. Sometimes different measures of income are used even within a jurisdiction. For example in New South Wales ‘Eligibility, including income limits, can vary depending on the way a property was funded or developed, and who manages it’.

In the absence of a single set of legislated requirements, we would like to see jurisdictions agree to a common policy position on core matters before 1 January 2018, with the aim of reducing complexity for potential tenants, investors and community housing organisations. A common approach would reduce complexity and inconsistency. It would also facilitate data-matching with the Australian Taxation Office, Centrelink and state governments, thus minimising the compliance burden on both community housing organisations and the ATO. The most obvious area of divergent policy and practice is how income is defined and where income limits are set. There are other eligibility questions which should be resolved at the outset. For example, guidance is sought on whether residence or citizenship restrictions will be placed on prospective tenants to exclude refugees or overseas students. Paragraph 1.34 of the Explanatory Memorandum proposes that premises used to provide accommodation ‘in connection with an educational institution that is not a school’ will be included in the measure. We would appreciate confirmation as to whether this includes or excludes purpose built student accommodation off campus which is not owned by, or contracted to, an educational institution. In relation to the eligibility of overseas students, we note that verification of tenant income from overseas is particularly problematic. Other tenant eligibility questions which would benefit from a common approach include policy on asset testing and the eligibility of prospective tenants who own or are purchasing a property elsewhere.

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In the absence of a common policy settings, community housing organisations operating across multiple jurisdictions will face increased administrative complexity and operating costs. These cross-border organisations will need to develop differentiated staff training products, IT systems, tenant advice material and so on. While this affects a small number of larger providers at present, it represents an unnecessary cost which could be avoided by standard provisions set out in Commonwealth legislation or policy.

The administration and compliance costs – such as record keeping, reporting requirements and the annual ‘certificate’ to be provided by CHPs

Given the spare detail in the Bills and the absence of a regulatory impact statement, it is difficult to provide constructive comment on the administration and compliance costs which might be incurred by either community housing organisations or investors. In particular, we seek more detail on the nature of the annual certificate to be provided by community housing organisations to investors, the schedule of information to be supplied to the ATO and the expectations around documentary evidence which will need to be collected to support either tenant or rental assessments.

We are encouraged by suggestions of Treasury officials that the compliance regime will be less onerous than the regulation-heavy National Rental Affordability Scheme. Our members would be happy to help design an appropriate risk-based compliance regime which supports these current measures without creating an unnecessary red-tape burden and which protects both the tax-payer interests and the reputation of the community housing industry. There are many opportunities to minimise the compliance overhead, including piggy-backing tenant eligibility assessments on existing Centrelink or state government entitlement assessments and data-matching. We would welcome the opportunity to discuss these approaches further.

The provision permitting the Commissioner of Taxation to disclose information to registrars of community housing, if the Commissioner has information suggesting that a CHP should no longer be registered

We understand that specific legislative provision is required to enable the Commissioner of Taxation to disclose information to the registrar, however we remain unclear about the circumstances which it is considered would prompt this disclosure. We would welcome more information on the concern behind this provision. In this regard, we note that the entity which has most to gain from fraudulent behaviour or misrepresentation under this legislation is not the community housing operator managing the tenancy.

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The proposed changes to MITs and tax incentives for institutional investment in affordable housing

We understand that together with other measures in the 2017-18 Budget, these Bills attempt to redirect foreign investment away from the pursuit of capital growth and towards passive investment income from long-term rental property. We note that Australia has Taxation Information Exchange Agreements in place with a relatively small number of non-OECD countries, which may limit the attractiveness of the proposed 15% withholding tax. In particular, it appears from the Australian taxation office website that there is not a TIEA in place with China.

We support the integrity measure limiting MIT investments to affordable housing rather than residential property more broadly and we regard the 10-year transitional period for MITs to divest their portfolios of non-affordable housing as more than reasonable.

The provisions enabling Managed Investment Trusts to derive some (smaller) part of their incomes from other activities including construction or development of affordable rental housing is a sensible inclusion. The experience of the community housing sector is that the social and economic outcomes from residential development projects are greatest when the projects involve a mix of properties for sale and for rent.

Other matters

The implementation date of 1 January 2018 for individuals investing in eligible affordable housing appears optimistic given the fundamental questions of tenant eligibility, rent settings and the compliance requirements are not yet settled.

Please do not hesitate to contact me at [REDACTED] if you require more information on any of the matters raised in this submission.

Peta Winzar

Chief Executive Officer

28 September 2017

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