



Grounded

Community Land Trust Advocacy

BTR Tax Concessions Submission

- Commentary on Exposure Draft Legislation

Grounded makes this submission on behalf of those locked out of housing.

For profit developers rarely provide affordable housing at levels lower income earners require. Too much is known of BTR's behaviour in the northern hemisphere to allow the draft legislation go through unchecked.^{1 2 3 4}

The exposure draft makes no mention of the lease conditions and the ability to **increase rents during that lease**. What oversight is provided to ensure rents aren't increased by double the WPI or CPI? Tenants in one of Victoria's first BTR's faced rent increases of between 9-17% upon nearing the end of their first year.⁵ Additionally, what increases are permitted at the end of lease?

The edifice of BTR's advocacy is that more supply will deliver lower rents. But at no point is a legislative claim placed on for-profit developers to meet any competitive outcomes for renters across the board. Why does government continue to produce housing policy as if the market is a purely competitive one? The monopoly power enabled by this legislation is overlooked as if the industry has no responsibility to maximise profits for shareholders, financiers and executive bonuses.

¹ D Fields, [Automated landlord: Digital technologies and post-crisis financial accumulation](#), SAGE, May 2019.

² A Semuels, [When Wall St is Your Landlord](#), The Atlantic, Feb 2019.

³ M Abood, [Wall St Landlords Turning American Dream into American Nightmare](#), ACCE, June 2018.

⁴ A Ferrer, [Beyond Wall St Landlords](#), SAJE, March 21.

⁵ C Kelly, [Build to rent? The Melbourne apartments where a third of tenants are being kicked out or getting rent hikes](#), Guardian Australia, Nov 23.

Whilst the government has withstood the property lobby's calls to reduce the affordable housing provision to 5% of dwellings (maintaining it at just 10%), there is no requirement that the remaining 90% of rentals will add to competitive supply.

If the public estate is giving the BTR industry nearly all they want, what is being required of them in return?

How will that rental supply initially be rolled out? Will government be keeping an eye on the initial supply and whether it is **teased out to manufacture scarcity** and therefore maintain rents? There should be some balance between the dominance of BTR market power and the capacity of this supply to push down rents. If business as usual strategies are allowed, such rental supply will do little to address society's problems.

Transparency over **occupancy permits** issued and **rents charged** can provide insight into reasonable efforts to push rents down.

The initial roll-out phase of stock should be **limited to 15 months** from the first **occupancy permit**. This will deter the staging of releases to maximise rents.⁶ BTR developers should also be required to ensure that rental vacancies are no greater than 3%. This is often quoted by real estate as a market equilibrium,⁷ so let's see it in action. The combination of these supply requirements would apply pressure to profit seeking via scarcity strategies.

There should not be any reason BTR cannot **maintain a 3% or lower vacancy rate** for the majority of the financial year. It is imperative that this be addressed as the discounted land taxes will enable BTR operators to hold sites vacant until the resident is forced to pay the asking rent. Trickle down housing supply is not possible when market power is accentuated and reinforced by proptech and its associated algorithms.

This is particularly of note as US proptech developers have been found to use algorithms to **coordinate rent increases** in oligopolistic fashion.⁸

Another requirement should be a **maximum vacancy period of 60 days**. This would re-balance some of the power enjoyed by the BTR industry.

A monthly report could easily be developed with barely a day of algorithmic coding, triggering a rental vacancy report based on bonds lodged.⁹ This data is already collected by BTR operators, so why not government see it too?

⁶ K Fitzgerald, [Staged Releases - Peering Behind the Land Supply Curtain](#), July 2022

⁷ O Conrau, [REIA - Housing Shortage Leading to Record Rental Growth](#), REIA, Mar 23.

⁸ H Vogel, [Rent Going Up? One company's algorithm could be why](#), Pro Publica, October 2022.

⁹ K Fitzgerald, [Speculative Vacancies 10 - The Persistent Puzzle](#), Prosper Australia, Dec 2020

There is no reason BTR cannot deliver this outcome. If BTR can lean in on proptech to make savings, what is government doing to ensure **proptech can assist governance oversight**? It is confronting when understanding just how much data is collected by BTR.¹⁰

“Data collected includes: Name, date of birth, email address, phone number; Household demographics - people, names, ages (incl.children); marital status; Pets (breed, name, weight, photos); Employer, profession, role, salary, time in position; Financial information from payslips, bank statements and tax returns, incl.: bank balances; saving’s track record; debts; full transactions history; Rental history incl.: previous landlord, rent, address; duration of residency; reason for moving; Immigration status and nationality: visa, passport, birth certificate (and associated information, place of birth, travel history). References (details of professional, housing agent and personal contacts plus any information they provide; Social networks: information from references; next of kin details; Photo identification; Social media accounts; Transport (car type, car registration). Identifies lease(s), lease duration, and lease conditions; Unit number, location and type.”¹¹

Such data streams have become valuable, to the extent that academics now call this ‘**double threat enclosure**’, inferring that BTR and proptech encourage the convergence of landlords and Big Tech to extract rents from both location and data agglomeration.¹²

This legislation makes no mention of **protecting tenant data**, which are often attained via privacy intrusions without the renters consent. This must be addressed.

The explanatory notes mention a “Specific reporting mechanism @ 1.63 to be included in [Schedule #, item 5, subsection 43-153(1) of the ITAA 1997]” . This could be expanded to include:

- Upon opening, the occupancy permits approved per month as a % of remaining titles
- Rents charged per new lease, per dwelling size, per month
- Number of vacant titles and rent requested per month
- Length of vacancy per month, per title
- Number of annual eviction notices, with detail on process per annum.

Nowhere in this legislation is a requirement that corporate landlords are banned from **evicting a tenant to increase rents**. A recent example in Melbourne found tenants were evicted to make use of

¹⁰ M Nethercote, [Platform landlords: Renters, personal data and new digital footholds of urban control](#), Digital Geography and Society, Volume 5, 2023

¹¹ ibid

¹² Sadowski, J. (2019). [When data is capital: Datafication, accumulation, and extraction](#). Big Data & Society, 6(1).

tight market conditions to rack rents.¹³ Simple data reporting requirements could see such information provided to government, rather than being left to journalists.

Evictions should be limited to 5% of tenants and strict thresholds should be set for this capability. Tenants must have a record of rent in arrears with multiple mediation attempts overseen by an independent arbitrator. Abuses of this process by BTR should lead to the removal of depreciation allowances. Escalating penalties overtime should be enabled for repeat offenders.

The exposure draft 3 (d)(i) states:

“for 10% or more of the dwellings (the affordable dwellings): 19 (i) rent payable under any lease offered to the public for the 20 dwelling is 74.9% or less of the market rate; .”

Further clarification is required to define if this market rate is set at a suburban or area median market rate.

On a typical 50 dwelling development, one can expect *just 5 affordable dwellings* to be provided. The taxpayer will be handing millions in enhanced depreciation write-offs and associated tax discounts for just a handful of ‘affordable’ properties.

1.35 The owner must make at least one of each of the three types of apartments an affordable dwelling. This requirement is in addition to the requirement that the owner makes available at least 10 per cent of the dwellings as affordable dwellings (i.e. the owner must ensure at least 10 dwellings are affordable dwellings).

This is shocking. Is there a **dog-box minimum size** for the 1BRM apartments required? What is stopping these rooms from being capsule sized?

1.36 As noted in paragraph 1.33 of this Explanatory Memorandum, any requirements determined by the Minister via a legislative instrument must be satisfied for a dwelling to be considered an affordable dwelling. These 11 Build to rent developments requirements can only relate to the income of the tenant or prospective tenant. [Schedule #, item 5, subsection 43-152(4) of the ITAA 1997]

This need be strengthened to include the standard definition of affordability, with the 3040 rule enacted for an Area Median Income for the entire city. This will assist some housing being suitable for those on lower incomes in likely wealthier BTR locations. The depreciation allowances and the 15 year operational window make these sites **valuable land banks of the future**.

¹³ C Kelly, [Vacated Fitzroy tenants see their former apartments relisted for hundreds of dollars more](#), Feb 2024

Surprise was noted at the ability of hostel providers to claim the 4% deduction as per section 1.46 in the exposure draft. We hope this generous deduction is extended to 100% affordable housing projects driven by the CHP and not for profit sectors.

We believe that the BTR holding period must be **increased from 15 to 20 years**. The shorter timeframe will incentivize the land banking perspective as a driver of investment returns.

What will happen to repairs and maintenance in that 10-15 year time window? One can expect such care to dwindle as the operator shores up finances to renovate towards penthouses and higher income orientated dwelling. Is any duty of care aspect incorporated into this **windup phase**?

What precautions has government enacted during this wind down phase, that sites aren't purchased in the last 5 years by short term operators who will plan to **dramatically increase rents**? New York's rent stabilised apartments and related land banking strategies offer some lessons lawmakers should take onboard.¹⁴

One would expect that the limits to eviction and maintenance of a 3% vacancy rate would be particularly useful at this point in the building's life cycle.

Conclusion

The market power enabled by state and federal tax discounts for BTR must be counterbalanced to ensure BTR dwellings do not become rentier extraction sites.

As private equity finds more streamlined ways to raise funds from multiple sources, government must do more to future proof concepts such as BTR. Real estate and the land that sits under it are monopoly assets that work towards agglomerating power. This legislation must do more to ensure such power imbalances between landlord and tenant are not even more magnified than witnessed in today's harrowing housing market.

For-purpose housing would provide a more holistic outcome if the aim of this legislation was to genuinely provide affordable rental supply. It appears these concepts have been given lip-service as Wall St is ushered in to rack rent from Australian communities.

Community Land Trusts offer a more holistic public interest outcome where government incentives can be recycled and scaled to deliver perpetually affordable housing.¹⁵ Such projects offer 100% affordable supply, guaranteed into the future.

www.grounded.org.au

¹⁴ B Anderson, [NYC investors hunt for distressed deals](#), Jan 2024

¹⁵ K Fitzgerald, [CLT 101](#), Nov 2022