KWM'S SPRINT TO THE FINISH

ANNUAL CPD PROGRAM | MARCH 2025

AUSTRALIA'S TIPPING POINT

FILLING THE HOUSING SHORTFALL

The Mind Wanders by Anya Love

TITLE OF SECTION

AGENDA

1 SCENE SETTING

Problem! What problem?

2 PLUGGING THE FUNDING GAP

A lot is being done but is it enough?

3 TAX & STAMP DUTY

The tax take and how that impacts the industry

4 UNLOCKING LAND FOR FUNDING

Planning reforms to enable more housing

5 WRAP UP

Top of mind future issues

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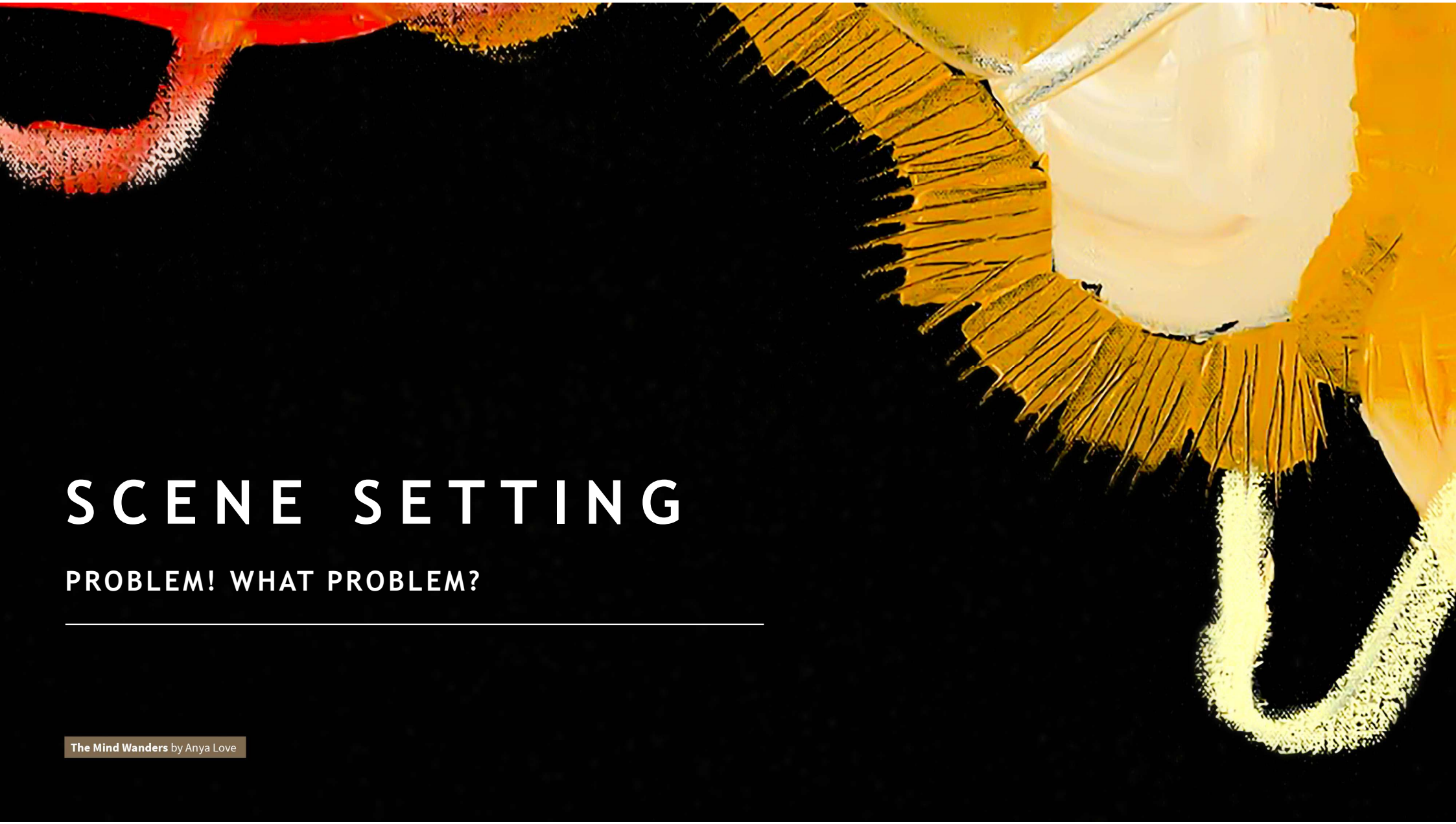

SCENE SETTING

PROBLEM! WHAT PROBLEM?

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PROBLEM! WHAT PROBLEM?

National Housing Supply and Affordability Council's **August 2024 report**:

- Affordability worsened in 2023:
  - Scheduled repayments for borrowers ↑ 60% since May 2022
  - 13% homes sold in 2022–23 were affordable for a median income household
  - Advertised rents ↑ 8% in 2023 & ↑~35% since 2020
  - Rental vacancy rate is 1.6% – optimal is 3-4%

2023

- Only 172,000 dwellings completed.
- Need 240,000 pa to meet the 1.2m target.

Not our first rodeo…

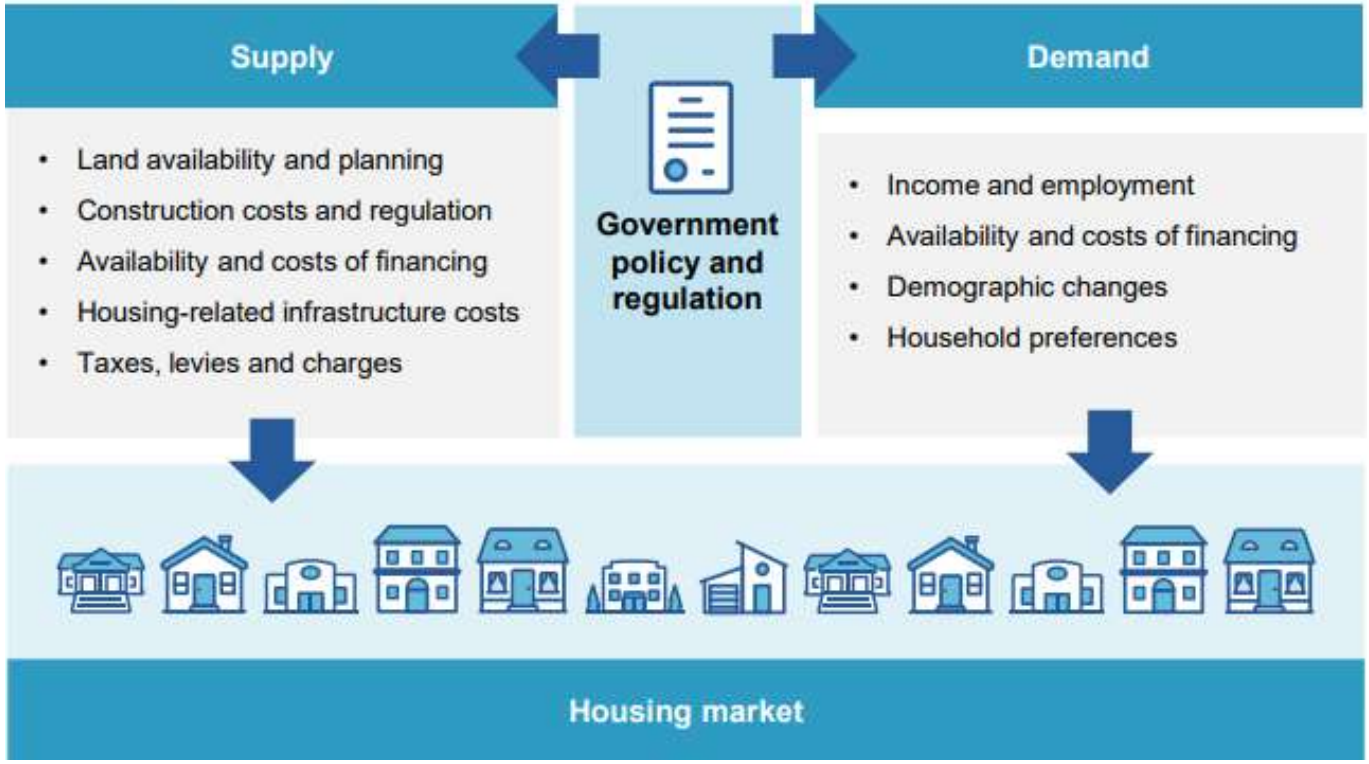
- **Mar 2022** The Australian Dream - Parliament of Australia
- **Dec 2015** Out of reach? The Australian housing affordability challenge, Senate Standing Committee on Economics
- **Mar 2004** First Home Ownership

In the Commission's view, both sides of the market have contributed to observed outcomes. However, the *dominant* source of the widespread escalation in prices has been a general surge in demand — above the normal increases associated with population and income growth — to which supply was inherently incapable of responding, at least in a way that could moderate the pressure on prices in the short term. There are several elements to the explanation.

AUGUST 2022 - PRODUCTIVITY COMMISSION REPORT

Figure 2.4 – The housing market is affected by demand and supply

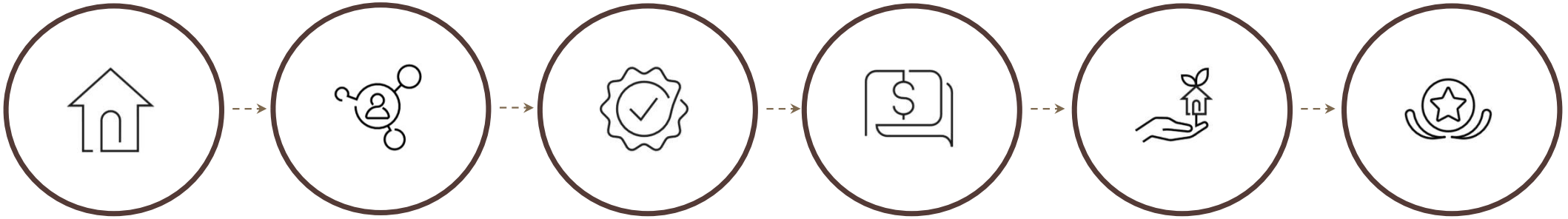
Market supply and demand drivers



Source: In need of repair: The National Housing and Homelessness Agreement

SETTING THE SCENE

THE HOUSING SPECTRUM



PUBLIC

- OWNED & OPERATED BY STATE GOVERNMENT

COMMUNITY

- OWNED OR OPERATED BY COMMUNITY HOUSING PROVIDERS

AFFORDABLE

- KEY WORKER
- LOW-TO-MODERATE INCOME HOUSEHOLDS

MARKET RENTAL

- PRIVATE INVESTOR STOCK
- BUILD-TO-RENT
- CO-LIVING
- STUDENT ACCOMMODATION
- LAND-LEASE

SHARED EQUITY

- SHARED EQUITY
- RENT TO OWN

PRIVATE OWNERSHIP

- ESTABLISHED DWELLINGS
- HOUSE & LAND PACKAGES
- OFF-THE-PLAN

WHAT DOES AFFORDABLE MEAN

	NEW SOUTH WALES	VICTORIA	QUEENSLAND	COMMONWEALTH
LEGISLATIVE INSTRUMENT	State Environmental Planning Policy (Housing) 2021	Planning and Environment Act 1987	Planning Regulation 2017	Income Tax Assessment (Build to Rent Developments) Determination 2024
FOR	Very low income, low income or moderate income households.	Very low income, low income or moderate income households.	Low to moderate income households.	Dwellings provided at a rent 74.9% or less of market rent
INCOME RANGE	Up to 120% of the median household income for Greater Sydney or rest of NSW.	Specified in detail by Order in Council.	Not defined, unlike VIC & NSW. The following may provide guidance: • 120% of the median household income for the Local Government Area, or • equivalent to the NRAS income range.	Tenants must meet income limits based on med equivalised household incomes: • 1 adult on < 120% of average annual earnings • 2 adults on < 130% of average annual earnings • Adult(s) with children on < 140% of average annual earnings
CRITERIA	Specified in the Housing SEPP.	Specified by Ministerial Notice - incl. allocation, affordability, longevity, tenure, type, location & need.		
RENT PRICE	Up to 30% of gross household income. **OR** for those eligible under NRAS, no more than NRAS.	Not specified, unlike NSW and QLD. But, generally understood to be up to 30% of gross household income.	Up to 30% of gross household income.	

PLUGGING THE FUNDING GAP

HOUSING AUSTRALIA FUTURE FUND & THE NATIONAL HOUSING ACCORD FACILITY

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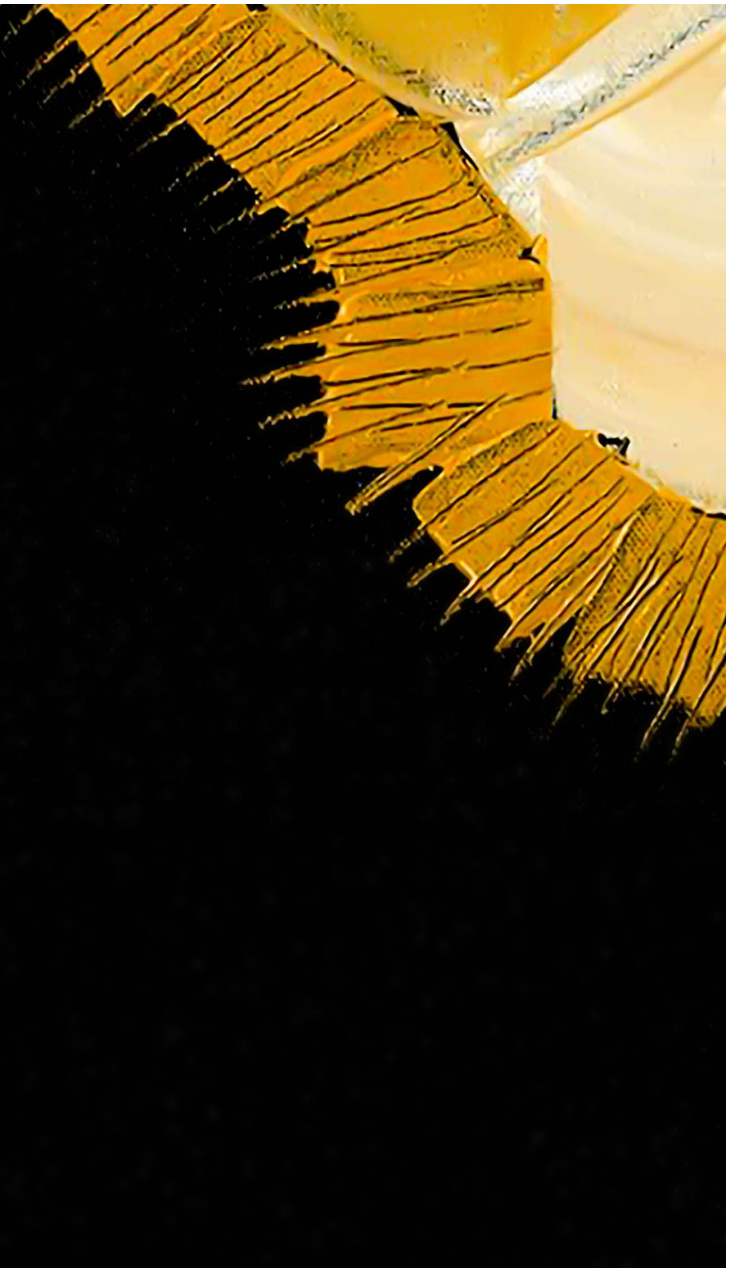


PLUGGING THE FUNDING GAP – SUPPLY & DEMAND

COMMONWEALTH SCHEMES

Targeted at increasing the supply of social & affordable housing:

- **Affordable Housing Bond Aggregator**
  Provides low-cost finance to registered community housing providers (**CHPs**) for social and affordable housing projects.
- **Home Guarantee Scheme**
  Supporting eligible home buyers to buy sooner, with low deposits of 5%.
- **Help to Buy Program**
  Yet to launch, but a shared equity model (similar models in States).
- **Housing Australia Future Fund Facility (HAFFF) & National Housing Accord Facility (NHAF)**
  Similar models in States and Territories.

HAFFF & NHAF

Federal Government initiatives to support:

- 20k new social
- 20k new affordable homes across Australia over 5 yrs.

Achieved through the **HAFFF** and **NHAF**.

Programs administered by Housing Australia.

HAFFF **$10b investment fund -** established federally, managed by the Future Fund to create a pipeline of funding for the supply & availability of 20k new 'social' & 10k 'affordable' homes.

- INVESTMENT: Minister issues an investment mandate to the Future Fund Board of Guardians.
- CREDITING HAFF: Minister credits HAFF Special Account with specified amount - $10bn was credited in Nov 2023.
- DEBITING HAFF: Minister transfers $500m from HAFF Special Account > HAFF Payments Special Account, the COAG Reform Fund & Housing Australia Special Account to pay grants relating to social & affordable housing.

NHAF **$350m commitment** from Cth to support the delivery of 1.2m new well-located homes over 5yrs.

PURPOSE Act as consistent revenue to plug the 'hole' - difference between rents from social & affordable housing dwellings & debt service costs/acceptable investor returns.

One objective is to encourage private sector investment social & affordable housing.

Not intended to be debt finance in lieu of trading bank or Housing Australia Affordable Housing Bond Aggregator senior loans.

FUNDING AVAILABLE - HAFFF/NAHF

FUNDING ROUND 1

Call for Applications (a competitive & merit-based process) closed on **22 March 2024** for projects involving:

- renovation of existing uninhabitable residential dwellings, or the conversion of non-residential property to residential dwellings
- construction of new residential dwellings, and
- purchase of new residential dwellings.

FUNDING AVAILABILITY

To be applied to support projects under the HAFFF and NHAF:

- availability payments - quarterly payments for 25yrs for making dwellings available during the operation phase, and
- concessional loans - zero interest loans for 25yrs (plus any development phase) which can be made available during the development phase.

Upfront capital grants to support the delivery of social housing can also be made available under the HAFFF, but could not be applied for under the Call for Applications.

Housing Australia *may* provide a capital grant to optimise an applicant's financial structure. Targeting housing projects that meet a high need, but are financially challenging, eg remote areas, high need or vulnerable cohorts, or for Aboriginal & Torres Strait Islander people.

ELIGIBLE RECIPIENTS - HAFFF/NAHF

Applicant Type	Can apply for Concessional Loan	Can apply for Availability Payment
1. State or Territory	✗	✓
2. Local governing body	✗	✓
3. Local, State or Territory government-owned corporation (other than a utility provider) that is a constitutional corporation	✗	✓
4. An entity that: a) is a registered community housing provider; and b) is a registered charity; and c) is a constitutional corporation.	✓	✓
5. An entity that: a) has the primary purpose of improving, directly or indirectly, housing outcomes for Aboriginal or Torres Strait Islander people; and b) is a registered charity.	✓	✓
6. An entity that: a) has the primary purpose of improving, directly or indirectly, housing outcomes for members of the Australian Defence Force; and b) is a registered charity.	✓	✓
7. An entity that: a) has the primary purpose of improving, directly or indirectly, housing outcomes for former members of the Australian Defence Force; and b) is a registered charity, and c) is a constitutional corporation.	✓	✓

Applicant Type	Can apply for Concessional Loan	Can apply for Availability Payment
8. An entity that: a) is a HAFFF or NHAF special purpose vehicle; and b) is a constitutional corporation; and c) in which an entity referred to in items 4, 5, 6 or 7 does not hold 100% of the voting interest. An Applicant is a 'HAFFF or NHAF special purpose vehicle' if: a) it has a purpose of undertaking any of the following kinds of projects: i. projects to increase available affordable housing (NHAF), or social housing or affordable housing, or both (HAFFF); ii. projects to address acute housing needs (HAFFF only); and b) at least one of its members is an entity mentioned in items 1-7 above.	✗	✓
9. An entity that: a) is a HAFFF or NHAF special purpose vehicle (as defined in 8 above); and b) is a constitutional corporation; and c) in which an entity referred to in items 4, 5, 6 or 7 above holds 100% of the voting interest in the vehicle.	✓	✓

AFFORDABLE HOUSING BOND AGGREGATOR

WHAT IS AHBA?

- Housing Australia provides funding to community housing providers for social and affordable housing projects or operations via Affordable Housing Bond Aggregator (AHBA) loans, which are senior ranking loans structured and secured in an equivalent manner to a similar loan provided by a trading bank.
- AHBA sources funding from:
  - **wholesale debt capital markets** by issuing long-term social and sustainability bonds. Bonds are guaranteed by the Commonwealth Government; and
  - a **$1 billion line of credit** provided by the Commonwealth Government.

ELIGIBILITY

Who is eligible for AHBA loans?

- Registered community housing providers.

What can AHBA be used for?

- Acquiring new dwellings
- Developing new dwellings
- Maintaining existing dwellings
- Working capital requirements and/or general corporate requirements
- Refinancing existing debts

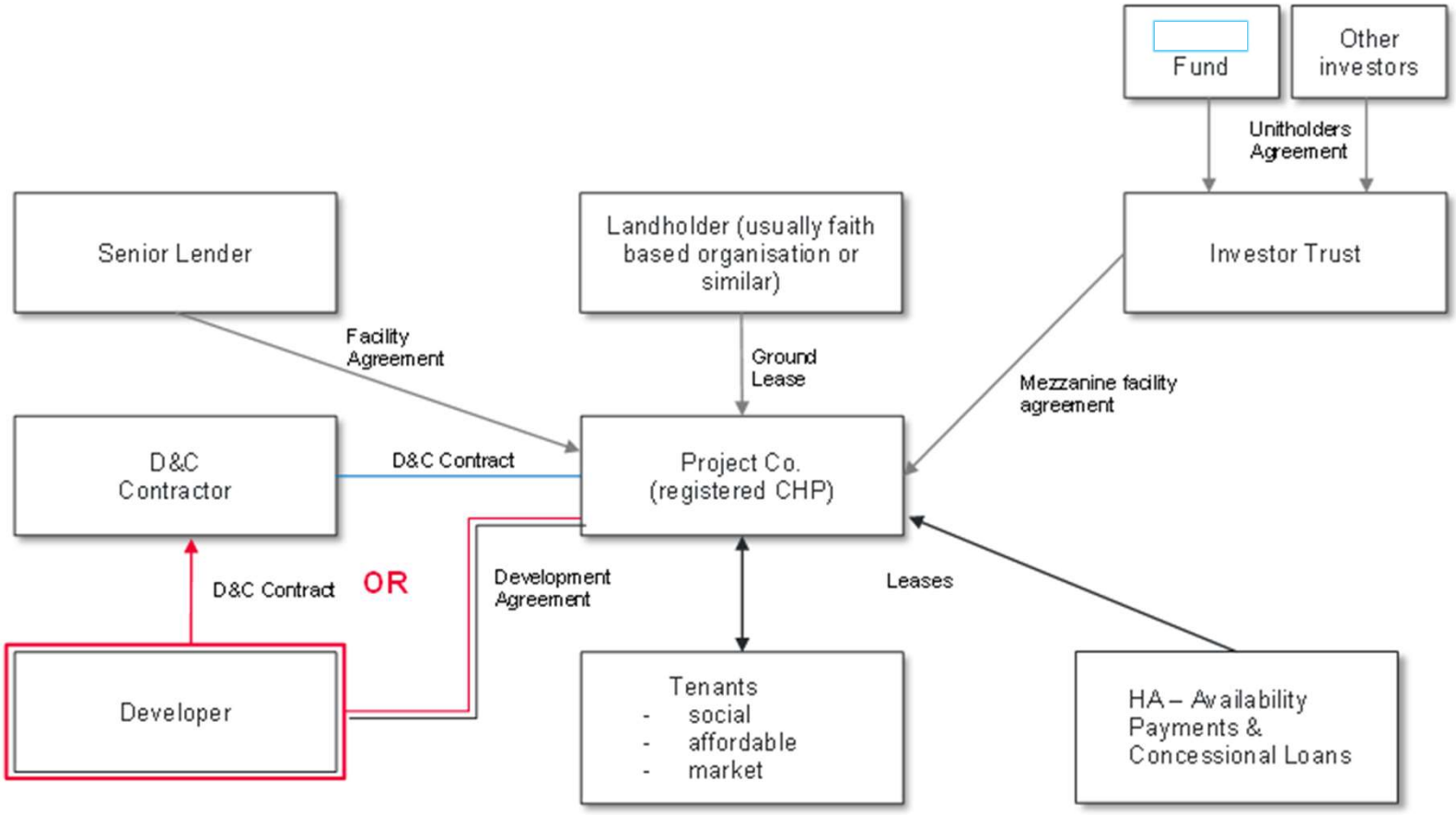
INTERACTION BETWEEN HAFFF/NAHF AND AHBA

- HAFFF/NAHF and AHBA are different products with different purposes - HAFFF/NAHF is more akin to revenue or equity whereas AHBA is a senior loan on terms trading banks would provide.

- If a recipient of funding for a project under HAFFF/NAHF is also eligible for AHBA loans, the recipient may apply for AHBA loans to fund:
  - the take-out of loans provided by a trading bank to fund the development of the project upon practical completion occurring and operations commencing; or
  - the development of the project and then conversion of the development loans into term loans upon practical completion occurring and operations commencing.

- Given the wider eligibility for HAFFF/NAHF funding, a recipient eligible for HAFFF/NAHF funding who is not a community housing provider will not be eligible for AHBA loans and therefore there is opportunities for trading banks to fund the senior loan component of the capital stack on such projects.

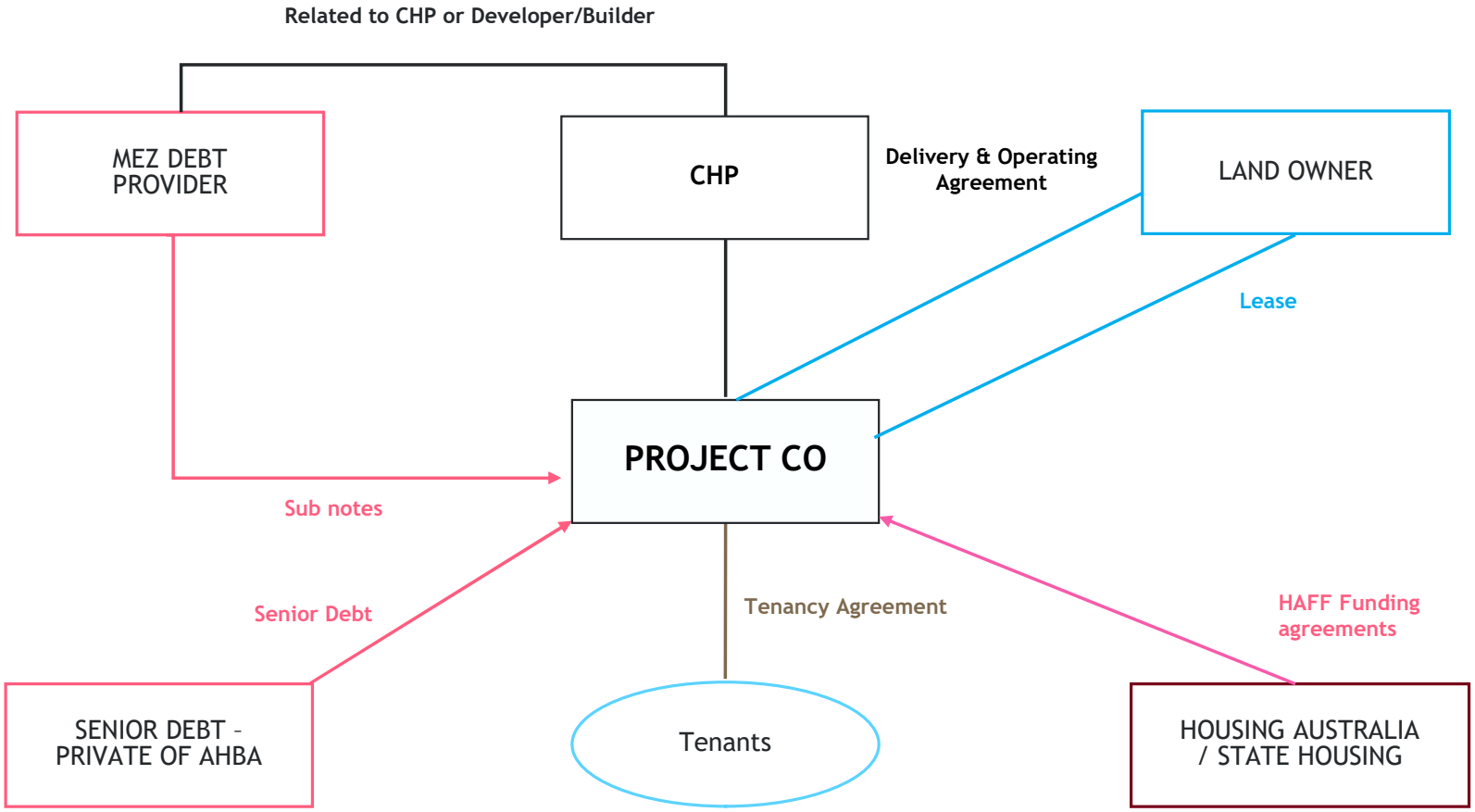
DEVELOPMENT PHASE – WHAT FUNDING LOOKS LIKE



DEVELOPMENT PHASE – KEY CONSIDERATIONS

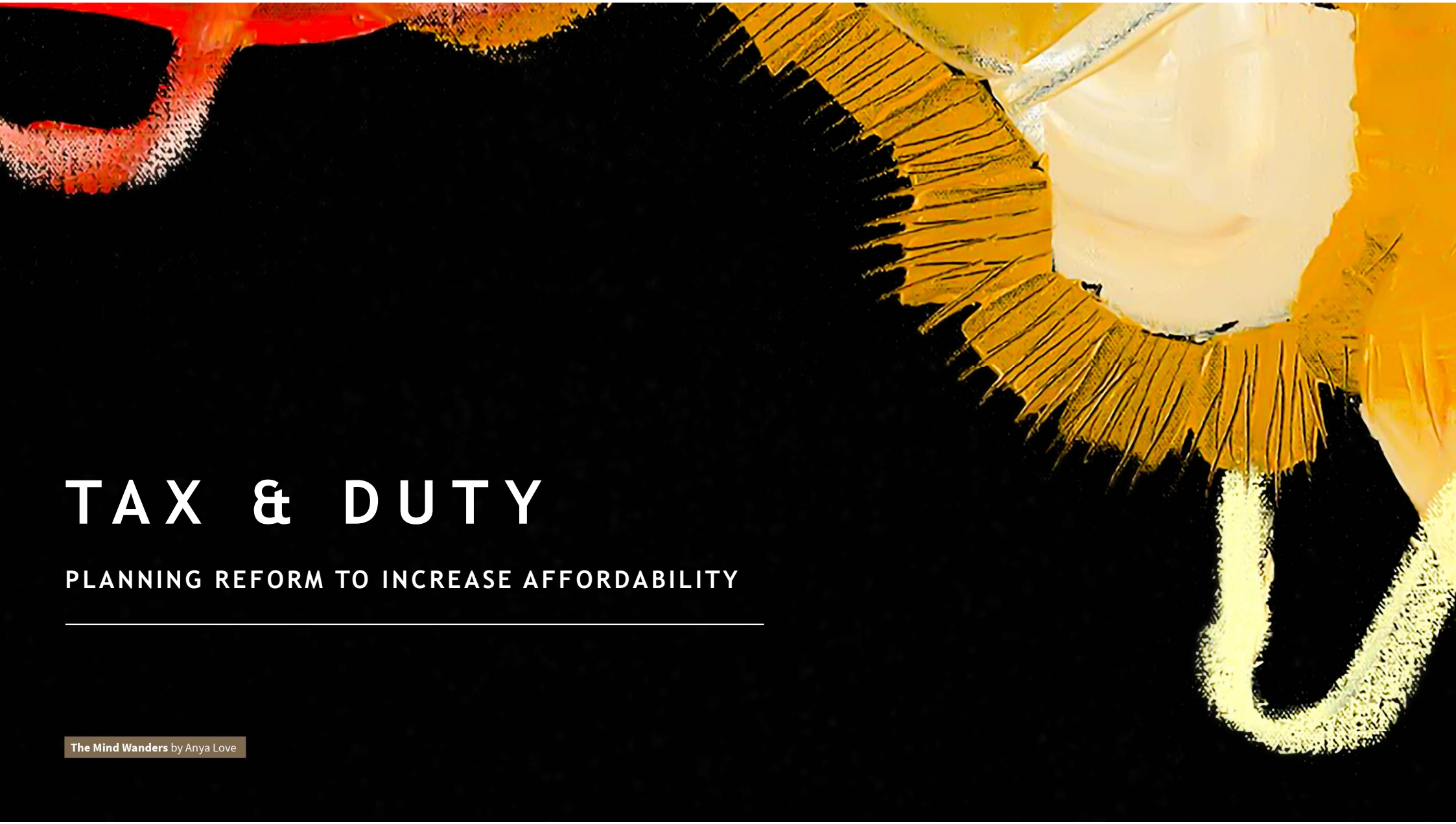
- Achievement of practical completion. Usual focus areas:
  - project budget, variation and cost overrun and equity commitment; and
  - building contract and risk of builder failure.
- Security arrangements, such as real property mortgage for project site, general security deed for building contract and project account and builder side deed for remedy, step-in and novation re building contract.
- Commitment from take-out financier. At a minimum there should be a signed commitment letter, but preferable position would be fully signed finance documents and all conditions precedent satisfied subject to those which are linked to practical completion occurring and key revenue contracts (such as HAFFF/NAHF funding) commencing.
- Given take-out finance will be linked to key revenue contracts commencing (such as HAFFF/NAHF), conditions precedent to such key revenue contracts commencing, including operational commencement long stop date, remain important.
- No debt service during development phase so model for operations phase is of limited relevance if take-out financier locked in.

OPERATIONAL PHASE SENIOR DEBT



OPERATIONAL PHASE – KEY CONSIDERATIONS

- Model, including forecast rental income and key revenue contracts (such as HAFFF/NAHF funding).
- Commitment under key revenue contracts (such as HAFFF/NAHF funding). Such arrangements should be the subject of signed documentation before providing first drawing.
  - In the case of facilities for development phase and conversion to term, key conditions precedent to first drawing for development are signed key revenue contracts with limited conditions precedent and an appropriate financial close adjustment protocol.
  - In the case of facilities for take out only, key conditions precedent to first drawing are all conditions precedent satisfied and financial close adjustment finalised under the key revenue contracts.
- Security arrangements, including real property mortgage for project site, general security deed for key revenue contracts and operations accounts and financier side deed for remedy, step-in and novation rights re key revenue contract.



TAX & DUTY

PLANNING REFORM TO INCREASE AFFORDABILITY

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THE TAX TAKE

2.1 Tax revenue collected by Australian Federal, State and Local Governments

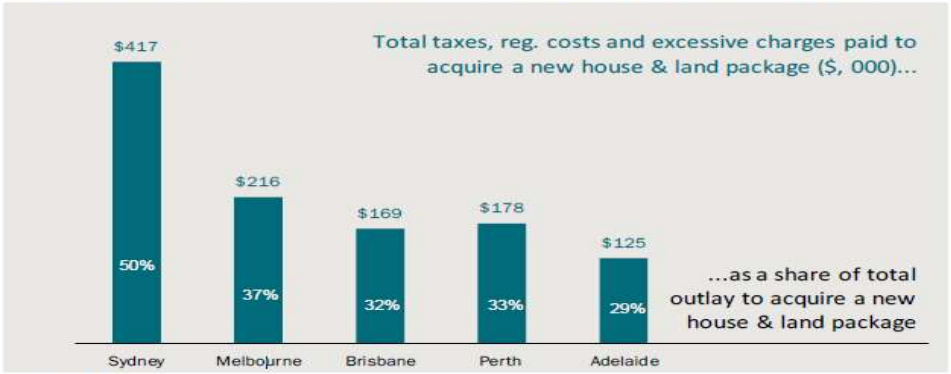
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Tax on income and super.	231	242	249	259	266	282
GST	50	51	57	58	62	64
Payroll	20	21	21	22	23	23
Taxes on land and housing [a]	32	35	40	43	48	51
Oil, petrol and fuel	17	18	18	18	18	18
International trade items	7	8	9	11	14	14
Motor vehicle taxes & fees	8	9	9	9	10	10
Insurance	5	5	5	6	6	6
Gambling	5	5	5	6	6	6
Other specific levies and taxes	15	21	22	14	14	15
Total	391	416	436	446	466	489

1 Data are taken from 20114-15 Input-Output Tables ABS Cat 5209.0

Source: *Taxation of the housing sector: Report prepared by the Centre for International Economics for the Housing Industry Association 26 June 2019*

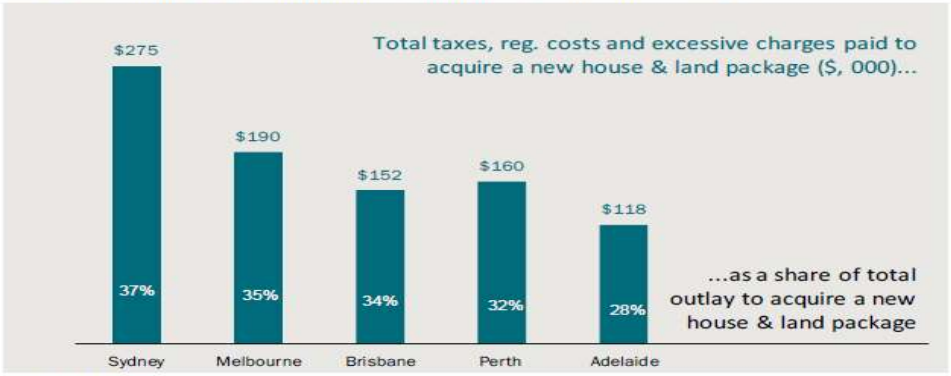
THE TAX TAKE

1 Total statutory taxes, regulatory costs and excessive charges paid within total outlay to acquire a new house & land package in a Greenfield estate (2016-17)



Data source: The CIE

2 Total statutory taxes, regulatory costs and excessive charges paid within total outlay to acquire a new apartment in an Infill development (2016-17)



Data source: The CIE

Source: *Taxation of the housing sector: Report prepared by the Centre for International Economics for the Housing Industry Association 26 June 2019*

WHATS BEING DONE?

1. National Rental Affordability Scheme (**NRAS**)
2. Capital gains tax discount
3. Build to rent (**BTR**) concessions

NRAS

- Aimed at encouraging large-scale investment in affordable housing by offering tax & cash incentives to providers of new dwellings.
- Dwellings must be rented to ‘low & moderate income’ houses at 20% below market rates.
- NRAS commenced in 2008 - will conclude in 2026.
- Offers annual incentives for a period of 10yrs - tax-free & have two components:

1	refundable **tax offset** on rental income up to a certain value	2023-24 = **$8,711**
2	direct **financial support** through state/territory contribution	2023-24 - >**$2,903.83** per dwelling pa

CGT DISCOUNT

Table D.1: Estimates of large measured tax expenditures and deductions

Tax type affected	Code	Title	Revenue forgone 2024-25 ($m)*	Average growth 2020-21 to 2023-24 (%)	Average projected growth over FEs (%)
Positive tax expenditures and deductions					
Super	C2	Concessional taxation of employer superannuation contributions	29,150	14.2	4.1
CGT	E8	Main residence exemption – discount component	27,000	18.6	8.0
Deductions		Rental deductions	26,500	14.4	6.1
CGT	E7	Main residence exemption	24,500	18.0	7.7
CGT	E15	Discount for individuals and trusts	22,730	27.0	-3.4
Super	C4	Concessional taxation of superannuation earnings	22,200	6.2	13.0

Source: Federal Government 'Mid-Year Economic and Fiscal Outlook 2024-25'

BTR

- BTR income tax concessions were recently enacted with effect from 1 July 2024.
- This follows many states and territories that have already introduced various land tax and duty incentives to support BTR developments.
- BTR measures are aimed at increasing the supply of rentals by incentivising investment and construction in new BTR developments.

What is a 'build to rent' development?

Build to Rent (**BTR**) developments are multi-unit buildings where, instead of the units being sold, ownership of the units is maintained by the developer, who leases out the units and maintains and manage the complex.

In order to obtain tax and duty concessions, specific eligibility criteria must be met by the development.

INCOME TAX BTR CONCESSIONS

From **1 July 2024**, the following BTR concessions are available for 'active BTR developments':

1 ACCELERATED DEPRECIATION RATE

- Capital works expenditure for 'active BTR developments' qualify for a 4% depreciation rate over 25 years (instead of 2.5% over 40yrs).
- The capital works deduction **is only available for construction commenced after 7.30pm AEST on 9 May 2023.**

2 CONCESSIONAL WITHHOLDING RATE

- Eligible fund payments[1] from 'active BTR investments' by MITs to foreign residents are subject to a **15% withholding rate** (↓ from 30%).
- The reduced MIT WHT rate **applies to all BTR developments, irrespective of when construction commenced.**

1 **Eligible fund payments -** distributions of rental income & capital gains on disposal of BTR dwellings & on disposal of membership interests in an entity to the extent referable to BTR dwellings.

‘ACTIVE BTR DEVELOPMENT’

To access the BTR concessions, the development must be an ‘active BTR development’ by meeting each of the following 4 criteria:

1. **50+** residential dwellings available for rent to the public
2. all dwellings & common areas owned by a ‘single entity’ for at **15+ consecutive yrs**
3. lease terms for the dwellings must be available for **3yrs+**, shorter term at tenant’s request
4. **10%+** of dwellings offered as ‘affordable’ tenancies.

If the eligibility criteria are not satisfied for full 15yr period, non-deductible ‘misuse tax’ may apply where tax benefits claimed may be clawed back, plus an interest component.

MIT PROPERTY INVESTMENT

Property class	Tax treatment
Eligible BTR developments	Concessional WHT rate of 15% applies to fund payments on eligible fund payments (including rental income and disposal of membership interests) by MITs, provided eligibility criteria is satisfied
Clean building	Concessional WHT rate of 10% applies to fund payments by 'clean building MITs' to a foreign resident
Residential housing / Agricultural land	Non-concessional WHT rate of 30% applies to fund payments by MITs in respect of 'MIT residential housing income' or 'MIT agricultural income' – i.e., income attributable to assets that are "residential dwelling assets" (subject to certain exclusions), or 'Australian agricultural land'
Affordable housing	Concessional WHT rate of 15% applies to fund payments by MITs where residential premises is tenanted or available to be tenanted under the management of an eligible community housing provider. An additional 10% discount on capital gains tax is also available
Disability accommodation	Concessional WHT rate of 15% applies to fund payments by MITs where the residential premises is used primarily to provide specialist disability accommodation.
Commercial residential premises	Concessional WHT rate of 15% applies to fund payments by MITs where the premises is characterised by a commercial intention with accommodation as its main purpose, for example a hotel or inn.

SUMMARY OF STATE TAXES

	STAMP DUTY		LAND TAX	
	General rate	Foreign purchaser surcharge	General land tax rate	Land tax surcharge
NSW	5.5% (or up to 7% where 'premium property duty' applies)	9%	2%	4% (5% from 2025 land tax year)
VIC	6.5%	8%	2.65%	4%
QLD	5.75%	8%	2.75%	3%
WA	5.15%	7%	2.67%	N/A
SA	5.5%	7%	2.4%	N/A
ACT	5%	N/A	1.26%	0.75%
NT	5.95%	N/A	N/A	N/A
TAS	4.5%	8% (residential) 1.5% (primary production)	1.5%	2%

STATE TAX - BTR CONCESSIONS

	LAND TAX RELIEF	SURCHARGE LAND TAX RELIEF	SURCHARGE STAMP DUTY RELIEF
NSW	• 50% land tax discount for BTR developments commenced after 1 July 2020 • Available: construction has completed until 2040	• Exemption for land acquired for BTR development after 1 July 2020 • Land acquired & held by an Australian corp • Available: once construction completed	• Exemption for land acquired for BTR development after 1 July 2020 • Land acquired & held by an Australian corp • Available: once construction completed
VIC	• 50% reduction on the taxable value of land used for BTR development • Available post-construction, up to 30yrs • Exemption available for any land tax absentee surcharge during this time	• Exemption for significant contribution to economy may be available during construction • BTR specific relief available post-construction	• Exemption (not BTR specific) for foreign corporation & foreign trusts where commercial activities add to supply of housing stock
QLD	• 50% reduction in the taxable value of land for land used solely/primarily for an eligible BTR development constructed pre-30 June 2030 • Available post-construction - up to 20yrs or 2050	• 100% reduction in the taxable value of land used solely/primarily for eligible BTR development	• 100% discount on any additional foreign acquirer duty for eligible BTR development • BTR development constructed pre-30 June 2030
WA	• 50% land tax concession for eligible BTR developments for up to 20yrs	• N/A (no surcharge applies)	• Exemption where development of 10+ residential dwellings completed in 5yrs of acquisition
SA	• 50% reduction in taxable value of land • Construction commenced on/after 1 July 2023 • Relief available for affordable housing developments	• N/A (no surcharge applies)	• Ex gratia relief if acquired for undertaking significant development of residential homes

PRACTICAL CONSIDERATIONS & CHALLENGES

GST & DUTY	Other tax and duty considerations may challenge investors making BTR investments, including: • stamp duty costs & other state-based foreign surcharges (subject to BTR duty concessions that may be available) and • availability of input tax credits (BTR developers are unable to claim GST credits on development costs)
STRICT ELIGIBILITY REQUIREMENTS	• The strict requirements relating to 'affordable dwellings' may result in significant compliance costs for developers
THIN CAPITALISATION	• It is likely that a substantial amount of debt deductions may be denied under the during the early construction phase of a BTR development (but may be eligible to be carried forward for 15 years)
POTENTIAL EXPOSURE ON QAUIRING BTR DEVELOPMENT	• Potential exposure to the misuse tax may present a significant risk for potential investors that may look to acquire existing BTR developments as there may be a latent exposure from a breach by the previous owner. May also result in double tax for assets that have had concessional capital works deductions 'clawed back'
FIRB	• The Government has announced changes to apply lower FIRB fees for applications to invest in BTR developments and to refund fees for applications relating to investments that do not proceed because the investor is unsuccessful in a competitive bidding process

UNLOCKING LAND FOR HOUSING

PLANNING REFORM TO INCREASE AFFORDABILITY

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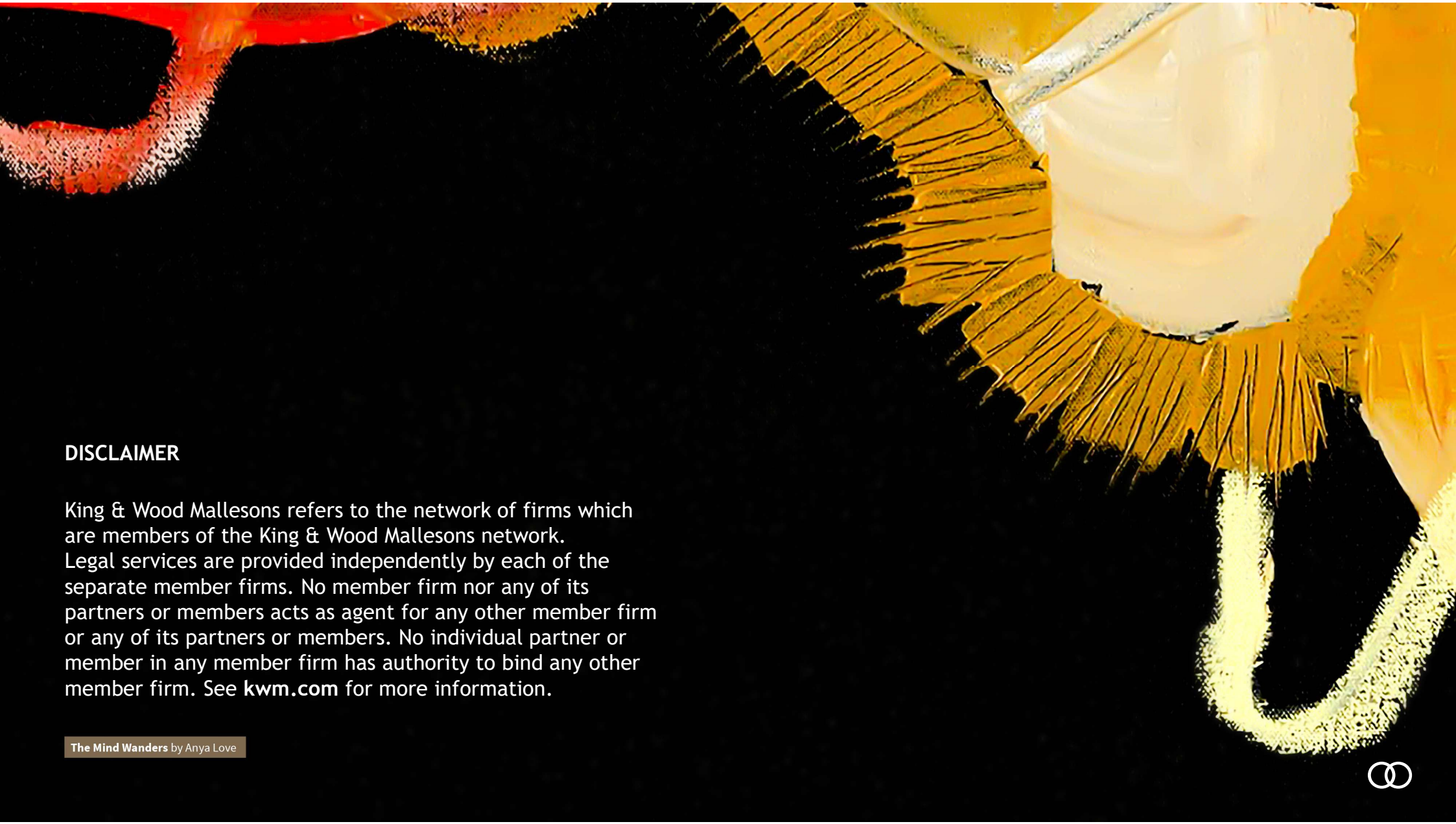
PLANNING REFORMS

New South Wales	Victoria	Queensland
In-fill affordable housing • Floor space ratio (FSR) bonus of 20-30% and heigh bonus of 20-30% • **Eligibility:** 10-15% of gross floor area as affordable housing • Affordable housing must be managed by a community housing provider	**Development Facilitation Program** • Accelerated assessment pathway • Minister for Planning is the decision maker rather than local Council • No third party appeal rights • **Eligibility:** $15 million (regional) or $50 million (metro) development cost and at least 10% of total dwellings are affordable housing	**State Facilitated Development** • Two stage process consisting of declaration stage (by the Planning Minister) and assessment stage (by the Chief Executive) • More streamlined than usual process • **Eligibility:** at least 15% of all dwellings are affordable housing



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