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THE REAL ESTATE INDUSTRY

Treasury Laws Amendment (Tax Reform No. 3) Bill 2026 and Income Tax Rates Amendment (Minimum Tax on Discretionary Trusts) Bill 2026

October 2026

Submitted to:

Senate Economics Legislation Committee

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About REIA

The Real Estate Institute of Australia (REIA) is the national peak body for the real estate profession and has advocated for policies supporting a well-functioning and sustainable property industry since 1924. Its members are the real estate institutes in each state and territory, collectively representing real estate agencies, property professionals and their clients across Australia.

The real estate industry is predominantly made up of small and medium-sized businesses, many independently owned and family-operated. REIA advocates for improved housing supply and affordability, an efficient and equitable taxation system, and regulation that is proportionate, practical, and capable of being implemented by small businesses.

As the leading voice for real estate professionals, REIA welcomes the opportunity to respond to the Senate Economics Legislation Committee's inquiry on the Treasury Laws Amendment (Tax Reform No. 3) Bill 2026 and Income Tax Rates Amendment (Minimum Tax on Discretionary Trusts) Bill 2026.

REIA recognises that the package includes technical implementation of earlier legislated reforms. Improvements to trust elections, restructuring provisions, and the new residential dwelling definition are constructive. They do not resolve the broader concerns about investment, housing supply, and small business costs.

Recommendations

REIA recommends that the Committee recommend that the Government:

1. Not proceed with the proposed 30 per cent minimum tax on discretionary trusts and fully reverse the 2026 negative gearing and capital gains tax (CGT) reforms. The Government should instead prioritise supply-side measures to improve housing affordability before considering tax reforms that risk reducing housing investment, new dwelling delivery, or rental supply. Any future property tax reform should form part of a holistic review of Commonwealth, state, territory, and local tax and regulatory settings, with increased housing supply as the primary objective.
2. If the Government nevertheless proceeds, apply any discretionary trust minimum tax at beneficiary level, through a creditable withholding mechanism, recognising tax already paid and imposing no additional tax where the beneficiary’s tax on the distribution is already at least 30 per cent.

3. If that alternative is not adopted, permanently grandfather existing discretionary trusts or permanently exempt genuine active small businesses with aggregated annual turnover of up to $10 million, including legitimate associated business and asset-holding structures.
4. Make the electable regime commercially workable, through broader permitted nomination changes, appropriate flexibility in distribution proportions, a statutory correction period, proportionate breach consequences, and protection against administrative mistakes permanently ending access.
5. Provide comprehensive restructuring relief, including standing rollover access or access for at least three years after election revocation, removal of the post-election rollover bar, coordinated state and territory transfer duty relief, and an appropriate write-off for reasonable reform-induced costs.
6. Provide certainty for legitimate commercial trusts, with clear statutory protections, safe harbours, and examples focused on material discretion over economic entitlements.
7. Amend the new residential dwelling definition to provide:
    - a 36-month acquisition eligibility period from the first certificate of occupancy;
    - if 36 months is not accepted, a 24-month period from first actual lawful occupation;
    - express confirmation that occupation and multiple transfers within the eligibility period do not independently disqualify an otherwise eligible acquisition;
    - a separate pathway for qualifying deep retrofits and substantial redevelopment, without a prescribed energy-rating threshold; and
    - a project-based assessment recognising genuine housing supply and capacity benefits, including qualifying replacement projects, land aggregation, and staged delivery.
8. Provide complete guidance, necessary instruments, and adequate implementation time before businesses must make irreversible structural decisions.
9. Establish a statutory review within two years of commencement, with public reporting on housing investment, rental supply, and outcomes across housing types and locations.

Recommendations 2 to 9 are made strictly in the alternative, should the Government not accept Recommendation 1 and proceed with the reforms.

Housing Tax Reforms and Housing Supply

REIA maintains its opposition to the 2026 negative gearing and capital gains tax changes. Australia's housing affordability challenge is fundamentally a supply challenge. Supply-side measures must be prioritised before consideration is given to property tax reforms that risk reducing housing investment, new dwelling delivery, or rental supply. Any future property tax reform should form part of a holistic review of Commonwealth, state, territory, and local tax and regulatory settings, with increased housing supply as the primary objective.

The Government must ensure these changes do not unfairly disadvantage small businesses and family enterprises. Real estate agency principals make long-term decisions about reinvestment, succession, and retirement on the basis of the businesses they have built. Increased complexity and compliance costs risk discouraging business investment, growth, and expansion. Further consultation with affected small businesses is necessary to ensure their practical circumstances are understood and unintended consequences are avoided.

The Treasury Laws Amendment (Tax Reform No. 3) Bill 2026 implements further CGT adjustments and legislates definitions and exemptions supporting the earlier reforms. REIA's opposition to the underlying approach remains, while its recommendations below address the introduced drafting's practical operation. The explanatory memorandum describes these implementation measures separately from the previously legislated reforms.

Independent Economic Modelling

The Real Estate Institute of Australia, Master Builders Australia, the Housing Industry Association, and the Property Council of Australia jointly released updated independent modelling by Qaive and Tulipwood Economics examining the cumulative impact of the Federal Budget housing package.

The modelling covers changes to negative gearing and capital gains tax arrangements, the $2 billion Housing Support Program, and the additional restriction preventing self-managed superannuation funds (SMSFs) from using limited recourse borrowing arrangements to purchase ordinary residential investment property.

The modelling indicates that the combined measures will reduce housing supply, place upward pressure on rents, weaken economic activity, and affect construction employment. While the Housing Support Program is expected to support some additional supply, it is not sufficient to offset the broader effects of the tax and investment changes.

The table below presents the combined impact of the changes to negative gearing and CGT arrangements, the Housing Support Program and the SMSF amendment. The annual results are measured relative to the no-policy-change baseline.

Metric	2026/27	2027/28	2028/29	2029/30
GDP impact ($m)	-$100	-$202	-$308	-$436
Construction output ($m)	-$219	-$337	-$411	-$485
Construction employment (FTE)	-725	-1,107	-1,340	-1,569
Total new dwelling starts	-1,424	-2,351	-3,067	-3,851
Rental price increase (%)	+0.58	+1.05	+1.36	+1.69
Established home prices (%)	-0.26	-0.49	-0.64	-0.78

**Source: Qaive and Tulipwood Economics, 2026/27 Federal Budget: The Impact of Changes to Residential Property Investments for Self-Managed Super Funds, Supplementary Modelling Brief, 3 September 2026*

The modelling estimates approximately 10,700 fewer dwelling starts and $1.05 billion lower cumulative GDP over the four years. Construction employment is approximately 4,740 FTE-years lower over the period, rather than 4,740 distinct or permanent jobs lost. Rental prices are estimated to be 1.69 per cent higher by 2029–30.

The findings reinforce REIA's concern that preserving favourable treatment for some new housing will not necessarily offset the wider package's effects. REIA recommends prioritising planning and approval reform, enabling infrastructure, construction capacity, and stable investment settings. These measures address the capacity to deliver homes and should be the starting point for housing affordability policy.

Minimum Tax on Discretionary Trusts

REIA does not support the introduction of a minimum tax on discretionary trusts and recommends that the Government not proceed with the measure.

Discretionary trusts are lawful and long-established business structures used by real estate agencies and other small and family businesses for asset protection, succession planning, business continuity, and commercial risk management. Businesses have made long-term decisions about ownership, finance, contracts, and succession on that basis. The proposed minimum tax would penalise the choice of a legitimate business structure, impose substantial compliance and restructuring costs, and reduce the flexibility businesses need to respond to changing family and

commercial circumstances. Any identified avoidance should be addressed through targeted integrity and compliance measures rather than a broad minimum tax affecting genuine operating businesses.

The recommendations below are made in the alternative, should the Government decide to proceed with the reform.

An Accent Research survey jointly commissioned by five property and construction peak bodies, including REIA, provides useful evidence of the potential impact on the real estate profession. Among real estate trust users, 91 per cent described their arrangements as very important to business ownership or operation, and 47 per cent ranked transfer duty among their three main restructuring barriers.

The recommendations below are made in the alternative, should the Government decide to proceed with the reform. (See Appendix A)

Apply the minimum tax at the beneficiary level

The introduced model retains trustee assessment under proposed section 101AA and a non-refundable offset for eligible beneficiaries under proposed section 101AG. Bodies corporate are excluded from that offset.

If the Government nevertheless proceeds, REIA recommends a beneficiary-level minimum rate of 30 per cent on discretionary trust distributions, supported by creditable withholding. Tax already paid should be recognised, with no additional tax where the beneficiary's tax on the distribution is already at least 30 per cent.

This would align the tax with the recipient of the economic benefit and reduce duplication through legitimate business groups. Recognition of tax through offsets does not remove the calculation, reporting, cash-flow, and unused-offset complexity imposed by the trustee-level model. Offsets can operate through trust structures, so repeated unreduced tax should not be assumed in every chain.

Grandfather existing trusts or exempt active small businesses

If the beneficiary-level alternative is not adopted, discretionary trusts in existence at 7.30 pm AEST on 12 May 2026 should be permanently grandfathered.

Alternatively, a permanent exemption should cover genuine active small businesses with aggregated annual turnover of up to $10 million, including trusts that:

- directly operate an active business;
- hold shares or ownership interests in an associated active business;
- hold assets predominantly used in an associated active business; or

- form part of a genuine small business group.

Proportionate integrity requirements should exclude predominantly passive investment arrangements while recognising legitimate separation of operating, ownership, and asset-holding entities.

Make the electable regime commercially workable

REIA welcomes proposed section 102UYH, which permits the Commissioner to prevent automatic revocation for certain entitlement, payment, and corpus breaches where revocation would be unreasonable. Relevant considerations include inadvertence, the size of the inconsistency, tax effects, and corrective action.

The redrafted regime distinguishes income, non-income earnings included in assessable income, and corpus. Income and non-income earnings must follow matching nominated shares. Corpus shares must match if an entitlement arises and the bill should not be characterised as requiring annual distribution of all trust capital. Proposed section 102UYF nevertheless generally limits nomination variations to death and qualifying relationship breakdown.

REIA recommends broader permitted changes for births, incapacity, retirement, succession, residency changes, and legitimate business ownership changes, together with appropriate flexibility between income, non-income earnings, and capital proportions.

A reasonable statutory correction period should complement the Commissioner's discretion. Where relief is unavailable, consequences should relate to affected income rather than the trust's entire net income. Proposed section 102UYI generally invalidates entitlements and exposes all net income to trustee assessment following revocation, but excludes revocation caused by winding up or vesting. Administrative mistakes should not permanently eliminate access to the regime.

Provide comprehensive rollover and transfer duty relief

The rollover window remains 1 July 2027 to 30 June 2030. Proposed section 126-910(3) separately bars access where the trustee has already made an excluded election trust election. Extending the deadline alone would not provide a post-election exit.

REIA recommends standing or indefinite rollover relief or, at minimum, access for three years after voluntary or automatic election revocation. Both the deadline and the election bar must be amended.

REIA acknowledges improvements, including preservation of relevant active-asset history. However, proposed section 126-945 addresses direct income tax

consequences; it does not provide comprehensive relief from GST, fringe benefits tax, state and territory duties, or commercial restructuring costs.

Smaller family agencies often lack the advisory budgets, time, and internal capacity to manage a restructure. Agencies may need legal, accounting, valuation, and financing advice, amended employment agreements and leases, revised supplier and franchise contracts, novated agency and property management agreements, licensing changes, third-party consents and new banking, trust account, and insurance arrangements. Reasonable reform-induced costs should receive an appropriate write-off.

The Commonwealth should engage directly with state and territory revenue offices and affected small businesses to assess these cumulative costs and coordinate duty relief and guidance before irreversible decisions are required. High duty and transaction costs can make restructuring commercially impractical even where it would reduce ongoing tax.

An election does not necessarily require a deed amendment or incur duty. Equally, associated legal steps cannot be assumed duty-free: outcomes depend on the jurisdiction, assets, deed, and transactions undertaken. Coordinated relief should be operational before businesses must elect or restructure.

Provide commercial trust certainty and implementation readiness

REIA welcomes the expanded fixed-trust definition's focus on discretion capable of significantly affecting economic entitlements, recognition of ordinary commercial powers, and express employee share trust exclusion. Attribution managed investment trusts already receive statutory fixed-trust treatment. Remaining uncertainty for commercial unit trusts and other legitimate vehicles should be addressed through clear safe harbours and examples.

Businesses need complete guidance and necessary instruments covering deed compatibility, multi-entity structures, duty, rollover eligibility, and notification requirements before permanent decisions. The explanatory memorandum identifies administration matters for subsequent legislation, and implementation time should accommodate advice, consents, and system changes.

Definition of A New Residential Dwelling

REIA welcomes placing the definition in primary legislation. Schedule 5 replaces section 26-160 with proposed section 960-590, providing pathways for construction, additional dwellings, conversion, and acquisition. Non-residential conversions, targeted housing protections, and transitional recognition of certain pre-Budget stock

held for sale are constructive features. However, REIA has highlighted previous unaddressed concerns below (see Appendix B).

Eligibility period

Proposed section 960-590(4) retains acquisition within 24 months of the first certificate of occupancy. This limits the acquisition pathway, not the period for which a qualifying owner retains favourable treatment or every construction pathway. The transitional rule for pre-Budget stock continuously held for sale does not remove the acquisition time limit.

REIA's primary recommendation is 36 months from the first certificate of occupancy, extending the introduced 24-month window. This better accommodates marketing, settlement, lending conditions, purchaser decisions, and project-completion issues affecting newly completed houses and apartments.

The legislation should also expressly confirm that occupation and multiple transfers within the eligibility period do not independently disqualify a purchaser where all other requirements are met. This matters where stock passes through a developer, intermediary, or purchaser before becoming a long-term rental investment. Neither occupation nor a transfer should be assumed to reset the clock or automatically establish eligibility.

A practical extension mechanism should accommodate genuine delivery or sale delays beyond the parties' reasonable control, including financing, title registration, and approval delays.

Commencement of the Eligibility Period from First Occupation of Dwelling

If a 36-month period is not adopted, REIA recommends that the 24-month eligibility period commence from the date a dwelling is first occupied, rather than from the date a certificate of occupancy is issued.

A certificate of occupancy is an administrative document whose timing varies across jurisdictions and does not necessarily align with when a dwelling is practically available, marketed, settled or occupied.

Developers and purchasers can be affected by delays in documentation, staged construction, authority processes, or the completion of common areas and services, none of which necessarily reflect the dwelling's actual readiness for sale or tenancy. Completed but vacant stock can therefore lose part of its purchaser eligibility window before occupation.

Using first occupation as the relevant starting point would better reflect when a dwelling has genuinely entered the housing market and reduce the risk of part of the

eligibility period expiring before the property is ready to be sold or leased. REIA also notes that certification systems differ across jurisdictions and can involve interim, partial or staged approvals, or approvals with different names. A tax outcome should not turn on administrative differences that do not affect whether a dwelling is complete and capable of lawful occupation.

REIA's preferred position is that the eligibility period be 36 months. If a 36-month period is not accepted, REIA recommends that the legislation provide for a 24-month eligibility period commencing from the date the dwelling is first occupied, rather than the date a certificate of occupancy is first issued.

Additional Special Case for Deep Retrofit of Existing Residential Dwellings

REIA recommends a separate eligibility pathway within the definition of a new residential dwelling for existing homes that undergo deep retrofits or substantial redevelopment. Purchasers acquiring a qualifying dwelling within the eligibility period should receive the same treatment as purchasers of newly constructed dwellings.

The current definition does not clearly capture major renewal of existing residential buildings, including unsafe, obsolete, or uninhabitable stock. These projects can involve substantial reconstruction, replacement of building systems, and prolonged non-occupation, while materially extending a building's useful residential life.

Recognising these investments would encourage improvements in energy efficiency, household running costs, comfort, safety, accessibility, and accommodation capacity. Additional bedrooms, for example, can increase housing capacity without creating a separate dwelling. Renters would also benefit from better-quality, more efficient homes.

REIA recommends that eligibility recognise substantial reconstruction or renewal that delivers material, verifiable improvements in housing quality, energy performance, safety, accessibility, residential amenity, or accommodation capacity, and supports genuine long-term residential use. Criteria should be developed in consultation with industry, without requiring a prescribed energy-rating threshold. Ordinary maintenance and cosmetic renovations should not qualify.

"**Additional Dwellings" Test**

The additional-dwelling pathway compares dwelling numbers with those at acquisition. That pathway and multi-dwelling conversions also require independently transferable legal interests. These conditions may create difficulties for staged, integrated, multi-parcel, or single-title projects genuinely increasing housing availability.

REIA recommends a project-based assessment of housing supply and housing-capacity benefits, rather than reliance solely on the dwelling count at acquisition. This should recognise both net additions and qualifying replacement or redevelopment projects that maintain dwelling numbers while materially improving capacity, quality, accessibility, safety, or energy performance.

Planning controls or lot configuration may permit only one-for-one redevelopment of unsafe or inefficient stock. Such projects should be capable of qualifying where substantial, verifiable benefits are demonstrated. REIA does not propose automatic eligibility for every like-for-like replacement.

The assessment should permit reasonable aggregation of land forming one development, accommodate staged delivery, and recognise dwellings legally or practically unavailable for occupation. Objective criteria should consider the proportion restored or replaced, bedroom capacity, residential floor area, and material housing improvements.

Monitoring Housing Outcomes

REIA reiterates its recommendation for a formal statutory post-implementation review within two years of commencement, including public reporting on investment in new dwellings, rental supply, affordable housing, build-to-rent, and secondary dwellings.

The review should examine outcomes for small-scale investors, off-the-plan purchases, apartment stock, and regional markets, alongside interest rates, construction costs, planning constraints, and rental-market conditions. Transparent monitoring is necessary to assess actual outcomes against the Government's expectations and identify unintended effects.

Conclusion

REIA maintains its opposition to the underlying housing CGT and negative gearing reforms and the proposed discretionary trust minimum tax. Housing affordability requires more homes and stable conditions for the businesses and investors supporting supply.

The introduced package contains technical improvements, but material concerns remain. If the Government nevertheless proceeds, the Committee should recommend the alternatives and safeguards outlined above, including practical trust elections, comprehensive restructuring relief, and a supply-focused new residential dwelling definition.

A coherent property tax system should support housing supply, business investment, productivity, and labour mobility. Implementation must be practical for small businesses and ordinary investors, with transparent monitoring of outcomes.

REIA welcomes further engagement with the Committee on the implications for real estate businesses and the broader property market.

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Appendix A

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Submission on the Minimum Tax on Discretionary Trusts – Exposure Draft Legislation

September 2026

Submitted to:

Treasury

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About REIA

The Real Estate Institute of Australia (REIA) is the national peak body representing the real estate profession and has advocated for policies supporting a well-functioning and sustainable property industry since 1924.

REIA's members are the State and Territory Real Estate Institutes, through which REIA represents real estate agencies and professionals across Australia.

The real estate profession is predominantly made up of small and medium-sized businesses. Many agencies are independently owned, family-operated businesses with close connections to the communities they serve.

REIA advocates for a strong and professional real estate sector, an efficient and equitable taxation system, improved housing supply and affordability, and regulation that is proportionate, practical, and capable of being implemented by small businesses.

Introduction

REIA welcomes the opportunity to respond to the exposure draft legislation implementing a minimum tax on discretionary trusts.

The electable regime is a constructive response in concept to concerns about forced restructuring. However, close examination of the exposure draft indicates that it is unlikely to provide a safe or commercially workable option for many real estate and property businesses.

The proposed regime still leaves small businesses without a safe or commercially practical pathway. A business must either:

- remain in its discretionary trust and be subject to the minimum tax;
- make an election that fixes beneficiaries and distributions indefinitely; or
- undertake a complex restructure that may attract transfer duty and substantial commercial costs.

Recommendations

REIA does not support the introduction of a minimum tax on discretionary trusts and recommends that the Government not proceed with the measure.

Discretionary trusts are lawful and long-established business structures used by real estate agencies and other small and family businesses for asset protection, succession planning, business continuity, and commercial risk management. The proposed minimum tax would penalise the choice of a legitimate business structure, impose substantial compliance and restructuring costs, and reduce the flexibility businesses need to respond to changing family and commercial circumstances.

The measure should also be considered in the context of the broader Budget tax changes affecting property investment, including the announced changes to negative gearing and capital gains tax. The cumulative effect risks weakening investment, business confidence, and the capacity of the property sector to support housing supply.

Existing integrity provisions already address personal services income, private company distributions, and other forms of inappropriate income diversion. Any identified avoidance should be addressed through targeted integrity and compliance measures rather than a broad minimum tax affecting genuine operating businesses. **The recommendations below are made in the alternative, should the Government decide to proceed with the reform.**

Recommendation 1: Apply the minimum tax at the beneficiary level

Under the exposure draft, the trustee of a minimum tax trust would be assessed and liable for the minimum tax under proposed section 101AA of the *Income Tax Assessment Act* (ITAA) 1936. A non-corporate beneficiary may receive a non-refundable offset under proposed section 101AF, while a corporate beneficiary would not be entitled to the offset.

This approach creates additional complexity, particularly for groups containing multiple trusts. Each trust may be required to calculate its minimum tax income, pay tax, issue beneficiary notifications, and pass offsets through successive levels of the group.

This is especially difficult for property businesses that use separate trusts to hold assets, undertake projects, or manage commercial risk. Income and expenditure may arise at different stages of a project, and each trust may have to determine its position before the broader group's final outcome is known.

REIA recommends that the minimum tax instead be applied at the beneficiary level. Where a beneficiary receives a discretionary trust distribution, the beneficiary would be subject to a minimum 30 per cent rate on that distribution, with credit for tax already paid. Where the beneficiary's tax on the distribution is already at least 30 per cent, no additional tax should arise.

This approach would:

- align the tax with the person or entity receiving the economic benefit;
- reduce duplication through chains of trusts;
- avoid the loss of otherwise unused non-refundable offsets;
- remove the pressure to restructure legitimate businesses;
- avoid state and territory transfer duty arising solely because of the Commonwealth reform; and
- allow businesses to retain structures established for asset protection, succession, and commercial risk management.

Recommendation 2: Grandfather existing trusts or exempt active small businesses

If a beneficiary-level model is not adopted, discretionary trusts in existence before commencement should be permanently grandfathered.

Businesses established these structures lawfully and have made long-term decisions about ownership, succession, finance, contracts, asset protection, and risk management on that basis. Existing businesses should not be forced to choose between a higher ongoing tax burden and a costly, complex, and uncertain restructure.

Grandfathering would provide certainty to existing businesses while allowing businesses established after commencement to make an informed choice about their structure under the new taxation arrangements.

Alternatively, a permanent exemption should apply to genuine active small businesses with aggregated annual turnover of up to $10 million. This would align with the expanded small business threshold adopted for other Commonwealth tax concessions and reflect the scale of businesses likely to face disproportionate compliance and restructuring costs.

The exemption should cover trusts that:

- directly operate an active business;
- hold shares or ownership interests in an associated active business;
- hold assets used predominantly in an associated active business; or
- form part of a genuine small business group.

Appropriate integrity requirements could ensure the exemption does not apply to predominantly passive investment arrangements. However, the requirements should recognise that legitimate real estate businesses commonly use separate entities to operate the business, hold ownership interests, protect assets, and manage commercial risk.

Recommendation 3: Amend the electable regime

The electable regime requires a trust to nominate beneficiaries accounting for 100 per cent of its income and capital, in the same fixed proportions, and maintain those proportions each year. The election may exclude a trust from the minimum tax, but it does not necessarily create fixed entitlements under trust law. Depending on the trust deed, amendments or other legal steps may be required, potentially creating separate tax and transfer duty consequences.

The Commonwealth tax election cannot be assumed to authorise conduct that is not permitted by the trust deed or applicable trust law. Nor should a trustee be placed in

a position where complying with fiduciary duties or responding to changed circumstances causes automatic revocation and punitive tax consequences.

The nomination can generally only be changed following a beneficiary's death or a qualifying relationship breakdown. This does not adequately accommodate common events such as births, incapacity, retirement, succession, residency changes, or changes in business ownership.

The consequences of non-compliance are also disproportionate. If the nominated proportions are not followed, the election is automatically revoked, the trustee may be taxed on the trust's entire net income at the top marginal rate plus the Medicare levy, and the minimum tax applies in later years.

REIA recommends broader permitted changes, separate income and capital proportions, a reasonable correction period, Commissioner discretion, and consequences limited to the income affected by a breach. Treasury should also clarify how the election will operate under state and territory trust and duty laws.

Recommendation 4: Provide comprehensive rollover and transfer duty relief

The Commonwealth rollover provides relief from certain immediate income tax consequences, but it is subject to significant limitations. Generally, all required assets must be transferred to one transferee by 30 June 2030, continuity and residency requirements must be met, and the choice is irrevocable. Failure to complete the restructure may result in earlier relief being reversed.

Proposed section 126-450 of the Income Tax (Transitional Provisions) Act 1997 confirms that GST, fringe benefits tax, state and territory duties, and other taxes continue to apply. An income tax rollover is therefore not a cost-free restructure.

A real estate business may still need to transfer assets, obtain new or amended registrations, novate agency and property management agreements, obtain third-party consents, establish new banking and trust account arrangements, update insurance and business records, and obtain professional advice.

Stamp Duty

The Explanatory Materials state that the election is expected to limit restructuring costs, including stamp (transfer) duty. However, duty outcomes depend on the jurisdiction, assets, trust deed, legal steps undertaken, and available concessions.

Stamp duty also varies materially between jurisdictions and depends on the assets transferred, the legal steps undertaken, continuity of beneficial ownership, and the available exemption or concession.

Material uncertainty remains across jurisdictions. Even where a specific restructuring concession may be available, including under Queensland's small business restructuring provisions, eligibility is conditional and may not cover every legal step, asset, or transaction required to implement an excluded election trust (EET) election or broader restructure. Victoria and other jurisdictions may offer more limited relief depending on the structure and assets involved.

The Commonwealth should secure coordinated state and territory guidance and duty relief before commencement. Businesses should not be required to elect or restructure until the duty consequences of the Commonwealth reform are known and appropriate relief is operational.

The rollover period must be extended

The rollover is available for transfers made between 1 July 2027 and 30 June 2030. A trust that makes an EET election cannot subsequently use the rollover. This creates an unreasonable risk.

A trust may enter the electable regime in 2028–29, comply for several years, and then need to change its beneficiaries or distributions because of a legitimate family or business event. By that time, the rollover may have expired. The election therefore risks delaying, rather than avoiding, the cost of restructuring.

REIA recommends rollover relief should be available on a standing or indefinite basis to trusts affected by the minimum tax. At a minimum, it should remain available for three years after an EET election is voluntarily or automatically revoked. Legal, accounting, valuation, financing, and other reasonable costs incurred because of the reform should also be eligible for an appropriate write-off.

Recommendation 5: Clarify the definition of fixed trust

REIA supports greater certainty in the definition of fixed trust but recommends that the definition focus on material discretion over economic entitlements.

Commercial and widely held investment vehicles should be expressly excluded in primary legislation rather than relying on expectations stated in explanatory materials or on future ministerial instruments. This should include MITs, AMITs, registered managed investment schemes, ordinary commercial unit trusts, employee share trusts, bare trusts, and other regulated or widely held vehicles that do not present the income-splitting concern targeted by the reform.

Limited administrative, governance, unit-issue, investment, and classification powers should not cause an otherwise commercial trust to be treated as discretionary unless those powers permit a material redirection of economic benefits between beneficiaries.

Regulatory Impact on Real Estate

An Accent Research survey jointly commissioned by five property and construction peak bodies, including REIA, provides useful evidence of the potential impact on the real estate profession. Respondents were recruited through online panels and through the memberships of the Property Council, REIA, and Master Builders Australia.

The survey included 1,195 business owners, including 112 real estate businesses. Questions directed to real estate businesses using discretionary trusts generally had an unweighted base of 81 respondents.

Results were weighted using Australian Bureau of Statistics business population benchmarks. The subgroup results should be interpreted conservatively, but the findings are consistent and material.

Real estate businesses are predominantly small businesses

Among real estate respondents:

- 43 per cent were owner-only businesses;
- 36 per cent employed between one and four people;
- 18 per cent employed between five and 19 people;
- 48 per cent had annual revenue below $500,000; and
- a further 29 per cent had annual revenue between $500,000 and $2 million.

These businesses do not generally have internal legal, taxation, or restructuring teams. They must obtain external professional advice and meet the resulting costs from existing business cash flow.

Trusts are embedded in real estate businesses

Among real estate respondents:

- 35 per cent used a discretionary trust to operate or conduct the business;
- 32 per cent used one to hold shares or an ownership interest;
- 21 per cent used one to hold land, property, or other business assets; and
- 8 per cent used one to ring-fence development projects from risk.

Among real estate businesses using a discretionary trust, 91 per cent said the trust arrangements were very important to the ownership or operation of the business. A further 5 per cent said they were somewhat important.

These structures are not incidental tax arrangements. They are embedded in business ownership, succession, asset protection, and risk management.

Transfer duty is a major restructuring barrier

Among real estate trust users:

- 32 per cent were unaware that transferring assets from a discretionary trust could attract state or territory duty;
- 47 per cent ranked transfer duty as one of their three main restructuring barriers;
- 28 per cent ranked transfer duty as their largest barrier;
- 43 per cent could not estimate their potential duty liability;
- 40 per cent estimated a duty liability of $50,000 or more;
- 19 per cent estimated a liability of $250,000 or more; and
- 10 per cent estimated duty of at least $1 million.

No real estate respondent using a discretionary trust selected “none” when asked to estimate the duty arising from a restructure.

The broader tax burden is already affecting the sector

Sixty-eight per cent of real estate respondents said their overall tax burden had increased over the preceding five years.

Among those reporting an increase:

- 80 per cent said it had reduced profitability; and
- 62 per cent said it had reduced business confidence.

Eighty-three per cent of real estate respondents agreed that a minimum tax of 30 per cent on discretionary trusts would make it harder for small and medium businesses to invest, grow, create jobs, and deliver housing. Sixty-nine per cent strongly agreed.

The results demonstrate that the reform will affect genuine small businesses and could further weaken confidence, investment, and employment across the property sector.

Conclusion

REIA does not support the introduction of a minimum tax on discretionary trusts and recommends that the Government not proceed with the reform.

Discretionary trusts are lawful and long-established structures used by real estate agencies and other small and family businesses for asset protection, succession planning, business continuity, and commercial risk management. The proposed minimum tax would penalise legitimate business structures, impose substantial compliance and restructuring costs, and reduce the flexibility businesses need to respond to changing family and commercial circumstances.

The exposure draft does not provide small businesses with a safe or commercially practical pathway. The electable regime remains inflexible and uncertain, while the Commonwealth rollover does not address transfer duty or the broader commercial and administrative costs of restructuring.

If the Government nevertheless proceeds, REIA recommends applying the minimum tax at the beneficiary level through a creditable withholding mechanism. If that approach is not adopted, existing trusts should be grandfathered, or genuine active small businesses with aggregated annual turnover of up to $10 million should be permanently exempt.

Businesses should not be required to make permanent structural decisions until the complete legislative package has been released, its impacts have been properly assessed, and the outstanding tax, trust law, transfer duty, and implementation issues have been resolved.

REIA welcomes further consultation with Treasury on the impact of the proposed reforms on real estate businesses and the broader property sector.

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Appendix B

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REAL ESTATE INSTITUTE OF AUSTRALIA

Capital Gains Tax and Negative Gearing Tranche 2 Legislation

21 August 2026

The Real Estate Institute of Australia (REIA) serves as the national peak body representing the real estate profession, advocating for policies that foster a prosperous and sustainable industry since 1924, comprising the State and Territory Real Estate Institutes (REIs) as its members. REIA's role is to lead on issues that require national coordination, delivering consultative and evidence-based advocacy on federal policy and regulation that impacts the profession and the property market.

As the leading national voice for real estate professionals, REIA welcomes the opportunity provided by the Treasury to contribute to the consultation on the second tranche of legislation implementing the Government's capital gains tax (CGT) and negative gearing reforms.

REIA recognises the Government's objective of directing investment towards additional housing supply. However, the legislation must not create unnecessary uncertainty, exclude legitimate supply-enhancing housing models or impose disproportionate compliance burdens on ordinary property owners.

REIA must also note, more broadly, that we continue to caution the Government against pursuing these housing tax reforms. Independent modelling released by REIA, Master Builders Australia and the Property Council of Australia following the Federal Budget indicated that the combined effect of the Budget settings could reduce new housing supply by more than 8,700 dwellings over four years, increase rents by up to $9 per week, reduce GDP by $864 million and result in the loss of more than 3,800 construction jobs.

New Residential Dwelling and Negative Gearing Activity Exemptions

Extension of Eligibility Period from 12 Months to 36 Months

REIA supports the extension of the eligibility period for new residential dwellings from 12 months to 24 months under proposed subsection 5(6). REIA recommends that the eligibility period be extended to 36 months, as this is more appropriate given the practical realities of residential development, sales, settlement, and rental markets.

The proposed provision allows a purchaser to treat a dwelling as new where the dwelling was new for the seller and the purchaser acquires it within 24 months of the certificate of occupancy first being issued. A 36-month period would provide greater

flexibility in the sales process and allow the market additional time to adjust to the recent changes before new stock is brought to market.

The explanatory material recognises that a purchaser may acquire a qualifying new dwelling within 24 months of the first certificate of occupancy, including where it has been occupied or sold during that period. Extending the period to 36 months is a practical improvement that will provide useful certainty for newly completed apartments and houses. It takes into account settlement timing, marketing periods, lending conditions, purchaser decisions, and project completion issues which can delay the sale of newly completed stock.

REIA also supports the proposal that there be no restriction on a dwelling being occupied, or on the number of times it may be sold, during the eligibility period. This is particularly important for apartments and other developments where stock may move through a developer, intermediary, selling agent, or purchaser before becoming a long-term rental investment.

REIA recommends that the final legislation provide for a 36-month eligibility period and expressly confirm that occupation of a dwelling, and multiple transfers of a dwelling, during that period do not cause a purchaser to lose new residential dwelling status where all other eligibility requirements are met.

Commencement of the Eligibility Period from First Occupation of Dwelling

The proposed definition of a “new residential dwelling” relies heavily on when a certificate of occupancy is first issued. If a 36-month period is not adopted, REIA recommends that the 24-month eligibility period commence from the date a dwelling is first occupied, rather than from the date a certificate of occupancy is issued.

A certificate of occupancy is an administrative document whose timing varies across jurisdictions and does not necessarily align with when a dwelling is practically available, marketed, settled or occupied. Developers and purchasers can be affected by delays in documentation, staged construction, authority processes, or the completion of common areas and services, none of which necessarily reflect the dwelling’s actual readiness for sale or tenancy.

Using first occupation as the relevant starting point would better reflect when a dwelling has genuinely entered the housing market and reduce the risk of part of the eligibility period expiring before the property is ready to be sold or leased. REIA also notes that certification systems differ across jurisdictions and can involve interim, partial or staged approvals, or approvals with different names.

A tax outcome should not turn on administrative differences that do not affect whether a dwelling is complete and capable of lawful occupation.

REIA’s preferred position is that the eligibility period be 36 months. If a 36-month period is not accepted, REIA recommends that the legislation provide for a 24-month eligibility period commencing from the date the dwelling is first occupied, rather than the date a certificate of occupancy is first issued.

Additional Special Case for Deep Retrofit of Existing Residential Dwellings

REIA recommends introducing an additional special case for deeply retrofitted existing residential dwellings within the definition of a new residential dwelling. The present definition of a "new residential dwelling" should be extended to capture existing dwellings that undergo a deep energy-efficiency retrofit and capacity upgrade, even though they do not involve new construction. This would allow purchasers who acquire a qualifying deeply retrofitted dwelling within the eligibility period to access the same treatment as purchasers of newly constructed dwellings.

The current definition overlooks investment that delivers outcomes closely aligned with broader Government residential energy efficiency policy objectives (i.e. the transformation of very poor-performing existing housing stock into high-performing, higher-capacity dwellings). Around 70 per cent of Australia's 11 million homes pre-date minimum energy-efficiency requirements. This concession should not extend to ordinary renovations, but be limited to projects that meet objective, verifiable thresholds and deliver outcomes aligned with housing quality, energy affordability and emissions-reduction objectives.

Beyond the energy-efficiency retrofit case proposed above, REIA is concerned that deep retrofits and substantial redevelopment of existing residential buildings are not clearly captured by either the basic new dwelling case or the conversion of a non-residential building. Residential buildings may become vacant, unsafe or uninhabitable and undergo extensive reconstruction without a clear legal point at which they cease to be a dwelling. Major renewal can require substantial capital investment, replacement of building systems and periods of non-occupation, while restoring obsolete or unsafe stock and extending its useful residential life.

The tax framework should therefore support substantial renewal of existing residential stock, rather than focus solely on net increases in dwelling numbers. REIA recommends a separate pathway for deep retrofits and substantial redevelopment, with eligibility based on substantial reconstruction or renewal, a material extension of the building's useful residential life, and its return to genuine long-term residential use.

<u>Policy Rationale</u>

1. **Incentivising upgrades to Australia's poorest-performing housing stock**
   The Commonwealth's Home Energy Rating framework for existing homes was introduced to improve energy efficiency, lower household energy costs, improve comfort and resilience, and reduce emissions from the residential sector. This proposal targets investment directly at that segment.

2. **Supporting national energy efficiency and emissions reduction objectives**
   Substantial retrofits can materially improve energy efficiency, thermal performance, household comfort, resilience, and running costs. These improvements support broader policy objectives while improving the quality of

existing housing stock.

3. **Increasing housing capacity**
   The requirement for an additional bedroom links the policy not only to improved quality but also to increased accommodation capacity. While these projects may not create a separate dwelling, they can support additional occupancy within established suburbs and contribute to broader housing supply objectives.

4. **Improving outcomes for renters**
   Higher-performing homes generally offer greater comfort, lower running costs and improved energy efficiency. Encouraging investors to undertake deep retrofits of existing rental stock would support better-quality housing outcomes for tenants while modernising ageing housing stock.

5. **Targeting genuine transformation, not cosmetic renovation**
   Requiring a move from a very low energy rating to a high-performing rating, combined with an increase in accommodation capacity, sets a high threshold and ensures the concession is directed only at projects that deliver substantial public policy benefit.

REIA recommends that the legislation establish a separate eligibility pathway for deep retrofits and substantial redevelopment of existing residential dwellings. The pathway should recognise material and verifiable improvements in housing quality, energy performance, safety, accessibility, residential amenity, or accommodation capacity, without requiring compliance with a prescribed energy-rating threshold.

"Additional Dwellings" Test

REIA is concerned that the proposed special case for adding dwellings to a parcel of land relies too heavily on a strict numerical test. The draft test requires that the number of dwellings after the works exceeds the number on the land at acquisition. While this will capture many supply-enhancing projects, it may exclude legitimate projects that deliver substantial housing and policy benefits but cannot increase the recognised number of dwellings because of local planning controls, lot configuration, or the nature of the project.

This could include projects that substantially improve an existing low-quality dwelling, make it capable of housing more people, deliver accessible accommodation, or replace unsafe and inefficient stock where only a one-for-one redevelopment is permitted. A strict numerical test may also create distortions between different planning jurisdictions and housing forms.

Treasury should develop objective thresholds in consultation with industry. These should consider the proportion of dwellings restored or replaced, bedroom capacity, residential floor area, and material improvements in accessibility, energy performance, safety, or amenity. A replacement ratio, such as retaining at least 80 per cent of the pre-development dwelling count while maintaining or improving

overall housing capacity, could provide an appropriate safe harbour. This should be supported by integrity rules to ensure that cosmetic refurbishment alone does not qualify.

REIA recommends that the additional dwellings test adopt a project-based assessment of genuine housing supply and housing-capacity benefits, rather than relying solely on the dwelling count at the time of acquisition. The test should recognise projects that deliver a net increase in dwellings, as well as qualifying replacement or redevelopment projects that maintain dwelling numbers while materially improving housing capacity, quality, accessibility, safety, or energy performance. It should also permit the reasonable aggregation of land forming a single development, accommodate staged delivery, and recognise dwellings that were legally or practically unavailable for occupation.

Negative Gearing (Tranche 2)

REIA notes that this aspect of the consultation has already progressed through Parliament. REIA supports the amendments preserving the existing negative gearing and CGT treatment where a surviving spouse, co-owner, or former spouse acquires an interest due to death or relationship breakdown. These amendments address an otherwise unfair consequence of the original acquisition rules and are necessary to ensure the reforms do not impose unintended tax outcomes in circumstances such as bereavement or relationship breakdown.

CGT Apportioning Method

As currently proposed, the draft instrument expressly provides a statutory apportionment formula as an alternative to a formal market valuation for real property and assets without a readily ascertainable market value. However, REIA anticipates that a significant cohort of property owners are likely to prefer a formal valuation to establish or support the market value of real property as at 30 June 2027, particularly where there is uncertainty about the future sale date, significant improvements, unusual property characteristics, or a potentially material tax outcome.

While a valuation-based approach has clear conceptual merit in accurately apportioning gains between the pre- and post-indexation periods, we also have significant concerns about whether the valuation profession has the capacity to deliver this volume of work within the timeframe.

Australia has a comparatively small pool of qualified property valuers against approximately 3 million rental properties nationally. A simultaneous need for retrospective or contemporaneous valuations across a large residential property base could create capacity constraints, delays, variable quality, and substantial cost for property owners.

The transition will also affect a large and predominantly small-scale investor cohort. In 2022–23, around 2.3 million individuals reported rental income, and 71.8 per cent reported a single property interest. The requirement for taxpayers to obtain valuations at or around a single fixed date risks delays, expensive valuation fees, inconsistent quality as demand outstrips supply, and taxpayers being unable to obtain a valuation in time to meet their compliance obligations. To support compliance, the ATO should publish clear guidance with relevant property examples for taxpayers who intend to use the prescribed method.

To manage this risk, REIA recommends setting an extended window, during which a formal valuation may be obtained and relied upon in determining market value at the end of 30 June 2027. This approach would allow valuation demand to be spread out rather than concentrated around a single date, easing pressure on valuer capacity and giving taxpayers greater flexibility to obtain a valuation at a time that suits their circumstances.

The Government should also expressly acknowledge that a significant cohort of property investors is likely to elect to obtain a formal valuation rather than rely on the statutory apportionment method. Even if only a proportion of affected investors choose this pathway, the cumulative cost across the investor base is likely to be substantial and easily could exceed one billion dollars. These are not theoretical compliance costs: they will either be absorbed by landlords or, where market conditions allow, passed through to tenants in the form of higher rents.

Additional Considerations

Need For Accessible Guidance

There is considerable uncertainty across the property industry around the interaction between negative gearing changes, CGT changes, new-dwelling status, grandfathering, and the new apportionment arrangements. We anticipate this will persist even once the legislation is settled unless it is accompanied by clear, accessible guidance.

Once legislation is settled, Treasury and the ATO should provide clear, comprehensive and plain-English information before the measures commence. Guidance should be designed for ordinary investors and should not assume tax expertise, with particular emphasis on the valuation and apportionment requirements given their complexity and the practical deadlines involved. These materials should be released with sufficient lead time before key dates to allow investors to act on them.

Real estate agents represent a significant and trusted communication channel to landlords, given their ongoing relationship in managing rental properties. Agents are

well placed to help distribute Government guidance materials and flag key dates and requirements directly to landlords and investors as part of their existing engagement, providing an efficient and credible conduit for reaching this audience.

REIA would welcome the opportunity to work with Treasury on how this channel could be used to support a broader communication and education strategy as the changes are implemented.

Monitoring Impacts on the Housing Market

The interaction of loss quarantining, CGT changes, interest rates, construction costs, planning constraints, and rental-market conditions may have different effects across locations and housing types. Treasury should monitor outcomes closely, particularly for small-scale investors, off-the-plan purchases, secondary dwellings, apartment stock, and regional markets.

REIA recommends establishing a formal post-implementation statutory review within two years of commencement, including public reporting on investment in new dwellings, rental supply, affordable housing, build-to-rent, and secondary dwellings.

Conclusion

REIA welcomes the opportunity to comment on the Capital Gains Tax and Negative Gearing – Tranche 2 Legislation. The draft legislation addresses several necessary technical issues and provides important protections for taxpayers in circumstances such as bereavement, relationship breakdown, and changes in residential use.

The final legislation should also ensure that the incentive framework recognises the full range of legitimate housing-supply pathways, is workable for consumers and industry, and is supported by clear administration and guidance. REIA would welcome further engagement with Treasury and the Australian Taxation Office as the legislation and associated guidance are finalised.