Property Council of Australia ABN 13 00847 4422
A Level 7, 50 Carrington Street, Sydney NSW 2000
T +61 2 9033 1900
E info@propertycouncil.com.au
W propertycouncil.com.au
Property Council of Australia

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Australian Securities and Investments Commission
GPOI Box 9827
Melbourne VIC 3001

By email only: markets.consultation@asic.gov.au

To Whom It May Concern

Australia's evolving capital markets – April 2025

The Property Council of Australia (the Property Council) welcomes the opportunity to comment on the Australian Securities and Investments Commission's (ASIC) discussion paper on Australia's evolving capital markets and the dynamics between public and private markets.

The Property Council is the peak body for owners and investors in Australia's $670 billion property industry. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private.

The property industry is the country's second largest employer, providing over 1.4 million jobs to Australians, representing a direct gross domestic product (GDP) contribution of $232 billion, or 10.6 per cent of total GDP, as well as 18.2 percent of total tax revenues totalling $129.6 billion.

The Property Council has previously welcomed a balanced discussion on Australia's public and private markets, ensuring that both private and public capital can continue to shape and build Australian cities into the future.

Both markets place a vital role in the Australian economy, supporting growth, investment and productivity, and we must ensure Australia remains internationally competitive and an appealing destination for investment.

Access to capital and the type of capital sought in real estate investment is determined by free market forces on a risk and return adjusted basis, with the balance of debt or equity, public or private a function of market conditions.

This submission responds to the discussion paper's development of the private market in Australia and the critical role that private credit and direct investment has on the Australian property market, including the development of much needed, diverse housing.

In addition, the submission outlines the risks to the Australian property industry, and by extension the broader economy, from a future regulatory regime that is not internationally competitive and restricts the investment and capital flows required by a healthy and competitive real estate market.

Lastly, the submission makes brief comments on the challenges addressing the attractiveness of the public market for investors and developers alike.

How the property industry interacts with the private market

Australia's property industry interacts closely with the private market, using private capital across equity and credit to finance and support its developments and operations on a diverse number of asset types, including residential, commercial and industrial.

Investments take a number of different forms, including direct asset-level investment into particular assets (such as through private property funds), to more structured debt arrangements such as private credit, preferred equity or mezzanine finance.

Equity and credit are drawn upon for distinct but complementary roles. Many unlisted property vehicles, such as wholesale trusts, are underpinned by equity from sovereign investors and superannuation funds.

The discussion paper refers to data from Preqin that lists private capital investment into Australian real estate (assets under management, or AUM) as $58.2 billion[1], however the data is from voluntary submissions and does not represent the entire market.

A diverse range of market participants interact with private capital, including ASX-listed Real Estate Investment Trusts (REITs), unlisted wholesale trusts and funds, joint ventures and syndicates alongside superannuation funds, sovereign wealth funds and international investors.

The investors in this market are highly sophisticated, and each lending arrangement often sits within a large, globally diversified portfolio.

Increasingly we have seen private credit funds act as alternative lenders to the major banks, providing access to capital that is vital for the delivery of real estate projects, and providing for recapitalisation or transitional finance.

In the last five years, direct investment by private capital into real estate has overtaken private equity, with the value of Australian-focused private capital at almost $150 billion.[2]

The role of private capital in property financing

For developers and investors alike, the private market represents a key investment partner to deliver on a variety of projects and asset-types, including the broader living sector such as build-to-sell and build-to-rent (BTR) developments, purpose-built student accommodation (PBSA) and land lease communities.

In the commercial and industrial sectors, developers draw on private credit to finance a diverse range of projects from office developments in our employment generating precincts, to key critical infrastructure in logistics and data centres.

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[1] Australian Securities and Investments Commission, *Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets*, 2025, 24, https://download.asic.gov.au/media/44hh5ctv/australia-s-evolving-capital-markets-a-discussion-paper-on-the-dynamics-between-public-and-private-markets.pdf
[2] Australian Securities and Investments Commission, *Australia's evolving capital* markets, 24.

All aspects of the property market interact with private credit as an alternative to the institutional banks, albeit at a lower rate than seen internationally. As an example, less than 5 per cent of housing credit in Australia is provided by non-bank financial intermediaries (NBFIs), such as non-bank lenders, pension and investment funds, compared to 67 per cent in the United States.[3]

Whilst the exposure of the Australian market is relatively low, it is growing, and it provides a critical stopgap for developments where the traditional, dominant bank lenders are not active. It provides for an alternative source of capital, increasing funding sources and thereby increasing choice and competition, and a healthier investment funding market.

Private capital plays a critical role in filling the financing gaps across the risk, return and size spectrum, that the traditional markets may not fully service.

Private credit funds provide both senior and subordinated loans for developments, including apartments, townhouses and house-and-land packages, as well as emerging BTR and PBSA developments, where traditional pre-sale requirements of bank lending can constrict development.

Private equity is commonly used to provide seed funding for emerging and innovative sectors such as BTR and provide the scale and flexibility to deliver large urban renewal and greenfield projects.

Non-bank lenders also provide transitional and bridge loans that provide much needed flexibility, such as for a maturing bank facility for a particular asset or to enable exits for those facing significant liquidity pressure, avoiding a distressed exit.

Mitigating liquidity pressure can allow entities to sell assets gradually (rather than at a distressed discount) or hold through market volatility to sell in a better window or refinance with a long-term lender.

Private equity and credit often work together in a development. Whilst equity may fund initial acquisitions and planning, private credit then provides finance for construction or another facility.

Why the property industry uses private capital
As outlined previously, the Australian property industry draws on private credit as an alternative to or a partner with the traditional, institutional banking sector, mitigating a number of limitations.

For the major banks, strict pre-sale thresholds often restrict development, with banks generally requiring pre-sales equivalent to at least 100% of the loan.

Even as APRA has recently clarified[4] that this underwriting criteria for pre-sales was not guidance or a minimum requirement but simply a reflection of industry practice, the traditional banking sector shows no signs of amending their credit risk management for property lending.

These limitations allow the non-bank lenders to fill a critical gap in the market, in particular for smaller and middle-market developers.

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[3] Australian Securities and Investments Commission, *Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets*, 25.
[4] Australian Prudential Regulation Authority, *APRA clarifies its March 2017 letter regarding commercial property lending*, 2025, https://www.apra.gov.au/apra-clarifies-its-march-2017-letter-regarding-commercial-property-lending

Non-bank lenders also provide critical flexibility for loans which are project-specific and suited for individual cash flows, capital needs or risk profiles of projects. They can also align repayments with revenue generation, or provide alternatives to pre-sale thresholds for assets like BTR or PBSA where they do not apply.

Generally speaking, non-bank lenders can be more agile than the institutional banking sector, which allow them to meet stricter timeframes for certain acquisitions or refinancing. As outlined previously, non-bank lenders also provide financing across diverse assets where banks may either lack a particular expertise or risk appetite to finance.

In addition, private equity has a crucial role in in delivering large-scale, often complex and innovative projects that otherwise would not be viable, as part of strategic equity partnerships through joint ventures and other unlisted funds. Together with private credit, they provide complementary roles as part of a competitive lending and investment landscape.

This is not to say the institutional banking sector is not also a critical partner for Australia's property industry. As the cornerstone of the lending system, they provide a safe and stable partner in delivering many real estate projects across the country, as well as underpinning over $2 trillion in mortgages.[5]

The strength in Australia's property sector lies not in the dominance of either the non-bank or institutional banking sectors, but rather their essential and complementary roles as part of a competitive lending market.

Market forces have led to the growth of the private markets in Australia, reflective of a global shift in capital allocation, as well as developer and investor preferences.

Risks to the Australian property sector

Investment into Australian property by the private market does not exist in a vacuum. It is not separated from outside influence or a foregone conclusion that investment will continue unabated.

In the globalised and increasingly competitive international capital markets, investors allocate funds where the risk and return balance is both attractive and stable, and which the regulatory environment provides long-term confidence.

A number of reforms have recently eroded confidence in Australia as a destination for international investment, including from private credit equity, and direct investment into property. Amendments to thin capitalisation rules has diminished Australia as a stable, safe market, particularly as the rules and guidance have yet to be finalised but apply to income years commencing on or after 1 July 2023.

Coupled with investment-limiting State and territory taxes such as the absentee owner surcharge (AOS) in Victoria or the surcharge land tax for foreign owners in New South Wales, international investors are having a crisis of confidence in the Australian market.

[5] Reserve Bank of Australia, *D5 Bank Lending Classified by Sector*, 2025, https://www.rba.gov.au/statistics/tables/xls/d05hist.xlsx?v=2025-04-28-11-47-52

Members continue to report to the Property Council that foreign investors, including private equity and credit, consider the ever-changing and negative regulatory environment in Australia as a sovereign risk.

In assessing any proposed regulatory response to real or perceived private market risks, efficiency and confidence, ASIC must ensure the response is:

1. Minimised and proportionate
2. Targeted appropriately
3. Maintains Australia's global competitiveness for capital

As foreign capital deployment in Australia covers a number of regulatory regimes, from the Foreign Investment Review Board (FIRB) to the tax regime, APRA and state planning laws, ASIC must ensure its response maintains an Australian reputation that is both attractive and stable.

Consideration must also be given to the impact on small and medium fund managers, who carry a disproportionate operational and compliance burden from additional regulation, despite the fact their risk due diligence and compliance are at comparable levels.

There are a number of risks to the Australian property industry, the broader economy, and the stated objectives of the government from a future regulatory regime that inadvertently causes capital flight from the private market, including private equity and credit.

Reduced capital availability and raised cost of capital
It is well established that capital is fluid, and can be diverted to other jurisdictions that are less restrictive or burdensome on private equity or credit.

As of June 2023, private capital asset managers hold a substantial balance of dry powder, that being capital allocated by investors but not yet deployed, of $43.6 billion.

Investors can quickly redeploy this capital if the regulatory environment in Australia makes investment no longer internationally competitive, to other markets such as Asia, Europe or the United States.

Smaller and middle-market developers will be disproportionally affected, who often rely on non-bank lenders and who are more susceptible to a rise in borrowing costs. The costs of borrowing borne by developers are ultimately passed on to consumers in the form of higher purchase prices or rents.

Reduced competition in lending
Ultimately, a reduction in competition in the lending market – the positive competitive friction between bank and non-bank lenders - will damage the viability of property development in Australia.

As outlined previously, non-bank lenders provide much needed flexibility for investors and developers – driving innovation and healthy competition amongst lenders.

A reduction in capital diversification from international sources will also expose Australia to greater impacts of the domestic economic cycle or investment conditions, particularly where international private capital addresses liquidity risk and stabilises price volatility.

Stagnation in emerging and innovative sectors
Private equity and credit play a critical role in a number of asset classes which, as outlined previously, do not fit into the traditional model of lending supported by the major banks.

For example, BTR developments (which lack the appropriate pre-sale commitments) and PBSA (which lack pre-commitments and are seasonal in nature) rely critically on non-bank lenders to underwrite projects.

This is extended to retirement living and land lease, innovative and affordable housing products which help meet the needs of an aging population. Any reforms which restrict capital to these asset types, and either redirects capital to other assets or to leave this jurisdiction altogether will actively make the housing and rental crisis worse.

For BTR developments and retirement living, alongside conventional build-to-sell apartments and house and land packages, these developments actively contribute to the government's National Housing Accord target of 1.2 million homes by 2029.

As stated earlier, investment into Australian property is not guaranteed, and both foreign and domestic equity and credit are constantly assessing the regulatory and risk landscape to ensure their investment remains competitive, including from an internal rate of return (IRR).

Less development and less investment
The systemic outcome which results from the previous risks are that Australia will see less development and less investment into the property industry and broader economy.

Australia cannot risk any slowdown in capital generation for the property industry, which will put at risk not only the National Housing Accord target of 1.2 million homes by 2029, but also critical productivity-enhancing projects in our commercial and industrial precincts.

Addressing the attractiveness of the public market

The discussion paper also centres on the future of Australia's public market, included listed entities and traded funds, and the public debt market.

The Property Council supports efforts to enhance the appeal of the public market, both for listed entities and investors, noting that many of Australia's leading property companies are listed on the Australian Securities Exchange (ASX).

The benefits of listing are well known to the market: greater liquidity and tradability, access to a broader range of investors, and a greater profile in the market.

It's critical to recognise however that some high-performing property companies choose to remain private for valid and strategic reasons. Besides reduced compliance costs, many enjoy a long-term, patient approach to investment – usually alongside superannuation funds and sovereign investors – that avoids the short-term earnings pressures associated with listed entities.

Indeed, not every financing opportunity is appropriate for either the public or private markets, and we should be encouraging the right opportunity to the right investor, from its risk profile to pricing.

The discussion paper explores a number of developments ASIC is investigating regarding the attractiveness of the public market, including improving the listing pathway and the ASX Listing Rules. Further investigation regarding the cost of listing, as well as burdensome corporate governance rules for boards and companies, deserve scrutiny.

The key recommendation from the Property Council is that any reforms which seek to improve the attractiveness of the public market should not come at the expense of the private market. This includes imposing public market governance standards on the private market, or further penalising private investment structures.

The recent Senate inquiry into the wholesale investor test showed that shrinking the capital base available to private credit funds, for example by raising the threshold for the individual wealth test, neither addressed a perceived issue for investors, nor recognised the different purpose and investor profiles of the public and private markets.

We strongly advise ASIC to avoid any punitive action on private market participants in order to achieve a policy outcome for the public market.

The Property Council would welcome the opportunity to discuss this submission in more detail. Please contact [redacted], Policy Manager at [redacted]@propertycouncil.com.au to arrange a meeting.

Yours sincerely

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Executive Director – Capital Markets