Australia's property industry
Creating for Generations

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Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir/Madam

Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021

The Property Council welcomes the opportunity to provide comments to the Senate Economics Legislation Committee regarding the provisions of the *Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021* (the Bill).

The property industry supports the introduction of a Corporate Collective Investment Vehicle (CCIV) framework and welcomes the Government's commitment to enhancing flexibility and choice for Australian fund managers through the introduction of a CCIV regime aligned with the robust and successful Managed Investment Trust (MIT) and attribution MIT (AMIT) frameworks.

The MIT and AMIT regimes are a vital cornerstone of Australia's property sector, facilitating global and domestic investment into office buildings, industrial precincts, retail centres and other property assets across our cities and regions. However, many overseas regimes are less familiar with trust law concepts and rely more on corporate vehicles for collective investment and funds management purposes. As such, the introduction of a CCIV, with the right tax and regulatory settings in place, will complement Australia's existing funds management offerings and enhance our ability to compete for international capital.

In summary, our submission:

- Supports the introduction of the Bill which is a significant and vital milestone in the evolution of establishing a new CCIV regime to complement the MIT and AMIT regimes. These investment frameworks facilitate the democratisation of large-scale real estate investment, providing opportunities for 'mum and dad' investors as well as institutional investors to invest in commercial real estate assets that are expertly designed, sustainably built and professionally managed. These regimes are robust, well-established and they enable capital to be pooled together and invested in various asset classes.

- Reiterates the importance of ensuring that the CCIV regime, along with the existing MIT and AMIT frameworks, are designed to encourage domestic and international investment in Australia. These investment inflows are needed, especially now during a time of economic recovery, to fund the creation and renewal of our real estate and infrastructure assets, generate economic growth and support local jobs and businesses.

If you would like to discuss any aspect of this submission further, please contact Kosta Sinelnikov on 0422 168 720 and ksinelnikov@propertycouncil.com.au or myself on 0400 356 140 and bngo@propertycouncil.com.au.

Yours sincerely

Belinda Ngo
Executive Director – Capital Markets

Submission:

Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021

January 2022

1. Executive summary

The Property Council welcomes the opportunity to provide comments to the Senate Economics Legislation Committee regarding the provisions of the *Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021* (the Bill).

We support the introduction of the Corporate Collective Investment Vehicle (CCIV) framework to modernise and complement Australia's existing regulatory and tax regimes, namely the Managed Investment Trust (MIT) and attribution MIT (AMIT) frameworks, that are used to pool and invest capital from domestic and offshore investors.

As a net capital importer, Australia relies on significant amounts of international investment to build and grow the economy. Our ability to attract and leverage this capital will be ever more important as we continue to navigate through the pandemic and spur on our economic recovery.

International investment also brings tangible benefits to different sectors and industries, including new infrastructure, higher productivity, greater employment opportunities and higher tax revenues for government.

This is why it is important to get the settings of the CCIV framework right in the first instance, as well as to continue to improve and leverage our existing investment regimes to be able to compete globally for capital. In particular, the regulatory and tax settings of these regimes will need to be internationally competitive to continue to attract necessary levels of investment.

To date, a significant amount of work has been done to develop and institute the CCIV framework by government, regulators and industry stakeholders. The passage of the CCIV bill will be a significant first step to establishing a new investment regime, which can be built upon as we work through supporting regulations and operational requirements to ensure the CCIV regime is able to be successfully and widely adopted. The Property Council looks forward to contributing our industry's views and input to these processes in due course.

2. Importance of global capital for Australia

Australia has historically been a net capital importer. As the Reserve Bank of Australia's Deputy Governor discussed in a speech in August 2019,[1] our reliance on foreign investment is a consequence of economic strength rather than weakness:

> *Because there are a lot of profitable investment opportunities in Australia relative to the size of the Australian savings pool, we have sourced capital from the rest of the world either in the form of debt or equity. This is not because savings in Australia is particularly low; it is about on par with many other advanced economies.* ***Rather, it is because the share of investment in the Australian economy is higher than that in many other advanced economies, and foreigners were attracted by the investment returns on offer***. (emphasis added)

Foreign capital is therefore attracted to the investment opportunities that Australia has on offer, and that capital is critical to the continued advancement of the overall economy. The Australian property sector is particularly attractive for investors given its relative stability, maturity, and desirable risk-return profile.

[1] Guy Debelle, Address to the Economic Society of Australia, Canberra – 27 August 2019, https://www.rba.gov.au/speeches/2019/sp-dg-2019-08-27.html

According to the Foreign Investment Review Board (FIRB), $55.9b of foreign capital was invested in Australian real estate in 2019-20, out of a total of $195.5b in approved foreign investment across the economy.[2] These capital inflows delivered a significant economic contribution to cities, regions and communities and supported thousands of local jobs. FIRB Chair David Irvine AO has noted that firms with foreign direct investment support 1 in 10 jobs in Australia and 40% of Australia's exports.[3]

3. Benefits of foreign investment in Australian real estate

The benefits that foreign investment brings to Australia are well-established but worth reiterating.

As mentioned earlier, the difference between our national investment needs and savings pool, of around 4% of GDP, is supported by foreign investment. Domestic capital alone wouldn't be sufficient to get the Australian economy to reach its full potential, fund the creation of new infrastructure and help shape our cities. The higher economic growth driven by foreign capital results in higher productivity, greater employment opportunities and higher tax revenues for government.

Looking ahead, Australia's need for investment will continue to grow strongly – particularly as we look for opportunities to manage our way through the latest COVID-19 impacts and continue our economic recovery. Australia is one of the most urbanised countries in the world and many of our cities and regions are expected to continue to grow.

This growth will require significant investment in real estate and infrastructure to ensure our cities remain both liveable and continue to be engines of economic prosperity. We will need more homes, offices, retail centres, industrial sites, retirement living, student accommodation, hotels and community, cultural and sporting precincts.

Without strong and stable flows of both domestic and international capital into the Australian property sector, the pressure to fund many significant investments will fall back to governments and will put further strain on government budgets. Or worse, many investment opportunities in Australian real estate would be delayed or not proceed and Australians will simply not have the real estate assets needed to sustain our quality of life.

4. Australia's traditional investment frameworks for property – MITs and AMITs

The Australian property funds management sector provides investors the opportunity to:

- invest in large scale real estate assets they could not own directly;
- benefit from the market experience and insights of professional asset managers;
- provide liquidity to investment in large real estate assets that would otherwise be highly illiquid; and
- diversify their investment portfolio to reduce the risk from market downturns.

Currently in Australia, property funds are typically established as MITs or AMITs. These investment vehicles are the means to attract the investment which provides our homes, sustainable cities and buildings, retail and entertainment precincts and build strong communities.

[2] FIRB Annual Report 2019-20, p. 27

[3] Address by Mr David Irvine AO, FIRB Chair to the Australia-China Business Council, Monday 19 August 2019

Unlike other countries, Australia does not have a dedicated real estate investment trust (REIT) legal/tax regime. Instead, the MIT and AMIT frameworks facilitates the democratisation of large-scale real estate investment, providing opportunities for 'mum and dad' investors as well as institutional investors to be at the global forefront of investment in real estate assets that are expertly designed, sustainably built and professionally managed. These regimes are robust, well-established and they enable capital to be pooled together and invested in various asset classes.

5. CCIV regime will modernise and expand Australia's investment frameworks

The establishment of a CCIV regime is a significant and positive step in modernising Australia's investment and funds management frameworks.

Australia's financial system is currently an outlier in the global funds management world in its reliance on trusts rather than corporate or limited partnership structures. While trusts are reasonably well understood in Australia, they are not the collective investment vehicle of choice in other countries. Corporate and limited partnership CIVs are common internationally.

The introduction of the CCIV regime is intended to broaden the suite of passive investment vehicles available to Australian funds managers and be an internationally recognisable investment vehicle for marketing to foreign investors.

The Property Council supports the establishment of a CCIV regime that provides an asset neutral passive investment vehicle, available to all types of passive assets, and equally attractive to domestic investors, to ensure fund managers are not required to set up separate vehicles for domestic and international investors.

We believe that, alongside MITs and AMITs, CCIVs will play an important role in attracting capital and investing in Australia's future growth.

We recognise that the introduction of the CCIV regime is a significant development, particularly for regulatory purposes as CCIVs are a new entity for Corporations Act purposes, combining company law and managed investment scheme (MIS) concepts. From a tax perspective, the decision to align the CCIV tax treatment with the existing AMIT regime ensures the framework is easier to understand and implement.

6. Importance of globally competitive policy settings for CCIVs, AMITs and MITs

MITs, AMITs and the proposed CCIVs are subject to a robust tax and regulatory framework that provides investor protections, such as ASIC licensing requirements and continuous disclosure requirements under ASX listing rules (for listed entities).

All three investment vehicles are effectively taxed on a flow through basis. This means the net rental income from the vehicles flows annually to the investor who then pays tax on their share of the net income, at their individual tax rate.

This is consistent with globally accepted policy settings for institutional investment in real estate. For example, the OECD commentary on the model tax convention discusses the importance of neutrality between direct investments and investments through a collective investment vehicle. Further, both the Johnson Report and the Murray Financial System Inquiry have recognised and championed the critical importance of having tax flow through collective investment vehicles to attract international capital to Australia.

To ensure the efficient collection of Australian tax, non-resident investors in MITs, AMITs and CCIVs will pay a final withholding tax on their share of the investment vehicle's Australian sourced taxable income.

Australia imposes withholding tax rates of either 15% for investors from an Exchange of information (EOI) country, or 30% for all other investors. As explained in the explanatory memorandum accompanying the proposed legislation, the 15% rate was introduced to "increase the attractiveness of Australia's fund management industry, especially property funds, to mobile foreign investment" (para 1.6).

Importantly, in order to access the 15% withholding tax rates, the collective investment vehicle must have sufficient management in Australia which promotes local expertise.

Australia's withholding tax rates for non-resident investors are currently comparable to the tax rates payable by international investors in the US, UK and Canadian institutional real estate markets. The MIT withholding tax rate of 15% is also in line with the Australian domestic rate applicable to both institutional and self-managed superannuation funds, being 15% for income and 10% on capital gains.

It is important that, at a minimum, we maintain these tax settings to not lose out on investment dollars to other jurisdictions that apply similar tax rates.

7. Conclusion and further progress

We recognise and applaud the work that has been done to date in establishing the CCIV framework, a regime that is a necessary evolution for Australia's funds management sector and for our investment needs.

But we also recognise that a significant amount of further progress will need to be made to get the right settings in place for the CCIV regime to be successful and widely adopted.

Future streams of work are being undertaken with this in mind to settle some of the unresolved issues of the CCIV framework, including regulatory issues (with a Treasury consultation currently underway into a set of draft CCIV regulations and rules), administrative issues (through ATO and ASIC) and interaction of the CCIV with other tax concepts and regimes (e.g. GST, stamp duty/land tax, payroll tax). It is important that these streams of work consult widely with industry participants as interpretation and operational issues are worked through.