EXPOSURE DRAFT MATERIAL

New residential dwellings

Introduction

The *Income Tax Assessment Act 1997* (ITAA 1997) limits the ability to deduct net rental losses from assessable income and applies new rules to the taxation of capital gains for residential dwellings.

Relevantly, section 26-155 of the ITAA 1997 provides that net rental losses from residential dwellings used or held as residential accommodation acquired after on or 7.30pm (by legal time in the Australian Capital Territory) on 12 May 2026 are subject to the requirement to quarantine amounts. This means that these amounts can only be used to reduce assessable income derived from residential dwellings used or held as residential accommodation or capital gains from the sale of a residential dwelling used or held as residential accommodation. Quarantined amounts cannot be used to reduce a taxpayer's other assessable income, such as salary and wages. Using net rental losses to reduce a taxpayer's other assessable income is often referred to as negative gearing.

The amendments to the ITAA 1997 also require the use of a cost base indexation model to calculate capital gains accrued from 1 July 2027 when a residential dwelling is disposed of by a trustee or an Australian resident individual. When the residential dwelling is sold, the capital gain accrued from 1 July 2027 will be subject to a minimum 30 per cent tax.

However, owners of residential dwellings that meet the requirements to be a 'new residential dwelling' for an entity are exempt from the requirement to quarantine amounts (under section 26-155 of the ITAA 1997) and can choose to apply the 50 per cent CGT discount (under section 115-102) or instead apply the cost base indexation (under sections 114-30 and 115-102) together with the 30 per cent minimum tax (under section 119-5) when the new residential dwelling is disposed of.

Allowing owners of new residential dwellings to negatively gear their investment and providing them with the option to select the 50 per cent CGT discount ensures that the benefits of this tax treatment are directed to investments that support increasing the supply of Australia's housing stock.

Section 26-160(3) of the ITAA 1997 provides that a residential dwelling is a new residential dwelling in respect of the entity if the residential dwelling meets the requirements prescribed by the Minister under subsection 26-160(4). Under section 26-160(4A) when making the Determination, the Minister must be satisfied that the requirements in the Determination will assist in achieving the objective of genuinely adding to the supply of residential dwellings. Part 2 sets out those requirements.

Paragraph 26-155(2)(c) also provides the Minister may determine activities or purposes for which a residential dwelling is not subject to the loss quarantining rules in section 26-155. Part 3 sets out those activities or purposes.

The Government is consulting on the definition of new residential dwellings and housing investment exemptions for inclusion in the ITAA 1997 together with the removal of the ministerial powers to make rules for these matters that is currently in the ITAA 1997.

Key elements of new residential dwellings

The four cases

A 'new residential dwelling' is a residential dwelling that falls within one of four cases:

- The 'Basic Case' (subsection 5(2)), which covers circumstances where a person acquires an ownership interest in land where there was no residential dwelling and constructs or installs a residential dwelling on that land. Under this case, the constructed or installed residential dwelling is a new residential dwelling for its owner.

- The 'Special Case: Adding more residential dwellings to a parcel of land' (subsection 5(4)), which covers circumstances where a person acquires an ownership in land on which there is already a residential dwelling (or residential dwellings) and then, at a later time, there is a greater number of residential dwellings on the same land. Under this case, any of those additional dwellings that are newly constructed residential dwellings are new residential dwellings for their owner or owners.

- The 'Special Case: converting a building to residential dwellings' (subsection 5(8)), which covers circumstances where a person acquires an ownership interest in land which has a building that is not a residential dwelling on it and then converts that building into a residential dwelling. Under this case, that converted residential dwelling is a new residential dwelling for its owner.

- The 'Special Case: Acquiring a dwelling before a time no more than 24 months after certificate of occupancy issued' (subsection 5(6)), which covers circumstances where a person acquires a residential dwelling was a new residential dwelling for the seller under one of the above three cases, and that acquisition happens no more than 24 months after a certificate of occupancy has been first issued for that dwelling. Under this case, the acquired residential dwelling is a new residential dwelling for its owner.

Common requirements

Subsections 5(2), (4), (6) and (8) share common requirements that ensure investment in new residential dwellings support the supply of housing in Australia. These common requirements are:

- a new residential dwelling is a residential dwelling located in Australia;

- each new residential dwelling is capable of being legally occupied (by reference to a certificate of occupancy); and

- the legal interest in the new residential dwelling is capable of being acquired by another entity.

The time that a certificate of occupancy is first issued reflects genuine completion of a dwelling so that it is legally able to be occupied as residential accommodation and is a reference point in time for determining whether a dwelling is a new residential dwelling in relation to an entity. Reference to the first issuance of the certificate of occupancy ensures that consideration of whether a dwelling is a new residential dwelling relates to the point in time at which the property is genuinely new and legally available for occupation. Reissuance of a certificate of occupancy in relation to the same dwelling, for example as a result of substantial renovations, is not relevant to consideration of whether that dwelling is a new dwelling to the entity.

The requirement for a legal interest in the new residential dwelling to be capable of being acquired by another entity ensures that new residential dwellings are only those which genuinely add to supply, rather than new constructions that are adjacent to existing dwellings and cannot be acquired in their own right (for example, a granny flat that is not separately titled). The legal interest relates to the ability for an entity to own the dwelling in its entirety, and could include freehold titles, strata titles and other forms of ownership.

A granny flat generally refers to a self-contained dwelling located within, attached to, or separate from another dwelling on the same site. In most scenarios a granny flat is associated with the other dwelling and does not have a separate legal title which would enable it to be acquired independently by another entity.

Paragraph 26-160(2)(b) of the ITAA 1997 states that a residential dwelling includes 'a garage, storeroom or other structure associated with the dwelling.' Where a granny flat does not have a separate legal title and is therefore associated with the other dwelling, the granny flat will take on the characteristics of that residential dwelling. If the residential dwelling can access negative gearing—for example, because it was acquired before the announcement time—then the granny flat can be negatively geared too. If the dwelling is subject to the loss quarantining rules, then so is the granny flat that is on the same land title.

Part 1

Section 4 – Definitions

Section 4 provides for the following definitions:

- 'Announcement time' is 7.30pm legal time in the Australian Capital Territory (i.e. AEST) on 12 May 2026. This is the date the negative gearing and capital gains tax reforms were announced in the 2026-27 Budget.
- 'Certificate of occupancy' for a dwelling, means a certificate or other form of document that:
  - is issued or recognised by an Australian government agency or local governing body that has responsibility for the area in which the dwelling is located;
  - certifies that the dwelling is suitable for residential purposes.
- 'National Disability Insurance Scheme' has the meaning in section 9 of the *National Disability Insurance Scheme Act 2013.*

- 'Specialist disability accommodation' has the meaning in section 5 of the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020.

- 'The Act' means the ITAA 1997.

Part 2

Subsection 5(1) – Requirements for a new residential dwelling

Subsection 5(1) provides that the four cases set out in subsections 5(2), (4), (6) and (8) are the requirements that a residential dwelling must meet to be a new residential dwelling in relation to an entity. Only one of these cases needs to be met for a residential dwelling to be a new residential dwelling for an entity.

This draws on paragraph 26-155(2)(b) of the ITAA 1997, which exempts from the loss quarantining requirements 'a residential dwelling that is a new residential dwelling in relation to you.' This language means that the new residential dwelling status of a dwelling is tied to a person. Where Person A acquires an ownership interest in a dwelling that is considered a new residential dwelling, it is always new for Person A. But where they sell the ownership interest (or part thereof) to Person B, it is not automatically new for Person B. It will only be new for Person B if they meet one of the four cases.

The residential dwelling for which the requirements in a case must be met is referred to as the ***test residential dwelling***.

Where an entity has multiple residential dwellings, each residential dwelling must be considered separately to determine whether the requirements to be a new residential dwelling for an entity are met.

Each entity that acquires an interest in the residential dwelling (including an interest subject to other interests, such as joint tenancy) will apply the requirements at the time they acquire their ownership interest to determine if the residential dwelling is a new residential dwelling for them.

This is also the case where an entity acquires multiple interests in the same dwelling, each interest must be considered separately to determine whether the requirements to be a new residential dwelling are met.

Subsections 5(2) and 5(3) – Basic case for new residential dwellings

Subsections 5(2) and (3) set out the requirements for a residential dwelling (referred to as the test residential dwelling) to be a new residential dwelling for an entity under the 'basic case'. A residential dwelling will be a new residential dwelling for an entity under the 'basic case' where:

- the entity acquired an ownership interest in land that did not have a residential dwelling on it;

- the land is located in Australia;

- the entity subsequently constructs or installs a residential dwelling on that land;

- the entity's ownership interest in the residential dwelling is a legal interest that is able to be acquired by another entity; and
- a certificate of occupancy for the residential dwelling was first issued after the 'announcement time' (being 7.30pm (AEST) on 12 May 2026).

The simplest example under the basic case is where an entity acquires vacant land and subsequently constructs a house or installs a modular home. However, the basic case also applies where the land does not have a residential dwelling on it but also is not vacant (e.g. land with a permanent structure that does not consist wholly or mainly of residential accommodation). This extends to buildings that are condemned or derelict, as those houses are not fit for habitation. The meaning of a residential dwelling is a dwelling as defined in section 118-115 of the ITAA 1997 with explicit carve outs in section 26-160. The definition of dwelling includes a unit of accommodation that consists wholly or mainly of residential accommodation. The physical characteristics of the premises will determine if a dwelling consists wholly or mainly of residential accommodation. A dwelling should be fit for human habitation to be suitable for and capable of being occupied for residential accommodation. A building that does not have the characteristics of residential accommodation is not a dwelling and therefore not a residential dwelling on the land that the basic case considers.

Where an entity demolishes a derelict building and rebuilds a single house, that house will meet the requirements of a new residential dwelling under section 5(2). This will support the rejuvenation of housing stock that is no longer legally able to be occupied as residential accommodation.

The basic case also applies to a lease arrangement which provides an entity the right to occupy land that does not have a residential dwelling, and the entity subsequently constructs or installs a residential dwelling on the land.

For land or a dwelling acquired under a contract, existing section 118-130 of the ITAA 1997 provides that an entity acquires an ownership interest in it from the time when they obtain legal ownership of it or, if the contract or a related contract gives them a right to occupy it at an earlier time, then the earlier time. This is different to how the negative gearing grandfathering rule works in section 26-155 of the ITAA 1997, as that section includes a modification of section 118-130.

However, under subsection 5(3) a test residential dwelling is not a new residential dwelling if the certificate of occupancy for the dwelling was first issued before the announcement time (i.e. 7.30pm on Budget night 2026). The reason for this is that dwellings with a certificate of occupancy issued before the announcement time are exempt from the loss quarantining requirements under paragraph 26-155(2)(a) of the ITAA 1997 and the policy is directed to encourage investment in new residential dwellings in Australia after Budget night 2026.

<u>Subsections 5(4) and 5(5) – Special case: adding more residential dwellings to a parcel of land</u>

Subsections 5(4) and (5) establish the requirements for the test residential dwelling to be a new residential dwelling under the 'Special case: adding more residential dwellings to a parcel of land' (the first special case).

A residential dwelling is a new residential dwelling under the first special case where:

- an entity acquired an ownership interest in land on which there was already at least one residential dwelling (the acquisition time);
- that land is located in Australia;
- after the acquisition time, the test residential dwelling is one of multiple residential dwellings on that land, the number of which exceeds the number that were on that land at the time of acquisition;
- the entity's ownership interest in the test residential dwelling is a legal interest that is able to be acquired by another entity; and
- a certificate of occupancy for the test residential dwelling was not first issued before the 'announcement time' (being 7.30pm on Budget night 2026) or the acquisition time.

The first special case applies where additional residential dwellings are added to the same land in Australia. This most commonly happens through subdivision of a block of land that had a single house on it, or a demolition and subsequent construction of an apartment complex.

Where a person subdivides their land and then builds a second dwelling, that dwelling can meet the requirements of subsection 5(4). Subsection 5(4) tests both parcels of land together because 'the land' in paragraph (c) refers to the land the person originally acquired an ownership interest in under paragraph (a) (i.e. the whole block).

For example, Koh buys a 30-year-old house with a large backyard in 2028. He subdivides and builds a second house, which is separately titled. The existing house (Dwelling A) is untouched. Koh considers the requirements under section 5 to work out if either house is considered a new residential dwelling. The second house (Dwelling B) meets the requirements in subsection 5(4), and is not excluded by subsection 5(5), so is considered a new residential dwelling. Dwelling A would meet the requirements of subsection 5(4) but is excluded from being a new residential dwelling by subsection 5(5). This is because Koh acquired Dwelling A after it had a certificate of occupancy issued.

Another example is where an entity acquires land after the announcement time on which there is an apartment block, and the entity demolishes the apartment block and constructs one or more apartment blocks that contain more residential dwellings than were previously on the same land. In this scenario, all the residential dwellings would be new residential dwellings for the entity.

However, if the entity instead constructed a new apartment block on the same land, leaving the existing apartment block as is, only the residential dwellings in the new apartment block would be new residential dwellings for the entity. The residential dwellings in the existing apartment block would not be new residential dwellings for the entity.

The different outcomes in these scenarios turn on the certificate of occupancy. In the first scenario, as all the residential dwellings were constructed after the announcement time and acquisition time, the certificate of occupancy for all these dwellings is issued after those relevant times. However, in the second scenario, the residential dwellings in the apartment block that were not demolished would not have a certificate of occupancy issued after the announcement time and acquisition time.

Subsection 5(5) ensures that only the genuinely new residential dwellings on the land qualify as a new residential dwelling, by requiring that a certificate of occupancy is issued after the acquisition time. The phrase ‘the acquisition time’ at the end of subsection 5(5) refers to the time of the original acquisition in paragraph 5(4)(a).

Similar to subsection 5(3), subsection 5(5) also ensures that a test residential dwelling is not a new residential dwelling if the certificate of occupancy for the dwelling was first issued before the announcement time (i.e. 7.30pm on Budget night 2026) to prevent existing housing stock qualifying as new residential dwellings.

<u>Subsection 5(6) and 5(7) – Special case acquiring a dwelling before a time no more than 24 months after the certificate of occupancy issued</u>

Subsections 5(6) and (7) provide the requirements for the test residential dwelling to be a new residential dwelling under the ‘Special case: Acquiring a dwelling before a time no more than 24 months after the certificate issued’ (the second special case).

A residential dwelling is a new residential dwelling under the second special case where:

- the test residential dwelling is located in Australia;
- the first entity acquired an ownership interest in the test residential dwelling at a time (the acquisition time);
- before the acquisition time, the test residential dwelling was a new residential dwelling for the second entity;
- the certificate of occupancy for the test residential dwelling was first issued on or after the announcement time (being 7.30pm on Budget night 2026) and no more than 24 months before the acquisition;
- the first entity’s ownership interest in the test residential dwelling is a legal interest that is capable of being acquired by another entity.

The second special case allows the purchasing entity to acquire a residential dwelling that was recently constructed or installed, and was a new residential dwelling in the hands of the selling entity, to be a new residential dwelling for the purchasing entity. There is no restriction on the dwelling being occupied during this time or the number of times the dwelling is sold during this time.

A common use of the special case is expected to enable purchaser’s units sold by developers to be treated as new residential dwellings. The basic case provides that these units would be new for the developer. The second special case means the units would also be new for the purchaser where they were bought no more than 24 months after the certificate of occupancy was first issued.

Further, if the developer sells units in the apartment block to a selling agency that then on-sold them to purchasers, so long as the purchasers acquired the units no more than 24 months after the certificate of occupancy was first issued, the units would be new residential dwellings for the purchasers as well.

This provides certainty to the developer of the period for which the dwelling will be considered to be a new residential dwelling, enabling the developer to market and sell the units as new residential dwellings. However, after the 24-month period ends, the status of new residential dwelling ceases to apply so that existing housing stock does not qualify for tax concessions as new residential dwellings.

This ensures that where a person buys an off-the-plan apartment, it will be considered a new residential dwelling for them. Under section 118-130 of the ITAA 1997, the ownership interest is not acquired until the person obtains legal or equitable interest of the dwelling, or the right to occupy it (i.e. at settlement). As this is after the certificate of occupancy is issued, the dwelling meets the requirements of subsection 5(6) and is considered a new residential dwelling.

Similar to subsection 5(3), the second special case also ensures that a test residential dwelling is not a new residential dwelling if the certificate of occupancy for the dwelling was first issued before the announcement time (i.e. 7.30pm on Budget night 2026).

Transitional Rule

However, there will be circumstances where developers may have stock of new residential dwellings after 7.30pm on Budget night 2026 which is unsold and for which a certificate of occupancy was issued before that time. Accordingly, section 8 in Part 10 provides a transitional rule for certain residential dwellings to be treated as new residential dwellings despite being completed before 7.30pm on Budget night 2026. This is to assist developers to sell stock on hand held after Budget night. Specifically, section 8 treats a residential dwelling as a new residential dwelling for the purposes of the requirement in paragraph 5(6)(b) if:

- the dwelling is, at all times, held by the builder or developer after the announcement time for the purposes of sale;
- the builder or developer had an ownership interest in the dwelling before announcement time; and
- the certificate of occupancy was issued before announcement time.

A dwelling that meets the requirements of section 8 is deemed to meet the requirements in paragraph 5(6)(b). The transitional rule ensures the acquisition of residential dwellings from a builder or developer that would otherwise be new residential dwellings for the builder that have added to the supply of housing in Australia can meet the requirements of being a new residential dwelling. This is the case applies when owned by the builder or developer and also once sold to a purchaser where the certificate of occupancy was issued before the 'announcement time' and all the other requirements in subsection 5(6) are met because subsection 5(8) disregards subsection 5(7).

Without the transitional rule, newly constructed residential dwellings held at announcement time by a builder or developer that have already had a certificate of occupancy issued would not be a new residential dwelling when acquired by a purchaser because of subsection 5(7). This would disproportionately affect the status of these residential dwellings which have added to housing supply.

Subsections 5(8) and (9)—Special case: converting a building to residential dwelling

Subsection 5(8) provides the requirements for a residential dwelling (referred to as the test residential dwelling) to be a new residential dwelling under the ‘Special case: converting a building to residential dwelling’ (the third special case).

A residential dwelling is a new residential dwelling under the third special case where:

- at the time of acquisition, an entity acquired an ownership interest in land on which there is a building that is not a residential dwelling, nor does the building comprise any residential dwellings;
- the land is in Australia;
- after the acquisition, that building is converted into residential dwellings;
- the certificate of occupancy for the residential dwellings was first issued after the announcement time or the acquisition time;
- the entity’s ownership interest in the residential dwellings is a legal interest that is capable of being acquired by another entity; and
- a certificate of occupancy for the test residential dwelling was not first issued before the announcement time (being 7.30pm on Budget night 2026) or the acquisition time.

The third special case supports conversions of commercial buildings into residential accommodation by allowing the residential dwellings created to be new residential dwellings for the entity that acquires the land and undertakes the conversion.

The residential dwellings created by the conversion could also be new residential dwellings in the hands of entities that acquire them no more than 24 months after the certificate of occupancy was first issued under the second special case.

Like the first special case, subsection 5(9) ensures that only the genuinely new residential dwellings qualify as new residential dwellings by requiring that a certificate of occupancy for the residential dwellings is issued after the acquisition time. Also similar to the first special case, subsection 5(9) ensures that a test residential dwelling is not a new residential dwelling if the certificate of occupancy for the dwelling was first issued before the announcement time (i.e. 7.30pm on Budget night 2026).

Subsection 5(10) – Schemes to convert residential dwellings into new residential dwellings

Subsection 5(10) provides that the effect of a scheme is not taken into account if it would be reasonable to conclude that a purpose of the entity, or one of the entities, who enters into or carries out the scheme or any part of the scheme is to treat a residential dwelling as a new residential dwelling to obtain a tax benefit.

As the loss quarantining rules prevent the claiming of a deduction for affected rental losses in an income year, a scheme to avoid the operation of those rules will result in a tax benefit

Similarly, an entity that attempts to reduce their assessable income by seeking to enter into a scheme to provide for a residential dwelling to be a new residential dwelling and therefore access the 50 per cent CGT discount instead of indexation and the minimum tax would also be obtaining a tax benefit.

This anti-avoidance provision is intended to prevent contrived or artificial schemes where an entity or entities manufacture circumstances to meet the requirements for a residential dwelling to be a new residential dwelling for the entity without having genuinely added to housing supply.

Part IVA of the *Income Tax Assessment Act 1936* is a general anti-avoidance provision applying across the income tax law that gives the Commissioner of Taxation the power to cancel a tax benefit that has been obtained by a taxpayer in connection with a scheme to which Part IVA applies. To cancel a tax benefit obtained by a taxpayer, the Commissioner of Taxation must issue a determination in respect of the scheme. In contrast, subsection 5(10) is a self-executing provision. It works automatically, in that a scheme to obtain a tax benefit by making a residential dwelling a new residential dwelling is not valid, and the residential dwelling will not be treated as a new residential dwelling.

Subsection 5(10) will apply if it is reasonable to conclude that a purpose of the entities in entering into the scheme (as defined in the tax law) is to treat an existing residential dwelling as a new residential dwelling without adding to housing supply. As the test is based on the existence of 'a purpose', as opposed to the sole or dominant purpose, this anti-avoidance provision applies broadly to various scenarios that involve artificial or contrived arrangements.

However, subsection 5(10) only applies if it is reasonable to conclude that there is a purpose of treating, or planning to treat, a residential dwelling as a new residential dwelling with a purpose of obtaining a tax benefit. The use of the phrase 'obtain a tax benefit' is appropriate because it should be genuine commercial and economic reasons that determine if a person buys, builds or sells a residential dwelling, and not the tax law. 'Tax benefit' draws on the meaning of the term from Part IVA of the *Income Tax Assessment Act 1936*.

An example of a scheme to which the anti-avoidance provision applies is where:

- an entity (the first entity) acquires a residential dwelling on a block of land;
- the first entity then transfers the land to a second entity;
- the second entity then demolishes the residential dwelling;
- the second entity then transfers the land back to the first entity;
- the first entity then constructs a residential dwelling on the land.

In this scenario, the newly constructed residential dwelling would not be a new residential dwelling in the hands of the first entity as they have attempted to convert a residential dwelling into a new residential dwelling and have not added to housing supply.

For the avoidance of doubt, where schemes result in genuine new residential dwellings from commercial arrangements which result in a greater number of dwellings that increase housing supply they will not be impacted by this subsection.

Part 3

Paragraph 26-155(2)(c) of the ITAA 1997 provides that certain activities or purposes for which a residential dwelling could be used or held for are exempt from the loss quarantining requirements.

Section 6 – Residential dwellings used for certain determined activities or purposes not subject to loss quarantining

Section 6 specifies that the activities and purposes for paragraph 26-155(2)(c) of the ITAA 1997 are the leasing of the residential dwelling, or making it available for lease:

- for the sole purpose of providing residential accommodation to an individual who receives support for specialist disability accommodation under the National Disability Insurance Scheme (NDIS);
- to an eligible community housing provider for the purpose of allowing it to provide affordable housing in the performance of its activities as a community housing provider;
- for the sole purpose of providing residential accommodation to an Australian government agency or a local government body for the purposes of the agency providing public housing; or
- where the residential dwelling is a dwelling of an active build to rent development.

The activities or purposes listed are intended to ensure that entities who support government housing initiatives are not unduly impacted by the restrictions to negative gearing and can continue to reduce their other assessable income by net rental losses for the prescribed activities or purposes.

The exemption from the loss quarantining provisions only applies to the time an entity uses or holds the residential dwelling for the above activities. In the event where this is for part of the income year, in the periods where the residential accommodation isn't used or held for those activities or purposes, it will be subject to the loss quarantining provisions (unless otherwise exempted).

Specialist disability accommodation

Using or holding a residential dwelling that is leased or available to be leased solely to a NDIS participant is not subject to the general rule for loss quarantining in section 26-155 of the ITAA 1997 where the participant receives Specialist Disability Accommodation support in line with the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020*.

For example, an individual who makes their investment property (which is a residential dwelling) available for rent to someone that receives Specialist Disability Accommodation support, any losses they incur whilst the residential dwelling is leased wholly for this purpose will be exempt from the restriction. Any rental losses incurred during this period will be able to be offset against other assessable income.

Specialist Disability Accommodation needs to be provided through a registered provider through the NDIS Quality and Safeguards Commission and is generally housing to support people with extreme functional impairment or very high support needs.

Affordable housing

A residential dwelling that is used or held to provide affordable housing through an eligible community housing provider is not subject to the general rule for loss quarantining in section 26-155 of the Act. A residential dwelling will be taken to be used to provide affordable housing if it satisfies the requirements in Subdivision 980-A of the ITAA 1997.

For example, an individual leases their property through an eligible community housing provider for below market rate rent. As long as the other requirements in Subdivision 980-A of the ITAA 1997 are met, any rental losses incurred during this time are not subject to loss quarantining and can be offset against other assessable income.

In addition, the existing framework requires eligible community housing providers (within the meaning of section 980-10 of the ITAA 1997) to issue an affordable housing certificate to an owner of the residential dwelling for each income year the dwelling has been used to provide affordable housing. The information in this certificate includes the days within the income year it was provided as affordable housing and will assist owners of residential dwellings to determine the period the exception is satisfied.

Public housing

A residential dwelling that is leased or available to be leased solely to a Commonwealth, state, territory, or local government body agency for the purposes of the agency providing public housing is not subject to the general rule for loss quarantining in section 26-155 of the ITAA 1997.

Local government body takes its meaning from subsection 995-1(1) of the ITAA 1997.

The term public housing is not defined in legislation but broadly covers the different types of public housing Commonwealth, state, territory, or local government bodies provide, including community housing, crisis accommodation or other forms of social and affordable housing.

Build to rent developments

A residential dwelling that is a dwelling of an active build to rent development is not subject to the general rule for loss quarantining in section 26-155 of the ITAA 1997. An active build to rent development takes its meaning from subsection 43-151(2) of the ITAA 1997.

This exception ensures that residential dwellings that are part of a build to rent development and are eligible for the accelerated deductions for capital works can continue to receive the full benefit of those deductions.

Part 10

Section 7 provides that the amendments apply to the 2027-28 income year and later income years.