

EXPOSURE DRAFT

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Issued by authority of the Minister for Housing, Minister for Homelessness and Minister for Small Business

Housing Australia Act 2018

Housing Australia Investment Mandate Amendment (Social Housing, Affordable Housing and Acute Housing Needs) Direction 2023

Subsection 12(1) of the *Housing Australia Act 2018* (Housing Australia Act) provides that the Minister may, by legislative instrument, give the Board of Housing Australia directions about the performance of Housing Australia's functions. The Board is subject to the requirements of the Housing Australia Act and the *Housing Australia Investment Mandate Direction 2018* (Investment Mandate). Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The Housing Australia Act established Housing Australia to improve housing outcomes for Australians. Housing Australia is a corporate Commonwealth entity in the Treasury portfolio and is governed by an independent board. Housing Australia commenced operation on 30 June 2018 and is dedicated to improving housing outcomes. It performs this role through its financing function, guarantee function and capacity building function.

The purpose of the *Housing Australia Investment Mandate Amendment (Social Housing, Affordable Housing and Acute Housing Needs) Direction 2023* (Instrument) is to establish the administration of the Housing Australia Future Fund Facility (HAFFF) and the National Housing Accord Facility (NHAF).

The HAFFF gives effect to the Government's policy intent regarding Housing Australia's use of the funds allocated from the HAFF to deliver 30,000 social and affordable homes. The HAFFF will facilitate the delivery of social and affordable housing and housing to support acute housing needs. It will be financed by disbursements from the Housing Australia Future Fund (HAFF). The HAFF is a Commonwealth investment fund, established to create a secure financing stream to support and increase social and affordable housing, as well as addressing a range of acute housing needs, including housing improvements in remote Indigenous communities (noting that finance from the HAFF could also be made available for housing needs in relation to non-remote Indigenous communities) and crisis and transitional housing for women and children impacted by domestic violence and older women at risk of homelessness, and veterans experiencing homelessness or at risk of homelessness.

The NHAF will enable the delivery of 10,000 affordable housing dwellings via financing received through the National Housing Accord (Accord), which is an agreement between all levels of government and other stakeholders to address the

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supply and affordability of housing in Australia. As part of the Accord, the Government has committed to delivering an additional 10,000 affordable housing dwellings over 5 years from 2024. This will be achieved through the funds directed to Housing Australia to deliver the affordable homes.

The HAFF and the Accord are part of a range of Government initiatives to improve housing outcomes for Australians and will collectively support an additional 20,000 social homes and 20,000 affordable homes across Australia over the next 5 years.

The Instrument also amends the Investment Mandate to provide directions about the activities of Housing Australia following the *Treasury Laws Amendment (Housing Measures No. 1) Act 2023* (Amendment Act), which amends the functions of Housing Australia.

In addition to this, the Instrument updates the Investment Mandate to replace references to the National Housing Finance and Investment Corporation (NHFIC) in the Investment Mandate with 'Housing Australia' as the NHFIC is now Housing Australia. This includes renaming the Investment Mandate from the *National Housing Finance and Investment Corporation Investment Mandate Direction 2018* to the *Housing Australia Investment Mandate Direction 2018*. These amendments reflect the Government's commitment to transition the NHFIC to Housing Australia. The Instrument also makes consequential amendments to ensure consistency between the Investment Mandate and the Housing Australia Act.

Details of the Instrument are set out in [Attachment A](#).

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Instrument is exempt from the sunseting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* as a result of regulations made for the purposes of paragraph 54(2)(b) of the Act. Item 3 of the table under section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides for class exemptions from sunseting if the instrument is a direction by the Minister to any person or body. The Instrument is a direction from the Minister to Housing Australia, and therefore is exempt from sunseting.

The Instrument is subject to the automatic repeal process under section 48A of the *Legislation Act 2003*. This section provides that where a legislative instrument only repeals or amends another instrument, without making any application, saving or transitional provisions relating to the amendment or repeal, that instrument is automatically repealed. By virtue of subparagraph 48A(2)(a)(i), the Instrument automatically repeals on the day after the commencement of the Instrument which results in the amendment of the Investment Mandate. Once repealed, the sunseting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* is no longer relevant to the Instrument.

As a direction from the Minister to Housing Australia, the Instrument is also exempt from disallowance under section 42 of the *Legislation Act 2003* as a result of regulations made for the purposes of paragraph 44(2)(b) of that Act. Item 2 of section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, provides for

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class exemptions from disallowance if the instrument is a direction by the Minister to any person or body.

The Instrument commences the day after registration.

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ATTACHMENT A

Details of the *Housing Australia Investment Mandate Amendment (Social Housing, Affordable Housing and Acute Housing Needs) Direction 2023*

Section 1 – Name of the Instrument

This section provides that the name of the Instrument is the *Housing Australia Investment Mandate Amendment (Social Housing, Affordable Housing and Acute Housing Needs) Direction 2023* (Instrument).

Section 2 – Commencement

The Instrument commences the day after registration.

Section 3 – Authority

Section 3 provides that the Instrument is made under subsection 12(1) of the *Housing Australia Act 2018* (Housing Australia Act).

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this Instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this Instrument has effect according to its terms.

Schedule 1 – Amendments

Legislative references in this attachment are to the *Housing Australia Investment Mandate Direction 2018* (Investment Mandate) unless otherwise stated.

Establishment of the Housing Australia Future Fund Facility and the National Housing Accord Facility

Housing Australia will support the Government's commitment to deliver 30,000 social and affordable homes over five years from the establishment of the Housing Australia Future Fund Facility (HAFFF) and an additional 10,000 affordable homes over five years from the establishment of the National Housing Accord Facility (NHAF). Financing will be made available through the HAFFF and NHAF to eligible project proponents for the purposes of increasing the supply of social housing and affordable housing and addressing acute housing needs. The HAFFF and the NHAF will help encourage investment in housing (particularly in the social or affordable housing sector) and contribute to the development of the community housing sector.

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Within this Instrument:

- Schedule 1 outlines matters related to the HAFFF;
- Schedule 2 provides matters related to the NHAF;
- Schedule 3 makes amendments to the Investment Mandate to ensure consistency between the Housing Australia Act and the Investment Mandate following changes made to the Housing Australia Act through the *Treasury Laws Amendment (Housing Measures No. 1) Act 2023* (Amendment Act), which renamed the National Housing Finance and Investment Corporation (NHFIC) to Housing Australia and amended the functions of Housing Australia; and
- Schedule 4 makes minor editorial amendments to the Investment Mandate.

Schedule 1 – Housing Australia Future Fund Facility

The Housing Australia Future Fund (HAFF) is established under the *Housing Australia Future Fund Act 2023* (HAFF Act) to create a secure financing stream to support and increase social and affordable housing, and to support a range of acute housing needs, including housing improvements in remote Indigenous communities (noting that finance from the HAFF could also be made available for housing needs in relation to non-remote Indigenous communities), and crisis and transitional housing for women and child impacted by domestic violence and older women at risk of homelessness, and veterans experiencing homelessness or at risk of homelessness.

The HAFF Act established the Housing Australia Future Fund Special Account and provides for the crediting of this account with \$10 billion after its creation. Following an annual decision of Government to allocate disbursements from the Fund, an agreed amount will be debited from the Housing Australia Future Fund Special Account and be credited to the Housing Australia Special Account for the purpose of making grants or loans in relation to social housing, affordable housing or acute housing needs.

Housing Australia will have primary responsibility for delivering on the Government's commitment to deliver 30,000 social and affordable homes over five years. The NHFIC was renamed Housing Australia in the Amendment Act.

Financing from the HAFF will support the delivery of 30,000 social and affordable homes through Housing Australia's establishment and operation of the HAFFF. The Government has committed to use HAFF disbursements to support the delivery of:

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- 20,000 social housing homes, including 4,000 homes for women and children impacted by domestic and family violence, and older women at risk of homelessness; and
- 10,000 affordable homes for frontline workers including, but not limited to, police, nurses and cleaners.

Housing Australia Future Fund Facility

Items 1 and 2 of Schedule 1 to the Instrument insert new definitions and amend definitions in section 4, to support the operation of the HAFFF. They are:

- HAFFF (for Housing Australia Future Fund Facility) – the amendment stipulates that HAFFF means the facility established under section 7A and Part 4A;
- HAFFF construction compliant – the amendment includes a signpost to subsection 28E(4);
- HAFFF project – the amendment includes a signpost to subsection 28E(1);
- HAFFF special purpose vehicle – the amendment includes a signpost to subsection 28F(2);
- NCC – the amendment stipulates that the NCC means the *National Construction Code 2022* as existing on 1 October 2023. The *National Construction Code 2022* has been published and is available on the National Construction Code website (<https://ncc.abcb.gov.au/>); and
- underlying eligible member – the amendments extend the definition of underlying eligible member so that the underlying eligible member of a HAFFF or NHAF special purpose vehicle includes a member of the HAFFF or NHAF special purpose vehicle that is an entity mentioned in paragraphs 28F(1)(a) to (h) (in relation to the HAFFF) or paragraphs 28S(1)(a) to (h) (in relation to the NHAF).

The National Construction Code (NCC) establishes minimum requirements for the design and construction of buildings across Australia. The NCC has been published and is available on the NCC website (<https://ncc.abcb.gov.au/>). Although the NCC is not a legislated code, it is established and published by the Australian Building Codes Board which works in collaboration with Commonwealth, State and Territory governments to establish the industry code for both new and existing buildings. The NCC is comprised of the Building Code of Australia and the Plumbing Code of Australia, which are given legal effect by different laws in each State and Territory.

Item 3 of Schedule 1 to the Instrument creates a section 7A to state that a new key activity of Housing Australia is to establish and operate the HAFFF, which makes loans and grants in accordance with Part 4A. The note to the provision clarifies that

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these activities are permitted within Housing Australia's financing function, as outlined in the Housing Australia Act.

Minimum number of dwellings made available

Item 4 of Schedule 1 to the Instrument inserts section 10A to further direct Housing Australia in performing its financing function. Housing Australia's financing function enables Housing Australia to make loans and grants to entities that are eligible under the Housing Australia Act and the Investment Mandate to receive such financial assistance for the purposes of improving housing outcomes, directly or indirectly. This function includes loans under the Affordable Housing Bond Aggregator (AHBA), loans and grants under the National Housing Infrastructure Facility (NHIF) for eligible social or affordable housing projects, loans and grants under the HAFFF for eligible HAFFF projects and loans and grants under the NHAF for eligible NHAF projects.

Section 10A provides that in performing its financing function, Housing Australia must take all reasonable steps to make loans or grants, or enter into contracts to make loans or grants, in order to make available a minimum of 1,200 dwellings in each State and Territory within five years from the commencement of Schedule 1 to this Instrument. Subsection 10A(2) requires that the dwellings are social housing, affordable housing or housing to address acute housing needs (collectively 'applicable dwellings'). This minimum target may be reached through Housing Australia programs which support the creation of social housing, affordable housing or housing that addresses an acute housing need (such as the HAFFF, NHAF, NHIF and AHBA), as well as other financing streams under the HAFF under subsection 18(1) or 18(3) of the HAFF Act including the:

- Housing Australia Future Fund Payments Special Account which allows the Housing Minister, Indigenous Australians Minister, Social Services Minister or Veterans' Affairs Minister to make grants in relation to acute housing needs; and
- COAG Reform Fund which makes grants to the States and Territories in relation to acute housing needs, social housing or affordable housing.

Section 10A highlights the Government's commitment to addressing social and affordable housing needs in every State and Territory, by creating a minimum target to be achieved in the first five years after the amendments. The target may be accomplished by either making the dwelling available for tenancy within the timeframe or by entering a contract within the timeframe to make a dwelling available in the future, acknowledging that many projects are long-term investments. Dwellings can include those delivered via the construction of a new home, the purchase of newly-built homes, through the renovation of an existing residential dwelling that was otherwise uninhabitable, or through the conversion of a non-residential property to a residential dwelling.

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Housing Australia Future Fund Facility

Item 5 of Schedule 1 to the Instrument inserts a new Part 4A to cover matters relating to the HAFFF. The new guidance material at section 28B of Part 4A provides an overview of the HAFFF. The guidance material notes that the purpose of the HAFFF is to increase the availability of social housing and affordable housing, and address acute housing needs; to deliver the Government's commitment to support 30,000 social and affordable homes (20,000 social homes and 10,000 affordable homes) over 5 years; and to encourage private sector investment in projects that deal with these matters.. Housing Australia, via the HAFFF, does this by providing finance (loans and grants) for those projects. However, as this provision constitutes guidance material, it is not comprehensive and the operative provisions provide the framework for Housing Australia to achieve these goals.

Within Part 4A:

- Division 1 covers the eligibility requirements for HAFFF projects and project proponents as well as the financing mechanisms available for these projects;
- Division 2 provides the matters Housing Australia must consider when making financing decisions; and
- Division 3 covers general matters including quarterly reporting to the Minister in relation to the HAFFF.

Division 1—Financing mechanisms and eligibility

Applications for finance under the HAFFF

Section 28C requires Housing Australia to consider an application from an entity, where the entity applies for finance under the HAFFF through submitting an application to Housing Australia in the manner and form specified by Housing Australia.

Eligibility for loans or grants

Section 28D provides that Housing Australia must only make a loan or grant under the HAFFF to finance a project where it is satisfied that all of the following are met:

- the project is a HAFFF project as set out under new section 28E;
- the project proponent is eligible under new section 28F;
- the loan or grant is covered by paragraph 8(1A)(a), (b) or (c) of the Housing Australia Act, to ensure that finance is only provided to those eligible under Housing Australia's financing function:
 - constitutional corporations (corporations to which paragraph 51(xx) of the Constitution applies) engaging in activities, functions, relationships or business that improve housing outcomes; or

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- States and Territories; or
- entities that are improving housing outcomes specifically for people located in a Territory, Aboriginal and Torres Strait Islander people, members of the Australian Defence Force or aliens (as defined under paragraph 51(xix) of the Constitution);
- the risk that the loan will not be repaid does not exceed an acceptable level (in the case of loans); and
- the project delivers value for money, in terms of the amount of housing delivered relative to the amount of government support provided.

Note 1 to section 28D clarifies that Housing Australia can only make a loan or grant to an entity if the entity has applied to Housing Australia for the loan or grant. This is in accordance with subsection 10(4) of the Housing Australia Act.

To avoid doubt, note 2 to section 28D clarifies that new section 28H provides that a project may be financed under the HAFFF through a combination of loans or grants.

HAFFF projects

Section 28E defines ‘HAFFF project’ as a project:

- that delivers housing located in an Australian State or Territory;
- that increases available social housing or affordable housing or both (regardless of whether or not the project would also increase available housing of other types) or addresses acute housing needs (regardless of whether or not the project would also address housing needs of other types); or does both of the above;
- where the project proponent has in their application, declared that the dwellings constructed under the project are or will be HAFFF construction compliant – being:
 - the standards in the NCC in relation to energy efficiency (including that the housing has an energy efficient rating of 7-stars or more as certified under the Nationwide House Energy Rating Scheme); and
 - the standards in the NCC relating to livable housing design will be met;
- where, at the time a dwelling under the project is available to be occupied, the proponent provides evidence to Housing Australia that the dwellings are HAFFF construction compliant.

These eligibility requirements ensure projects under the HAFFF will assist in the Government’s goal to increase the availability of social housing, affordable housing, or address acute housing needs by providing financing to projects that require finance

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to proceed. HAFFF projects can involve the construction of new dwellings, the purchase of newly-built dwellings, the renovation of existing residential dwellings that were otherwise uninhabitable, or through the conversion of non-residential property to a residential dwelling.

In the context of the amendments:

- social housing is an umbrella term that typically refers to either public housing owned and managed by State and Territory governments or community housing;
- affordable housing is generally used to refer to a range of housing types that seek to reduce or eliminate housing stress for low to moderate income households, where housing stress is typically defined as spending more than 30 per cent of household income on housing costs. This can include rental housing offered at below-market rent and pathways to home ownership for low to medium income households (such as shared equity arrangements or subsidised loans); and
- acute housing refers to crisis housing offered to cohorts at serious risk of, or who are already experiencing, homelessness. This includes short-term and emergency housing, medium-to-long-term transitional housing and specialist services in relation to housing. This should not be considered to be an exhaustive description.

In the application for finance under the HAFFF, the project proponent must declare that the housing complies with, or will comply at the time it is made available under the project, with the minimum standards on energy efficiency and livable housing design contained in the NCC on 1 October 2023. When a dwelling under the project is available to be occupied, the proponent provides evidence to Housing Australia that the dwellings are HAFFF construction compliant. These requirements together ensure that financing can occur before a building can be certified as compliant, but also that when the building is available to be occupied, that it has been certified as compliant.

To be HAFF construction compliant, the dwellings under the project must, with reference to the NCC, meet:

- the energy efficiency standard (including a 7-star energy efficiency rating as per the Nationwide House Energy Rating Scheme). This will improve the efficient use of energy in building design and construction, as well as the energy usage by key equipment installed in a building;
- the livable housing design standard. The livable housing design standard sets out requirements for dwellings to include features that are designed to improve their accessibility and usability for occupants and visitors, including older people and people with mobility limitations.

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Energy efficiency standards and the livable housing design standard are matters addressed in the NCC. These standards have been available for adoption by all States and Territories since 1 October 2023. Housing made available through a HAFFF project must comply with these standards regardless of whether the State or Territory in which the project is located has adopted these standards. The energy efficiency standard intends to improve the efficient use of energy in residential building design and construction, as well as the energy usage by key equipment installed in a residential building. It includes requiring a minimum level of thermal performance equivalent to a 7-stars under the Nationwide House Energy Rating Scheme to ensure thermal comfort for occupants of a home. The livable housing design standard sets out requirements for dwellings to include features that are designed to improve their accessibility and usability for occupants and visitors, including those with a mobility-related disability. The requirement for the housing to satisfy these standards for energy efficiency and livable housing design (regardless of whether the State or Territory in which the project will be undertaken, has or has not adopted the standards) ensures that all projects financed under the HAFFF will minimise household emissions, lower energy bills, have long-term sustainability and accommodate tenants with differing needs. This ensures that these homes can be utilised in the future by a wide range of tenant occupants without the need for extensive renovations.

Housing Australia will ensure compliance with the eligibility requirements. To demonstrate compliance with the HAFFF construction compliance matters, a project proponent must provide Housing Australia with relevant certification when housing under the project becomes available to be occupied. It is expected that the administrative aspects and obligations for compliance with financing conditions will be covered in arrangements between Housing Australia and eligible project proponents for the HAFFF projects.

Eligible project proponents for HAFFF projects

Section 28F prescribes eligible project proponents for a HAFFF project. To be eligible for finance for a HAFFF project, a project proponent must be any of the following:

- a State or Territory, including a State or Territory agency representing the State or Territory such as a government owned corporation but not a utility provider; or
- a local governing body; or
- a local government-owned corporation (other than a utility provider) that is a constitutional corporation; or
- a State government owned corporation that is a constitutional corporation and not a utility provider (but not necessarily an emanation of the State); or
- a Territory government owned corporation that is a constitutional corporation and not a utility provider (but not necessarily an emanation of the Territory); or

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- a registered community housing provider that is a constitutional corporation; or
- an entity that has the primary purpose of improving, directly or indirectly, housing outcomes for Aboriginal or Torres Strait Islander people (for example, this could be an Indigenous Community Housing Organisation that has the primary purpose of improving housing outcomes for Aboriginal and Torres Strait Islander people); or
- an entity that is a constitutional corporation and has the primary purpose of improving, directly, or indirectly, housing outcomes for members of the Australian Defence Force; or
- a HAFFF special purpose vehicle that is a constitutional corporation.

The note to subsection 28F(1) clarifies that if the project proponent is a local governing body, the project may only be financed through a grant of financial assistance to a State or Territory.

Housing Australia may also provide finance to a HAFFF special purpose vehicle that is a constitutional corporation. To meet the definition, the HAFFF special purpose vehicle must have a purpose of undertaking projects that increase available social housing or affordable housing, or both social and affordable housing, or undertaking projects that address acute housing needs. The HAFFF special purpose vehicle must further have at least one member that is an eligible recipient listed above (the underlying eligible member or members). In this context, an underlying eligible member is an entity that has an ownership or participation interest in the HAFFF special purpose vehicle (for example, a shareholder if the HAFFF special purpose vehicle is a company).

Identifying eligible project proponents

Subsection 28G(1) requires Housing Australia to make reasonable efforts to identify potential project proponents in each State and Territory (including in regional, rural and remote areas) that may be assisted by financing for a HAFFF project. Where an entity's existing business or activities could benefit from financing, Housing Australia must promote the HAFFF to these potential proponents. This requirement will ensure there is adequate public awareness of the HAFFF and that the facility is promoted to project proponents across Australia.

Similarly, subsection 28G(2) requires Housing Australia to make reasonable efforts to identify potential project proponents with projects that increase the supply of social housing or affordable housing in the short term. The business or activities of these potential proponents may include projects that increase available social or affordable housing in the short term and financing under the HAFFF may assist the potential proponents to further such projects. An example of a project that increases social or affordable housing in the short term could be "spot purchases" of existing, ready-for-tenancy dwellings that will be offered as social or affordable homes whereby the spot

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purchases add to the social and affordable housing supply stock. Housing Australia must promote the HAFFF to these potential proponents to encourage them to apply for financing under the HAFFF. This provision recognises the immediate pressures for social and affordable housing and ensures Housing Australia is identifying potential opportunities to increase the supply of social or affordable housing as soon as possible in Australia.

Financing mechanisms

Section 28H provides that eligible project proponents may receive financing under the HAFFF through loans, grants or a combination of loans and grants. Where finance is provided to a local governing body, these will be provided through a grant to the relevant State or Territory.

The terms ‘loan’ and ‘grant’ take on their ordinary meaning and are not defined in the Instrument. A general indicator of a loan is a genuine expectation of the lender for the loan to be repaid and for action to be taken by the lender consistent with those ordinary concepts. This includes stipulating clear terms of repayment, agreement by the borrower and taking necessary action to manage risk of delayed or non-repayment.

A grant generally involves a disbursement on the basis that certain conditions must be fulfilled.

The terms and conditions of financing under the HAFFF will be outlined in arrangements between Housing Australia and the project proponent. This will clarify how payments will be made, ongoing requirements which must be fulfilled by the project proponent to continue receiving financing (if it is ongoing), and consequences for failure to satisfy obligations. It is expected that these arrangements will ensure that financing provided will deliver projects in a manner consistent with the purpose of the HAFFF.

Division 2—Criteria for financing decisions

Section 28J requires Housing Australia to consider all of the following matters when making a financing decision under the HAFFF:

- the extent to which a project would be consistent with increasing the availability of social housing and affordable housing, and addressing acute housing needs, including in regional, rural and remote Australia on an equitable, as needs basis;
- the likely effect of a project on the supply and ongoing availability of social housing and affordable housing, and on addressing acute housing needs;
- whether the dwellings delivered under the project are well-located (close to work, schools, transport and other amenities, and supporting productivity and liveability);

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- the extent to which the project's workforce (whether or not employed directly by the project proponent) will support greater participation of apprentices with a focus on the degree to which the workforce will support female apprentices and female trade apprentices in the building and construction industries;
- the extent to which financing the project would assist Housing Australia to achieve the objectives of these amendments;
- whether finance under the HAFFF is needed to encourage private sector participation in financing the project;
- whether finance under the HAFFF would complement, leverage, or support other State or Territory finance or activities;
- relevant reports or advice by the National Housing Supply and Affordability Council (Council) on unmet social, affordable, or acute housing needs and the appropriate use of HAFF disbursements to meet those needs where these reports are publicly available or disclosed by Housing Australia to the project proponent;
- the object of the Housing Australia Act and the limits set in that Act;
- the extent to which underlying eligible members will be involved in the project over its duration where the project proponent is a HAFFF special purpose vehicle; and
- where the project proponent is a constitutional corporation, the extent to which the support would assist that corporation in the performance and development of its activities, functions, relationships or business.

Consideration of these matters ensures financing is directed towards projects which increase the availability of social and affordable housing or address acute housing needs in areas which are most in need of assistance. These disbursements can be combined with financing from the private sector. It requires consideration of whether certain financing types will attract institutional investment or private finance into the project or will leverage existing support from State or Territory finance or activities. Furthermore, it obliges Housing Australia to consider whether its financing decisions are providing housing outcomes on an as-needs and equitable basis across jurisdictions. The balancing of these considerations and the flexibility provided by the range of financing options on offer by Housing Australia will ensure it is able to deliver a number of housing priorities, including increasing the supply of available social and affordable housing; encouraging private sector participation in the social and affordable housing sector; and addressing acute housing needs (including housing improvements in remote and non-remote Indigenous communities and crisis and transitional housing for women and child impacted by domestic violence and older women at risk of homelessness, and veterans experiencing homelessness or at risk of homelessness).

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Additionally, Housing Australia must consider the degree to which the project's workforce (whether or not employed directly by the project proponent) will support greater participation of apprentices, in particular the extent to which the project's workforce will support the participation of female apprentices and female trade apprentices in the building and construction industries. This reflects the government's commitment to ensure that the right skills and training are available to secure a pipeline of workers in the building and construction industries and address any skills shortages, and to reduce gender segregation in the industries' apprenticeship system. Consideration of this matter supports the objectives of the Australian Skills Guarantee (ASG).

The ASG is a government commitment under the Secure Australian Jobs Plan. The ASG will introduce new national targets to ensure one in ten workers on major, federally funded government projects is an apprentice, trainee or paid cadet. The ASG will also introduce national targets for women to increase the proportion of women working on major projects and drive long term sustainable change to reduce gender segregation in the apprenticeship system. Further information on the ASG is available on the website for Department of Employment and Workplace Relations (www.dewr.gov.au/australian-skills-guarantee).

Division 3—General matters

Reporting

Section 28K requires Housing Australia to report quarterly to the Minister on its activities under Divisions 1 and 2 of Part 3A during the previous quarter.

The first report to the Minister will cover the activities under the HAFFF in the period from registration of this Instrument to the end of the first relevant quarter. This report must be delivered as soon as practicable within three months after the period ends. This reporting must then continue for each subsequent quarter with reports due within three months after the end of each quarter, to ensure transparency of Housing Australia's decision-making actions under the HAFFF and provide opportunities for continuous improvement of the facility.

The report must cover the following items on all the HAFFF projects which have been approved since the commencement of the HAFFF:

- the total number of projects;
- the total number of projects by type of housing provided (for example, social housing, affordable housing and housing to address an acute housing need);
- the number of projects in each State and Territory;
- the number of projects that are complete, under construction or in planning, or will not be completed; and
- the total amount of finance under the HAFFF provided in relation to those projects.

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In addition to the above, the report must also cover the following items on each new HAFFF project which has been approved in the relevant reporting period:

- the project proponent;
- the Statistical Area Level 4 area in which the project is located;
- the types of people that would be assisted by the project (for example, whether the project is targeted at assisting certain types of people, such as remote Indigenous communities, non-remote Indigenous communities, women and children impacted by domestic violence, older women at risk of homelessness, and veterans experiencing homelessness or at risk of homelessness);
- the number and types of dwellings made available under the project including the types of housing provided (for example, social housing, affordable housing and housing to address an acute housing need) as well as the types of residential building (for example, apartments, houses and townhouses);
- whether the financing is through a loan, a grant or through a combination;
- details of each loan or grant for the project;
- the level of financing from the HAFFF and other sources; and
- the expected completion date of the project.

The list of reporting requirements is non-exhaustive. It is intended that the information reported to the Minister will provide the Minister with an understanding of financing decisions made under the HAFFF, the impact of these projects in various States and Territories and the progress made on approved projects. This will allow the Minister to determine if the decisions made by Housing Australia are in line with the overall purpose of the HAFFF, and whether further directions are necessary.

Under subsection 28K(3), Housing Australia must provide information in the report about whether projects under the HAFFF are or will be HAFFF construction compliant.

Liabilities under the HAFFF to be disregarded for the purposes of section 48 of the Housing Australia Act

Section 48 of the Housing Australia Act requires that Housing Australia's Board maintain adequate capital and reserves. The Board must ensure, according to sound commercial principles, that the capital and reserves of Housing Australia at any time are sufficient to meet the likely liabilities of Housing Australia and must make adequate provision in the case of default on a loan made by Housing Australia. Subsection 48(3) of the Housing Australia Act enables the Minister to make directions

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in the Investment Mandate to exclude specified types of liabilities or loans from the application of section 48 of the Housing Australia Act.

Pursuant to subsection 48(3) of the Housing Australia Act, new section 28L permits the Board to disregard any likely liabilities of Housing Australia that relate to the HAFFF from the requirement to maintain adequate capital and reserves under section 48 of the Housing Australia Act. Housing Australia will facilitate the delivery of social and affordable housing and housing to support acute housing needs by providing financing from the HAFF in part by entering into long-term payment contracts. The exclusion will allow Housing Australia to administer the HAFFF in a manner consistent with the policy objectives, as it would involve entering into long-term payment obligations and where the financing for this program is appropriated.

Minister to specify an amount for HAFF financing decisions

Section 28M provides that the Minister may, specify in writing to Housing Australia, the overall amount that may be used by Housing Australia in a financial year for making financing decisions under the HAFFF. This amount must not exceed the amount appropriated for the HAFFF for that financial year.

Further amendments

Items 6 and 7 of Schedule 1 to the Instrument make minor amendments to include the HAFFF and Accord in the transparency provisions (section 32) relevant to Housing Australia. This ensures that, alongside the AHBA and NHIF, the format of financing applications, decision-making process, and details of the decisions made under the HAFFF are published on Housing Australia's website.

Schedule 2 –National Housing Accord Facility

The National Housing Accord Facility (NHAF) brings together all levels of government, investors, and the residential development, building and construction sector to deliver quality affordable housing over the medium term.

The NHAF will enable the Commonwealth to support an additional 10,000 affordable housing dwellings over 5 years from 2024 in fulfilment of its NHAF Accord commitment. Housing Australia will have primary responsibility for delivering the Accord.

National Housing Accord Facility

Item 1 of Schedule 2 to the Instrument inserts three new definitions in section 4 of the Investment Mandate that support the operation of the NHAF. The definitions are signposts to other provisions of the Investment Mandate:

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- NHAF (for National Housing Accord Facility) - the amendment stipulates that NHAF means the facility established under section 7B and Part 4B;
- NHAF construction compliant – includes a signpost to subsection 28R(4);
- NHAF project - the amendment includes a signpost to section 28R(1); and
- NHAF special purpose vehicle - the amendment includes a signpost to subsection 28S(2).

Item 2 of Schedule 2 to the Instrument creates a new section 7B to state that a new key activity of Housing Australia is to establish and operate the NHAF, which makes loans and grants in accordance with Part 4B. The note to the provision clarifies that these activities are permitted within Housing Australia's financing function, as outlined in the Housing Australia Act.

Item 3 of Schedule 2 to the Instrument repeals former section 8C, which enabled Housing Australia to undertake preparatory work for the delivery of the Accord subject to some limitations. The commencement of amendments means that section 8C is no longer required.

Item 4 of Schedule 2 to the Instrument inserts a new Part 4B into the Investment Mandate. The new guidance material at section 28N of Part 4B provides an overview of the NHAF. The guidance material notes that the purpose of the NHAF is to increase the availability of affordable housing; to deliver the Government's commitment to support 10,000 additional dwellings available for affordable housing; and to encourage private sector investment in those projects. Housing Australia, via the NHAF, does this by providing finance (loans and grants) for those projects. However, as this provision constitutes guidance material, it is not comprehensive, and the operative provisions provide the framework for Housing Australia to achieve these goals.

Within Part 4B:

- Division 1 covers the eligibility requirements for NHAF projects and project proponents, as well as financing mechanisms available for these projects;
- Division 2 provides the matters that Housing Australia must consider when making financing decisions; and
- Division 3 covers general matters, including quarterly reporting to the Minister in relation to the NHAF.

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Division 1—Financing mechanisms and eligibility

Applications for finance under the NHAF

Section 28P requires Housing Australia to consider an application from an entity, where the entity applies for finance under the NHAF through submitting an application to Housing Australia in the manner and form specified by Housing Australia.

Eligibility for loans or grants

Section 28Q provides that Housing Australia must only make a loan or grant under the NHAF to finance a project where it is satisfied that all of the following are met:

- the project is a ‘NHAF project’ as set out under new section 28R;
- the project proponent is eligible under new section 28S;
- the loan or grant is covered by paragraphs 8(1A)(a), (b) or (c) of the Housing Australia Act to ensure that finance is only provided to those eligible under Housing Australia’s financing function;
 - constitutional corporations (corporations to which paragraph 51(xx) of the Constitution applies) engaging in activities, functions, relationships or business that improve housing outcomes; or
 - States and Territories; or
 - entities that are improving housing outcomes specifically for people located in a Territory, Aboriginal and Torres Strait Islander people, members of the Australian Defence Force or aliens (as defined under paragraph 51(xix) of the Constitution); and
- the risk that the loan will not be repaid does not exceed an acceptable level (in the case of loans).
- the project delivers value for money, in terms of the amount of housing delivered relative to the amount of government support provided.

Notes 1 and 2 clarify the operation of section 28Q. Note 1 explains that Housing Australia can only make a loan or a grant where an entity has applied to Housing Australia for a loan or a grant. Note 2 explains that Housing Australia can only finance National Housing Accord projects through loans and grants.

Subsection 28Q(2) prohibits Housing Australia from making a loan or grant under the NHAF before a specified date. This date will be confirmed prior to the making of the instrument.

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NHAF projects

New section 28R defines a ‘NHAF project’ as a project:

- that delivers housing located in an Australian State or Territory;
- that increases available affordable housing, which relates to the project increasing the supply of available affordable housing dwellings;
- where the project proponent has in their application, declared that the dwellings constructed under the project is or will be NHAF construction compliant – being:
 - the standard in the NCC in relation to energy efficiency (including that the housing has an energy efficient rating of 7-stars or more as certified under the Nationwide House Energy Rating Scheme), or to the energy efficiency standard in that State or Territory; and
 - the standards in the NCC in relation to livable housing design;
- where, at the time a dwelling under the project is available to be occupied, the proponent provides evidence to Housing Australia that the dwellings are NHAF construction compliant.

These eligibility requirements ensure projects under the NHAF will assist in the Government’s goal to increase the availability of affordable housing.

In the context of the amendments, affordable housing is generally used to refer to a range of housing types that seek to reduce or eliminate housing stress for low to moderate income households, where housing stress is typically defined as spending more than 30 per cent of household income on housing costs. This can include rental housing offered at below-market rent and pathways to home ownership for low to medium income households (such as shared equity arrangements or subsidised loans).

To be NHAF construction compliant, the dwellings under the project must, with reference to the NCC, meet:

- the energy efficiency standard (including the 7-star energy efficiency rating as per the Nationwide House Energy Rating Scheme), or the energy efficiency standards required by the State or Territory where the dwellings under the project are constructed. This will improve the efficient use of energy in building design and construction, as well as the energy usage by key equipment installed in a building;
- the livable housing design standard. The livable housing design standard sets out requirements for dwellings to include features that are designed to improve their accessibility and usability for occupants and visitors, including older people and people with mobility limitations.

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Housing Australia will ensure compliance with the eligibility requirements. To demonstrate compliance with the NHAF construction compliance matters, a project proponent must provide Housing Australia with relevant certification when affordable housing under the project becomes available to be occupied. It is expected that the administrative aspects and obligations for compliance with financing conditions will be covered in arrangements between Housing Australia and eligible project proponents for the NHAF projects.

Eligible project proponents for NHAF projects

Section 28S prescribes eligible project proponents for a NHAF project. To be eligible for finance for a NHAF project, a project proponent must be any of the following:

- a State or Territory, including a State or Territory agency representing the State or Territory such as a government owned corporation but not a utility provider; or
- a local governing body; or
- a local government-owned corporation (other than a utility provider) that is a constitutional corporation; or
- a State government owned corporation that is a constitutional corporation and not a utility provider (but not necessarily an emanation of the State); or
- a Territory government owned corporation that is a constitutional corporation and not a utility provider (but not necessarily an emanation of the Territory); or
- a registered community housing provider that is a constitutional corporation; or
- an entity that has the primary purpose of improving, directly or indirectly, housing outcomes for Aboriginal or Torres Strait Islander people (for example, this could be an Indigenous Community Housing Organisation that has the primary purpose of improving housing outcomes for Aboriginal and Torres Strait Islander people); or
- an entity that is a constitutional corporation and has the primary purpose of improving, directly, or indirectly, housing outcomes for members of the Australian Defence Force; or
- a NHAF special purpose vehicle that is a constitutional corporation.

The note to new subsection 28S(1) clarifies that if the project proponent is a local governing body, the project may only be financed through a grant of financial assistance to a State or Territory.

Housing Australia may also provide finance to a NHAF special purpose vehicle that is a constitutional corporation. To meet the definition, the NHAF special purpose vehicle must have a purpose of undertaking projects that increase available affordable

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housing. It must also have at least one member that is an eligible recipient, which is a recipient that is one of the eligible project proponents already identified (referred to as an underlying eligible member). In this context, an underlying eligible member is an entity that has an ownership or participation interest in the NHAF special purpose vehicle.

Identifying eligible project proponents

Subsection 28T(1) requires Housing Australia to make reasonable efforts to identify potential project proponents in each State and Territory (including in regional, rural and remote areas) that may be assisted by financing for a NHAF project. Where an entity's existing business or activities could benefit from financing, Housing Australia must promote the NHAF to these potential proponents. This requirement will ensure there is adequate public awareness of the NHAF and the facility are promoted to project proponents across Australia.

Similarly, subsection 28T(2) requires Housing Australia to make reasonable efforts to identify potential project proponents with projects that increase the supply of affordable housing in the short term. The business or activities of these potential proponents may include projects that increase available affordable housing in the short term and financing under the NHAF may assist the potential proponents to further such projects. Housing Australia must promote the NHAF to these potential proponents to encourage them to apply for financing under the NHAF. This provision recognises the immediate pressures for social and affordable housing and ensures Housing Australia is identifying potential opportunities to increase the supply of affordable housing as soon as possible in Australia.

Financing mechanisms

Section 28U provides that eligible project proponents may receive financing under the NHAF through loans, grants or a combination of loans and grants. Where finance is provided to a local governing body, these will be provided through a grant to the relevant State or Territory.

The terms 'loan' and 'grant' take on their ordinary meaning and are not defined in the Instrument. A general indicator of a loan is a genuine expectation from the lender for the loan to be repaid and for action to be taken by the lender consistent with those ordinary concepts. This includes stipulating clear terms of repayment, agreement by the borrower and taking necessary action to manage risk of delayed or non-repayment.

A grant generally involves a disbursement on the basis that certain conditions must be fulfilled.

The terms and conditions of financing under the NHAF will be outlined in arrangements between Housing Australia and the project proponent. This will clarify

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how payments will be made, ongoing requirements which must be fulfilled by the proponent to continue receiving financing, and consequences for failure to satisfy obligations. It is expected that these contracts will ensure that financing provided will deliver projects in a manner consistent with the purpose of the NHAF.

Division 2—Criteria for financing decisions

Matters to be considered when making financing decisions

Section 28V requires Housing Australia to consider all of the following matters when making a financing decision under the NHAF:

- the extent to which financing the project would be consistent with increasing the availability of affordable housing, including in regional, rural and remote Australia on an equitable, as needs basis;
- the likely effect of the project on the supply and ongoing availability of affordable housing;
- whether the dwellings delivered under the project are well-located (close to work, schools, transport and other amenities, and supporting productivity and liveability);
- the extent to which the project's workforce (whether or not employed directly by the project proponent) will support greater participation of apprentices with a focus on the degree to which the workforce will support female apprentices and female trade apprentices in the building and construction industries;
- whether finance under the NHAF is needed to encourage private sector participation in financing the project;
- whether finance under the NHAF would complement, leverage, or support other Commonwealth, State or Territory finance or activities;
- the object of the Housing Australia Act and the limits set in that Act;
- where the project proponent is a NHAF special purpose vehicle – the extent to which its underlying eligible members will be involved in the project over its duration; and
- where the project proponent is a constitutional corporation, the extent to which the support would assist that corporation in the performance and development of its activities, functions, relationships or business.

Consideration of these matters ensures that finance is directed towards projects that will increase the supply of affordable housing in Australia. These disbursements can be combined with financing from the private sector. It requires consideration of whether certain financing types will attract institutional investment or private finance into the project or will leverage existing support from State or Territory finance or activities. Furthermore, it obliges Housing Australia to consider whether its financing

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decisions are providing housing outcomes on an as-needs and equitable basis across jurisdictions.

Additionally, Housing Australia must consider the degree to which the project's workforce (whether or not employed directly by the project proponent) will support greater participation of apprentices, in particular the extent to which the project's workforce will support the participation of female apprentices and female trade apprentices in the building and construction industries. This reflects the government's commitment to ensure that the right skills and training are available to secure a pipeline of workers in the building and construction industries, address any skills shortages, and reduce gender segregation in the industries' apprenticeship system. Consideration of this matter supports the objectives of the ASG.

Division 3—General matters

Reporting

Section 28W requires Housing Australia to report quarterly to the Minister on its activities under Divisions 1 and 2 of Part 4B during the previous quarter.

The first report to the Minister will cover the activities under the NHAF in the period from registration of this Instrument to the end of the first relevant quarter. This report must be delivered as soon as practicable within three months after the period ends. This reporting must then continue for each subsequent quarter with reports due within three months after the end of each quarter, to ensure transparency of Housing Australia's decision-making actions under the NHAF and provide opportunities for continuous improvement of the program. This ensures that quarterly reporting begins when Housing Australia first enters into contracts to deliver the 10,000 affordable housing dwellings.

The report must cover the following items on all the NHAF projects that have been approved since the program's commencement:

- the total number of projects;
- the number of projects in each State and Territory;
- the number of projects that are complete, under construction or in planning, or will not be completed; and
- the total amount of finance under the NHAF provided in relation to those projects.

In addition to the above, the report must also cover the following items on each new NHAF project which has been approved in the relevant reporting period:

- the project proponent;

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- the Statistical Area Level 4 area in which the project is located;
- the types of people that would be assisted by the project (for example, whether the project is targeted at assisting certain types of people, such as remote Indigenous communities, non-remote Indigenous communities, women and children impacted by domestic violence, older women at risk of homelessness, and veterans experiencing homelessness or at risk of homelessness);
- the number and types of dwellings made available under the project (for example, by the types of residential building such as apartments, houses and townhouses);
- whether the financing is through a loan, a grant or through a combination;
- details of each loan or grant for the project;
- the level of financing from the NHAF and other sources; and
- the expected completion date of the project.

The list of reporting requirements is non-exhaustive and the information will provide the Minister with an understanding of financing decisions made under the NHAF, the impact of these projects in various States and Territories, and the progress made on approved projects. This will allow the Minister to determine if the decisions made by Housing Australia are in line with the overall purpose of the NHAF, or whether further directions are necessary.

Under subsection 28W(3), Housing Australia must provide information in the report about whether projects under the NHAF are or will be NHAF construction compliant.

Schedule 3 – Consequential matters arising from the *Treasury Laws Amendment (Housing Measures No. 1) Act 2023*

Following changes in the Amendment Act where Housing Australia's functions were streamlined, the directions in the Investment Mandate have also been updated to ensure consistency between the Housing Australia Act and the Investment Mandate.

Part 1 – References to the NHFIC

Part 1 of Schedule 3 of the Instrument replaces references to the NHFIC in the Investment Mandate with 'Housing Australia' to reflect the NHFIC's transition to be known as Housing Australia, consistent with the amendments made in Schedule 1 to the Amendment Act. Housing Australia will continue to administer the Home Guarantee Scheme, the AHBA, the NHIF and provide capacity building support to community housing providers.

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Rename the Investment Mandate

Item 1 of Schedule 3 to the Instrument amends section 1 to update the name of the Investment Mandate to the *Housing Australia Investment Mandate Direction 2018*.

Item 2 of Schedule 3 to the Instrument amends section 3 to reflect that the Investment Mandate is made under subsection 12(1) of the Housing Australia Act.

Transition to Housing Australia

Item 3 of Schedule 3 to the Instrument repeals paragraph (b) of the note in section 4 to remove the redundant reference to the NHFIC.

Item 4 of Schedule 3 to the Instrument amends the definition of ‘Act’ in section 4, updating the reference to *National Housing Finance and Investment Corporation Act 2018* (NHFIC Act) to *Housing Australia Act 2018*, consistent with the Amendment Act renaming the NHFIC Act to the Housing Australia Act.

Items 5 to 68 and item 70 of Schedule 3 to the Instrument replace all references to the NHFIC in the Investment Mandate with ‘Housing Australia’.

Item 69 of Schedule 3 to the Instrument repeals the definition of ‘total guaranteed liabilities of the NHFIC’ in subsection 34(2) and replaces it with a new defined term of ‘total guaranteed liabilities of Housing Australia’.

All these amendments reflect the transition of the NHFIC to be known as Housing Australia.

Part 2 – Housing Australia’s functions

Definitions

Items 71 to 74 of Schedule 3 to the Instrument update existing definitions or insert new definitions into section 4 to support Housing Australia’s activities and to improve the clarity of certain provisions throughout the Investment Mandate. They are:

- financing application – the new definition means an application to Housing Australia for the making of a loan or grant;
- financing decision – the amendment makes clear that the term refers to a decision to make a loan or grant;
- financing proposal – the amendment repeals the definition as there is a new definition for financing application;

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- infrastructure – the amendment repeals the definition as there is a new definition for infrastructure.

Housing Australia's activities

Items 76, 78, 79 and 80 of Schedule 3 to the Instrument insert a note under sections 6, 7, 8 and 8A respectively to make clear the relationship between Housing Australia's activities and functions. The notes clarify the activities that further each function contained in the Housing Australia Act, and provide that:

- the establishment and operation of the AHBA and the NHIF are part of Housing Australia's financing function;
- the provision of support for capacity building is part of Housing Australia's capacity building function; and
- the establishment and operation of the Home Guarantee Scheme is part of Housing Australia's guarantee function.

Consistency with Housing Australia's functions under the Housing Australia Act

Items 77, 84, 85, 86, 100 and 107 of Schedule 3 to the Instrument remove the word 'investments' or 'investment' from section 7, paragraph 13(1)(a), subparagraph 13(1)(b)(i), subsection 13(3), the note to subsection 24(6), and subparagraph 28A(2)(e)(ii) respectively. Item 106 of Schedule 3 to the Instrument removes word investment in subparagraph 28A(2)(e)(i) and substitutes with "a loan or grant, or through a combination of 2 or more of these". Similarly, items 97 and 98 of Schedule 3 to the Instrument repeal paragraph 24(1)(b) and subsection 24(4).

These amendments clarify Housing Australia's functions, ensure consistency with the Housing Australia Act and are consequential to the Amendment Act.

Housing Australia's research activities

Items 81 and 110 of Schedule 3 to the Instrument repeals section 8B and Part 5B which previously directed Housing Australia on its activities in undertaking research into housing affordability in Australia. The research function has been removed following the creation of the National Housing Supply and Affordability Council which undertakes independent research into matters relevant to housing supply and affordability. Accordingly, Housing Australia will no longer be responsible for conducting and publishing research on housing supply and affordability, which will allow it to focus on its core business of housing financing, the provision of guarantees and capacity building services. Despite this change, if any research is necessary in the process of undertaking Housing Australia's other functions, this will be permitted under the incidental powers of Housing Australia under paragraph 8(1)(e) of the Housing Australia Act.

Housing Australia's AHBA and NHIF activities

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Items 87 and 94 of Schedule 3 to the Instrument insert new sections 15B, 21AB and 21AC into the Investment Mandate. Sections 15B and 21AB provide that Housing Australia must consider an application from an entity for the making of a loan through the AHBA if the entity is a registered community housing provider, and that Housing Australia must consider an application from an entity for the making of a loan or grant under the NHIF. New section 21AC clarifies eligibility requirements for loans or grants under the NHIF. These additions create consistency in the Instrument with the language used in section 10 of the Housing Australia Act, which requires eligible entities to make applications based on conditions outlined in the Investment Mandate. Items 88, 91 and 109 of Schedule 3 to the Instrument further update the Investment Mandate to support this consistency.

The following provisions clearly indicate that applications made for an AHBA loan, NHIF loan or grant, capacity building support, or a guarantee under the Home Guarantee Scheme, will have an express right to be considered by Housing Australia:

- section 15B;
- note after section 16;
- section 21AB;
- section 28Y; and
- section 29.

Additionally, the following sections clarify the criteria that must be satisfied for an applicant to be eligible for assistance from Housing Australia:

- subsection 16(1);
- section 21AC;
- section 28Z; and
- section 29A.

Items 99, 111 and 112 of Schedule 3 to the Instrument make minor editorial amendments to replace the use of ‘proposal’ with ‘application’ in accordance with the new definition for ‘financing application’.

Item 108 of Schedule 3 to the Instrument also expands on the capacity building assistance provided by Housing Australia by updating the simplified outline for Part 5, setting out the eligibility criteria to receive capacity building assistance and specifying the matters to be considered by the Board when selecting recipients, in line with the other housing programs offered by Housing Australia. Where registered community housing providers have made an application as required by section 28Y, the Investment Mandate specifies under section 28Z, to be eligible for capacity

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building assistance, the assistance must be covered by paragraph 8(1C)(a) or (b) of the Housing Australia Act. In other words, capacity building assistance must only be provided to registered community housing providers that are either constitutional corporations or community housing providers targeted towards groups of people in need of housing.

These requirements link the Investment Mandate with the Housing Australia Act and clarify that only registered community housing providers are eligible, which are defined under the Housing Australia Act as community housing providers (however described) that are registered under a law of, or under a scheme administered by, a State or a Territory.

In addition to this, when Housing Australia is determining whether to provide business advisory services and other assistance in capacity building, they must consider the following matters:

- whether the registered community housing provider has made an application for capacity building assistance; and
- the extent to which the registered community housing provider requires professional advisory services in one or more of the following areas to support a Housing Australia application for a loan, grant or guarantee, including:
 - finance;
 - business planning;
 - property development; and
 - risk management.

Items 95 and 96 of Schedule 3 to the Instrument provide further clarification that section 22B of the Investment Mandate, formally section 23A, applies to the identification of project proponents, as opposed to the individual projects themselves. This ensures a holistic assessment of the entity that will receive financing and ensures that Housing Australia encourages the use of the NHIF to entities whose business or activities may be assisted or benefitted by receiving NHIF finance.

Housing Australia supporting registered community housing providers

Items 90 and 92 of Schedule 3 to the Instrument omit references to ‘providers’ in the Investment Mandate and replaces them instead with ‘registered community housing providers’. This ensures consistency with the Housing Australia Act and reflects the Government’s commitment to capability building within the community housing sector.

Further minor amendments

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Items 75, 82, 83, 89, 93, 101, 102, 103, 104 and 105 of Schedule 3 to the Instrument make minor editorial amendments to ensure consistency in the Instrument and to ensure consistency with the Housing Australia Act:

- section 6 – amendment to ensure consistency with the language used in the Housing Australia Act;
- paragraph 9(1)(a) – minor referencing amendment;
- subsection 11(5) – amendment to ensure consistency with the language used in the Housing Australia Act;
- subsection 16(2) – amendment to ensure consistency with the language used in the Housing Australia Act;
- section 18 – amendment to ensure consistency with the language used in the Housing Australia Act;
- subsection 25(1) – minor amendment to ensure consistency with Housing Australia’s new functions;
- subsection 25(2) – minor amendment to reflect that ‘financing decisions’ here refers to decisions made under Part 4 of the Investment Mandate;
- subsection 26(1) – minor amendment to reflect that ‘financing decisions’ here refers to decisions made under Part 4 of the Investment Mandate; and
- paragraph 26(1)(a) and subsection 26(2) – minor editorial amendment to refer to projects.

Application of amendments

Item 113 of Schedule 3 to the Instrument inserts a new Division into Part 7 of the Investment Mandate to provide that the amendments made by Part 2 of Schedule 3 of this Instrument apply to decisions made by Housing Australia (in relation to applications made for a loan or grant, the issuing of a guarantee or assistance in capability building) made on or after the commencement of Part 2 of Schedule 3 of the Instrument. Alternatively, amendments made by Part 2 of Schedule 3 of this Instrument apply before the commencement of that Part where no decision has been made by Housing Australia on the application before commencement.

Schedule 4 – Miscellaneous

Items 1 to 3 of Schedule 4 to the Instrument make minor editorial amendments inserting new section headings for the simplified outlines of Part 3, 4 and 5A. This amendment is aligned with the section heading for the simplified outlines of Part 4A in Schedule 1 and Part 4B in Schedule 2 of the Instrument.

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