EXPLANATORY STATEMENT

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

National Housing Finance and Investment Corporation Act 2018

National Housing Finance and Investment Corporation Investment Mandate Amendment (Liability Cap Update) Direction 2023

Subsection 12(1) of the *National Housing Finance and Investment Corporation Act 2018* (NHFIC Act) provides that the Minister may, by legislative instrument, give the Board of the National Housing Finance and Investment Corporation (NHFIC) directions about the performance of its functions. The Board is subject to the requirements of the NHFIC Act and the *National Housing Finance and Investment Corporation Investment Mandate Direction 2018* (Investment Mandate).

The NHFIC Act established the NHFIC to improve housing outcomes for Australians. The NHFIC (to be renamed Housing Australia in the *Treasury Laws Amendment (Housing Measures No. 1) Act 2023* (Amendment Act)) is a corporate Commonwealth entity in the Treasury portfolio and is governed by an independent board. The NHFIC commenced operation on 30 June 2018 and is dedicated to improving housing outcomes. The NHFIC performs this role through its financing, guarantees, and capacity building functions.

The purpose of the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Liability Cap Update) Direction 2023* is to amend the Investment Mandate to increase the cap of the NHFIC's total liabilities (Liability Cap) by $2.0 billion from $5.5 billion to $7.5 billion.

Under the Investment Mandate, the Liability Cap sets the maximum value of liabilities that the NHFIC can incur under its Commonwealth guarantee. The NHFIC cannot incur liabilities exceeding the Liability Cap without prior agreement of the Minister for Housing and the Minister for Finance.

The Liability Cap was previously increased from $3.5 billion to $5.5 billion, in July 2022. The further increase of $2.0 billion (taking the Liability Cap to $7.5 billion), ensures the NHFIC can continue to expand its financing activities to the Community Housing Provider sector.

No public consultation was undertaken on the Instrument as the change is targeted, machinery in nature and does not alter existing arrangements.

Details of the Investment Mandate are set out in <u>Attachment A.</u>

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

The Instrument is exempt from the sunsetting regime set out in Part 4 of Chapter 3 of the Legislation Act 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 sunsetting if the instrument is a direction by the Minister to any person or body. The Instrument is a direction from the Minister to the NHFIC, and therefore is exempt from sunsetting.

The Instrument is subject to the automatic repeal process under section 48A of the Legislation Act. 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 sunsetting regime set out in Part 4 of Chapter 3 of the Legislation Act is no longer relevant to the Instrument.

The Instrument is also exempt from disallowance under section 42 of the Legislation Act 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 class exemptions from disallowance if the instrument is a direction by the Minister to any person or body. The Instrument is a direction from the Minister to the NHFIC, and therefore is exempt from disallowance.

This Instrument commences on 1 July 2023.

The Office of Impact Analysis (OIA) has been consulted (OIA reference ID: OIA23-04455) and a Policy Impact Analysis is not required for the amendments to increase the Liability Cap as the Instrument is non-regulatory in nature and has no regulatory costs.

ATTACHMENT A

Details of the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Liability Cap Update) Direction 2023*

Section 1 – Name

This section provides that the name of the Instrument is the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Liability Cap Update) Direction 2023* (Instrument).

Section 2 – Commencement

This Instrument commences on 1 July 2023.

Section 3 – Authority

Section 3 provides that the Instrument is made under subsection 12(1) of the *National Housing Finance and Investment Corporation Act 2018* (NHFIC Act).

Section 4 – Schedule

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

Schedule 1 – Amendments

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

Increasing the liability cap of the National Housing Finance and Investment Corporation

Items 1 and 2 of the Instrument amend the heading of section 34 and the definition of "cap" in subsection 34(2) to omit the reference to $5.5 billion and substitute this with $7.5 billion. From 1 July 2023, the National Housing Finance and Investment Corporation (NHFIC) will have a maximum of $7.5 billion in liabilities comprised of:

- the total sum of all current and expected amounts that are payable to a person other than the Commonwealth, or guaranteed by the Commonwealth under the NHFIC Act; and
- the current value of the Affordable Housing Bond Aggregator reserve.

Increasing the cap of the NHFIC's total liabilities (Liability Cap) by $2.0 billion from $5.5 billion to $7.5 billion ensures the NHFIC can continue to expand its financing activities to the Community Housing Provider sector, including in relation to the upcoming pipeline of social and affordable housing projects and projects meeting acute housing needs which are intended to be supported by the NHFIC through the use of finance from the Housing Australia Future Fund.

The Government's focus on providing housing options to all Australians requires the NHFIC to have the ability to finance these projects within the legislated Liability Cap. Accordingly, based on the NHFIC's updates to the Minister in relation to the volume of projects currently in the timeline and potential upcoming projects, the increase in the Liability Cap to $7.5 billion from 1 July 2023 is necessary to ensure projects that have been committed to in the medium-term can proceed and that the NHFIC has sufficient liability space to facilitate long-term projects in the future.