

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
(Enhancing the Home Guarantee Scheme) Direction 2023*

Subsection 12(1) of the *National Housing Finance and Investment Corporation Act 2018* (the 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 Act and the *National Housing Finance and Investment Corporation Investment Mandate Direction 2018* (Investment Mandate).

The Act established the NHFIC to improve housing outcomes for Australians. The NHFIC 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, guarantee, and capacity building functions.

As part of its guarantee function, the NHFIC administers the Home Guarantee Scheme (the Scheme). The Scheme aims to enable first home buyers, single parents or legal guardians with dependants, and other eligible home buyers to access the housing market sooner. The Scheme comprises of the First Home Guarantee, the Regional First Home Buyer Guarantee, the Family Home Guarantee and the New Home Guarantee. The New Home Guarantee ceased accepting new applications on 1 July 2022.

The purpose of the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Enhancing the Home Guarantee Scheme) Direction 2023* is to amend the Investment Mandate to enhance the operation of the Scheme. These enhancements seek to increase opportunities for more Australians to realise home ownership sooner by overcoming the deposit barrier and improve the Scheme's operation as well as the experience of home buyers participating in the Scheme.

Schedule 5 to the *Treasury Laws Amendment (2023 Measures No. 2) Act 2023* amends the Act to expand the objects of the Act, providing for the NHFIC to improve housing outcomes for Australians by assisting earlier access to the housing market for eligible individuals who have not held an ownership interest in real property in Australia in the preceding 10 years, as well as single legal guardians of children. The amendments to the objects of the Act enable the Minister to issue directions to the NHFIC concerning eligibility for guarantees issued under the Scheme through the Investment Mandate.

Targeted consultation on an exposure draft Instrument and the accompanying Explanatory Statement was undertaken from 21 to 22 June 2023 with two stakeholders, including industry bodies. The NHFIC was also consulted on drafts during the development of the Instrument and Explanatory Statement. Some adjustments were made

to the Instrument and Explanatory Statement following the consultation with the NHFIC and other stakeholders to clarify the operation of the Scheme.

Details of the Instrument are set out in Attachment A.

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

The Instrument is exempt from the sunseting 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 sunseting 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 sunseting.

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 sunseting 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 the later of 1 July 2023 or the day after this Instrument is registered.

The Office of Impact Analysis has been (OIA) has been consulted (OBPR23-04395) and a Policy Impact Analysis (PIA) is not required for the amendments as there are nil regulatory impacts.

Details of the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Enhancing the Home Guarantee Scheme) 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 (Enhancing the Home Guarantee Scheme) Direction 2023* (the Instrument).

Section 2 – Commencement

This Instrument commences the later of 1 July 2023 or the day after this Instrument is registered.

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* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument is 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 commencing on 1 July 2023

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

Enhancing the Home Guarantee Scheme

The amendments to the Investment Mandate in Schedule 1:

- expand access to guarantees for home purchases to any two adults as well as sole parents with certain dependent adult children;
- allow concurrent settlement and purchase of an existing home by a single parent under the Family Home Guarantee;
- expand eligibility for guarantees by extending access to Australian permanent residents;
- extend eligibility to relocate for a resident subject to a guarantee to circumstances where one borrower is required to relocate by their current employer of at least 12 months and it is not practical to remain in the property, or where relocation is required because of a serious illness of the borrower, or the borrower has carer responsibilities for a person who suffers from a serious illness and it is impractical to continue to live in the property as an owner-occupier;

- remove the requirement for the NHFIC to recommend changes to property price caps; and
- make a number of other minor changes.

Definitions

Items 1 and 2 of the Instrument make amendments to the definitions in section 4 of the Investment Mandate to support the Home Guarantee Scheme and to improve the clarity of provisions throughout the Investment Mandate.

Item 1 repeals the definitions of ‘Australian Defence Force’, ‘eligible first home buyer’, ‘First Home Guarantee’ and ‘Reserves’ as these definitions are not required.

Item 2 inserts a number of definitions into the definitions section. They are:

- eligible home buyer – the amendment inserts a signpost to the definition of eligible home buyer under section 29D;
- First Home Guarantee – the amendment inserts a signpost to a guarantee issued under section 29I;
- Home Guarantee Scheme – the amendment inserts a signpost to the definition of Home Guarantee Scheme under section 8A; and
- permanent resident – the amendment provides that the term has the same meaning as in the *Australian Citizenship Act 2007*.

Home Guarantee Scheme (renamed from the First Home Guarantee)

Items 3 to 9, 11, 29, 30, 31, 34, 35 and 37 make referencing amendments to the definition of ‘unissued’ in section 4 and amend references to the ‘First Home Guarantee’ to the ‘Home Guarantee Scheme’ in section 8A, section 10, Part 5A, section 29K and subsection 29L(1). This ensures that all references to the scheme refer to the Home Guarantee Scheme and all references to the First Home Guarantee refer to a guarantee issued under the First Home Guarantee stream, improving the clarity of the Investment Mandate. These amendments clarify where the Investment Mandate is referring to all four streams under the Home Guarantee Scheme, as opposed to the individual First Home Guarantee stream.

Eligibility under the Home Guarantee Scheme

Two borrowers

Subsection 29C(2) of the Investment Mandate provides that an eligible loan must have particular features at the time it is entered into.

Item 13 repeals paragraph 29C(2)(c) to expand eligibility of two borrowers under a loan agreement beyond the scope of spouses or de facto couples. For example, two borrowers under a loan agreement could now include a parent and an adult child, or two siblings, or two friends, or spouses or de facto couples. This amendment provides more Australians with the opportunity to realise home ownership sooner. As a result of the repeal of

paragraph 29C(2)(c), item 16 amends subsection 29C(2B) to remove the reference to paragraph 29C(2)(c).

Eligible single parent

For the purposes of the Family Home Guarantee, an adult person is an eligible single parent at the time the loan agreement is entered into if the adult has at least one dependent child. Subsection 29D(5) provides the meaning of a dependent child.

Item 23 repeals sub-subparagraph 29D(5)(b)(ii)(A) to remove the current age restriction to allow older dependents to be considered a dependent child. A person is a dependent child of the eligible single parent (the adult) if the adult is a natural or adoptive parent of the person and either:

- the person is a dependent child of the adult within the meaning of subsections (2), (3), (4), (5), (6) and (7) of section 5 of the *Social Security Act 1991* (first category); or
- the person is in receipt of a disability support pension within the meaning of the *Social Security Act 1991* and lives with the adult (second category).

This amendment removes the age restriction of being between 16 and 21 years of age that was previously imposed on a person that fell within the second category. The amendment ensures a person in receipt of a disability support pension and living with their adult parent is considered a dependent person regardless of their age. The amendment allows single parents of older dependents (aged 22 or above) in receipt of a disability support pension to access the Family Home Guarantee where the older dependent lives with their parent.

Simultaneous settlement and purchase of existing home

Items 12 and 21 expand the eligibility of a single parent under the Family Home Guarantee by exempting single parents from the requirement to not hold an interest in property in two circumstances:

- where the single parent holds an interest in another property in Australia but intends to relinquish this interest within four weeks from when they become the registered owner of the property that will be purchased with the loan; or
- where the single parent is a joint tenant or tenant in common in a property and intends to become the sole registered owner of the same property as a result of the loan.

The first exception will increase the accessibility of the Family Home Guarantee by removing a previous obstacle requiring single parents to seek temporary housing before accessing the guarantee. Allowing a four-week period for single parents to settle the sale of their prior home whilst using the guarantee to purchase a new home for their family, will assist many at-risk individuals who need permanent housing. However, item 26 inserts a new paragraph 29H(5)(b) which provides that if the single parent retains their prior property interest after the four-week period, the guarantee will cease at the time of the default.

The second exception which permits single parents to become the sole registered owner of a home they already have a property interest in, will provide stability for families by enabling them to remain in their family home without relocating their family to access the Family Home Guarantee.

Australian permanent residents

Section 29D provides that guarantees under the Home Guarantee Scheme are issued to persons who are at least 18 years of age and Australian citizens.

Items 20 and 22 amend paragraphs 29D(1)(b) and 29D(3)(b) by expanding eligibility to also include Australian permanent residents as eligible home buyers for the First Home Guarantee and the Regional First Home Buyer Guarantee or as eligible single parents for the Family Home Guarantee.

These amendments support more Australians to achieve home ownership sooner by allowing Australian permanent residents (in addition to Australian citizens) to access the Home Guarantee Scheme. Australian permanent residents have similar entitlements to citizens as they are able to live work and study without restriction in Australia, with many becoming citizens after the mandatory residency requirement. The amendments recognise permanent residents' status in Australia and their equal right to access home ownership under the Home Guarantee Scheme alongside citizens.

Relocation exception

Subsection 29K(1) requires the NHFIC to ensure that when operating the Home Guarantee Scheme, properties purchased under the scheme are owner-occupied for the entirety of the borrowers participation in the scheme. An exception to this requirement existed where a person was posted at another location as a result of their duties as a member of the Australian Defence Force. A similar exception was permitted in determining compliance with the residence requirement at the time the loan agreement was entered into, at paragraph 29C(2AA)(b) in relation to the Regional First Home Buyer Guarantee.

Items 32 and 36 amend paragraph 29K(1)(b) and insert a new subsection 29K(3) to provide a broader exception to the owner-occupied requirement where borrowers are required to relocate by their current employer of at least 12 months and as a result it is impractical for the property to continue to be owner-occupied for a period. Similarly, item 15 amends paragraph 29C(2AA)(b) to provide that the Regional First Home Buyer Guarantee applies to loans where at least one borrower under the loan agreement has lived in the regional area or an adjacent regional area for some part of the previous 12 months, but was unable to live in the area in the remaining part of the year because the borrower's current employer of at least 12 months required them to relocate for work. In both circumstances, the exemption will only apply to borrowers over the course of the guarantee and not at the point of applying for the loan. Additionally, borrowers who relocate as a result of their employment, must intend to return to the property, and maintain it as their principal residence.

This exemption includes a borrower that is required to relocate by:

- their current employer of at least 12 months as a result of a compulsory work transfer; and

- the Australian Defence Force (ADF) (their employer) because of a posting required in the course of their duties as a member of the ADF, other than as a member of the Reserves.

It does not include a borrower that is relocating for new employment.

Where there are two borrowers, they will be exempted from the owner-occupied requirement on the basis that one borrower is required to relocate for work and both borrowers move from the relevant residence and intend to return to the residence and maintain it as their principal residence.

These amendments prevent guarantees from being cancelled for reasons outside of borrowers' control. Borrowers' will now be able to manage the owner-occupied requirement alongside potential changes in their work location over the entirety of their participation in the Home Guarantee Scheme. It also supports more Australians to achieve home ownership sooner in regional and remote areas by allowing more borrowers to be eligible for the Regional First Home Buyer Guarantee.

Item 26 inserts paragraph 29H(5)(a) which provides that if this exception for relocation due to work does not apply to a property subject to a loan under the Home Guarantee Scheme, and the owner-occupied residence requirement is not met, the guarantee will cease. In situation, the guarantee will cease at the time of the default.

Health-related exception

In addition to the exception from the owner-occupied requirement for relocation due to work, item 36 provides at new subsection 29K(3) that an exception applies for borrowers who are required to relocate due to an illness considered to be serious by the NHFIC or carer responsibilities for a person who suffers a serious illness. This exception will apply on the basis that after the time the loan agreement was entered into, the property was used as an owner-occupier residence and the NHFIC is satisfied that it is impracticable for the property to continue to be used as an owner-occupier residence for a period of time due to a serious illness or carer responsibilities for a person with serious illness.

These amendments enhance the operation of the Home Guarantee Scheme by allowing exceptions to the owner-occupied requirement in unavoidable circumstances where a borrower's serious health condition or their carer responsibilities for such a person prevent them from residing in the relevant property under the Home Guarantee Scheme. This retains the importance of the owner-occupied requirement for a majority of guarantees issued under the scheme but provides a reasonable exception on compassionate grounds where necessary.

As noted above, item 26 inserts paragraph 29H(5)(a) which provides that if this exception for relocation due to health-related reasons does not apply to a property subject to a loan under the Home Guarantee Scheme, and the owner-occupied requirement is not met, the guarantee will cease.

Review of dwelling price caps

Subsection 29F(1) sets out the dwelling price caps that apply to restrict the value of properties that may be purchased, or the on-completion value of new residential premises, under the Home Guarantee Scheme.

Item 25 repeals subsection 29F(2), which previously required the NHFIC to make recommendations to the Minister as soon as practicable after the end of each 12 month period ending on 31 December outlining what (if any) changes should be made to the dwelling price caps. The NHFIC will no longer be required to make the recommendations.

The Treasury, in its policy role, will provide recommendations to the Minister on what adjustments (if any) it considers should be made to the dwelling price caps for the Home Guarantee Scheme. These recommendations will be made as soon as practicable after the end of each 12 month period ending on 31 December. The Government will consider the Treasury's recommendations in deciding whether to adjust the dwelling price caps. The Treasury may also make recommendations at other times if it considers there are factors that warrant an adjustment to the dwelling price caps outside of the annual review period.

Minor amendments

Item 10 clarifies in the simplified outline that the New Home Guarantee stream ceased issuing guarantees from 1 July 2022 and is now closed.

Items 14, 17, 18 and 33 make referencing amendments to paragraph 29C(2)(d), the heading of section 29D, subsection 29D(1) and paragraph 29K(1)(d) to amend references to the 'eligible first home buyer' to 'eligible home buyer', in accordance with the updated definition at item 2.

Item 27 makes a minor amendment to the section 29I heading from 'limit on guarantees in a financial year' to 'First home guarantees'. This better reflects the naming conventions of section 29IA, 29IB and 29IBA, which all impose different limits on the allocation of guarantees and are named in accordance with the relevant guarantee stream.

Item 28 clarifies under subsection 29JA(1) that the creation of scheme rules by the NHFIC is necessary in relation to the operation of the Home Guarantee Scheme as a whole and separately for the First Home Guarantee, New Home Guarantee, Family Home Guarantee and Regional First Home Buyer Guarantee.

Items 19 and 24 amend paragraph 29D(1)(a) and insert subsection 29D(6) to improve the clarity and structure of section 29D.

A person is an eligible home buyer under paragraph 29D(1)(a) if at the time of entering the loan they have never held a freehold interest in real property in Australia, or a relevant interest in land. A freehold interest in real property includes an investment property, vacant land or commercial property. A 'relevant interest in land' is defined in the new subsection 29D(6) as:

- a long- term (50 years or more) lease of land or a renewal or extension of such a long-term lease on substantially the same terms as the lessor owned the real property or held it under a lease; or
- a company title interest in land.

The test for whether a person has owned an interest in Australian land is based on paragraph 138- 10(2)(a) in Schedule 1 to the *Taxation Administration Act 1953*.

NHFIC reporting requirements

Item 38 amends subsection 29L(2) to clarify that NHFIC reports to the Minister must separately include specified matters in relation to First Home Guarantees, as well as the other guarantee streams.

Item 39 replaces subsection 29L(3) to require NHFIC to collect data and information which would be of the assistance in evaluating whether the Home Guarantee Scheme is effective in facilitating home buyers who are able to benefit from the scheme entering into the housing market sooner, including collecting data and information about the changes in behaviour of buyers induced by the scheme and the effectiveness of the scheme in relation to different types of buyers. This amendment recognises the enhancement to the Home Guarantee Scheme and broadens the original subsection, which was limited to evaluating the changes in behaviour and effectiveness of the scheme solely in relation to first home buyers.

Application of amendments

Item 40 inserts section 40 in new division 5 in relation to amendments made by this Instrument, which states that the amendments made under Schedule 1 of the Instrument apply to guarantees issued on or after the later of 1 July 2023 or the day after this Instrument is registered.

Schedule 2 – Amendments commencing at the same time as Schedule 5 to the *Treasury Laws Amendment (2023 Measures No. 2) Act 2023*

Schedule 2 amends the Investment Mandate to allow single legal guardians of children to be eligible for the Family Home Guarantee, in addition to eligible single parents and to allow individuals who have not held an ownership interest in real property in Australia in the last 10 years to be eligible for the First Home Guarantee and the Regional First Home Buyer Guarantee, in addition to eligible first home buyers. These changes were dependent on the passage of schedule 5 to the *Treasury Laws Amendment (2023 Measures No. 2) Act 2023* which expanded the objects of the NHFIC Act to include the provision of housing assistance to people who are not purchasing their first home and single legal guardians.

Item 1 of Schedule 2 inserts the definition of ‘eligible single legal guardian’ into the definitions section. The amendment inserts a signpost in the definitions section that refers to the definition of eligible single legal guardian under section 29D.

Family Home Guarantee – Eligible borrowers

Item 9 inserts new subsection 29D(3A) which sets out the criteria for an eligible single legal guardian, which is consistent with the criteria for an eligible single parent. This criteria includes requiring that the single legal guardian be a person who:

- does not hold an interest in real property in Australia; or
- holds interest in another property in Australia but intends to relinquish this interest within four weeks from when they become the registered owner of the property that will be purchased with the loan; or
- is a joint tenant or tenant in common in a property and intends to become the sole registered owner of the same property as a result of the loan.

These amendments ensure that eligibility of a single legal guardian is treated the same as eligibility for a single parent, and acknowledges that guardians of children such as uncles, aunts and grandparents also deserve access to the Family Home Guarantee. The enhancements make the eligibility criteria more flexible to support more Australians to access the Home Guarantee Scheme.

Other minor amendments

Items 2 to 5 makes minor editorial amendments to the guide material to clarify that buyers who have not held an ownership in interest in Australian land in the last 10 years are eligible for the First Home Guarantee and that single legal guardians are also eligible for the Family Home Guarantee.

Items 6, 10 and 11 insert the term ‘eligible single legal guardian’ in paragraph 29C(2B)(b), subparagraph 29H(5)(b)(i) and paragraph 29K(1)(d).

Item 7 makes a minor editorial amendment to the heading of section 29D to reference ‘eligible single legal guardian’ in the heading.

Item 8 amends paragraph 29D(1)(a) to provide that an eligible home buyer must not have held property in the last 10 years.

Application of amendments

Item 12 inserts a ‘(1)’ in relation to the application provision for Schedule 1 of this Instrument.

Item 13 inserts subsection 40(2) which states that the amendments made under Schedule 2 of the Instrument apply to guarantees issued on or after the later of 1 July 2023 or the day after this Instrument is registered.