

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 (National
Housing Accord—Preparatory Work) Direction 2023*

Subsection 12(1) of the *National Housing Finance and Investment Corporation Act 2018* (the NHFIC Act) provides that the Minister may, by legislative instrument, give the Board of the National Housing Finance and Investment Corporation (the NHFIC) directions about the performance of the NHFIC's functions, and must give at least one such direction.

The NHFIC Act established the NHFIC as a corporate Commonwealth entity that is dedicated to improving housing outcomes for Australians.

In the October 2022-23 Budget, the Government announced that it will provide \$350 million over 5 years from 2024 to support funding an additional 10,000 affordable dwellings under the National Housing Accord 2022 (the Housing Accord), which the Commonwealth entered into with state and territory governments and other key stakeholders. The Housing Accord is part of a range of Government initiatives to improve housing outcomes for Australians.

The purpose of the *National Housing Finance and Investment Corporation Investment Mandate (National Housing Accord—Preparatory Work) Direction 2023* (the Instrument) is to enable the NHFIC to undertake preparatory work in support of the Government's commitment. This Instrument also sets out the limitations to the preparatory work which NHFIC can undertake. The purpose of these limitations is to manage the scope of work that the NHFIC can undertake and ensure that the NHFIC does not engage in activities that go to the actual delivery of the Housing Accord commitment.

The Act does not specify any conditions that need to be satisfied before the power to make the Instrument may be exercised.

The NHFIC was consulted in relation to the Instrument.

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 that 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 is therefore exempt from sunseting.

The Instrument is further 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. 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.

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. Further, Item 2 of section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides that an instrument that is a direction by the Minister to any person or body is not subject to disallowance. The Instrument is a direction from the Minister to the NHFIC and is therefore exempt from disallowance. The Instrument being exempt from disallowance provides the NHFIC with certainty in the administration of this new activity and provides assurance to any eligible project proponents that engage with the NHFIC that the activity has ongoing operation and is not subject to disallowance or sunseting.

The Instrument commences the day after registration.

The Office of Impact Analysis has been (OIA) has been consulted (OIA ref: OIA23-05267) and advised that an Impact Analysis is not required. The measure has no impact on compliance costs.

Details of the *National Housing Finance and Investment Corporation Investment Mandate (National Housing Accord—Preparatory Work) Direction 2023*

Section 1 – Name

This section provides that the name of the Instrument is the *National Housing Finance and Investment Corporation Investment Mandate (National Housing Accord—Preparatory Work) Direction 2023* (the Instrument).

Section 2 – Commencement

This section provides that the Instrument commences the day it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Instrument is made under the *National Housing Finance and Investment Corporation Act 2018* (the NHFIC Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to the Instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to the 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* (the Investment Mandate), unless otherwise stated.

New activity for the NHFIC

Section 8 of the NHFIC Act sets out the functions of the NHFIC, which relevantly includes to make loans, investments, and grants to improve, directly or indirectly, housing outcomes. Subsection 12(1) of the NHFIC Act relevantly provides that the Minister may, by legislative instrument, give the Board directions about the performance of the NHFIC's functions, and must give at least one such direction. The directions together constitute the Investment Mandate.

Part 2, Division 1 of the Investment Mandate sets out the activities and allocation of funds for the NHFIC. This Instrument inserts a new activity for the NHFIC in Part 2, Division 1 of the Investment Mandate.

Preparatory work for the Australian Government's commitment to deliver the 10,000 affordable dwellings under the National Housing Accord 2022

Item 1 of the Instrument inserts a new section 8C, titled 'Preparatory work for National Housing Accord commitment' in the Investment Mandate. This section sets out the preparatory work which NHFIC may undertake for the purposes of the Government's

commitment under the National Housing Accord 2022 (the Housing Accord), and the limitations of that work.

New subsection 8C(1) empowers the NHFIC to undertake preparatory work for the delivery of the Australian Government's commitment under the National Housing Accord 2022 to support an additional 10,000 affordable dwellings over 5 years from 2024. For ease of reference, within section 8C, this commitment is defined as the 'National Housing Accord commitment'.

This provision does not specify the preparatory work that the NHFIC can undertake for the delivery of the National Housing Accord commitment. This is because the intention is to provide the NHFIC with the flexibility to undertake a broad range of work for the purposes of preparing for the National Housing Accord commitment. Some examples of the type of preparatory work that could be within scope are:

- establishing principles for engagement with state and territory governments on program delivery;
- establishing documentation and procurement processes in preparation for receiving applications from project proponents, including development of an online applications portal; and
- consulting with affordable housing stakeholders such as community housing providers, developers and builders, banks, and other finance providers to determine program delivery requirements.

However, the preparatory work which the NHFIC may undertake is subject to the limitations set out in subsections 8C(2) and (3).

Subsection 8C(2) provides that the preparatory work must be incidental or conducive to the performance of NHFIC's functions under subsection 8(1) of the NHFIC Act. This provision reinforces the scope of the work which NHFIC is permitted to undertake under paragraph 8(1)(e) of the NHFIC Act, which relevantly provides that the functions of the NHFIC are to do anything incidental or conducive to the performance of its functions in subsection 8(1). The purpose of this limitation is to make clear that any preparatory works that the NHFIC carries out must be consistent with, and within the scope of, its functions in section 8 of the NHFIC Act.

Subsection 8C(3) sets out two limitations on the scope of preparatory work that the NHFIC can undertake under subsection 8C(1). Specifically, the NHFIC is prohibited from:

- entering into contracts for loans, investments, grants or guarantees relating to the provision of housing under the National Housing Accord commitment; or
- commencing a process for selecting a particular recipient of a loan, investment, grant, or guarantee relating to the provision of housing under the National Housing Accord commitment.

These activities are not considered to be work that is preparatory in nature and, for that reason, NHFIC is specifically prohibited from undertaking that work.

The purpose of subsection 8C(3) is that the NHFIC cannot enter into any form of agreement that commits to the provision of affordable dwellings under the National Housing Accord commitment.

Enabling the NHFIC to spend money on preparatory work for the Housing Accord

Item 2 of the Instrument omits the reference of ‘8B’ and substitutes the reference of ‘8C’ in paragraph 9(1)(a) of the Investment Mandate. It is a consequential amendment from the insertion of the new section 8C.

Subsection 9(1) prohibits the NHFIC from spending money otherwise than for certain purposes set out in that subsection.

Paragraph 9(1)(a) allows the NHFIC to spend money on activities outlined in sections 6 to 8B of the Investment Mandate, which are the NHFIC’s current activities. As the Instrument inserts a new activity for the NHFIC by inserting section 8C into the Investment Mandate, it is necessary to amend paragraph 9(1)(a) to extend the exceptions to subsection 9(1) to include section 8C in order to enable the NHFIC to spend money on the preparatory works for the Housing Accord.