

EXPLANATORY STATEMENT

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 (in its previous form as the National Housing Finance and Investment Corporation) 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 Housing Australia Future Fund (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 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 gives effect to the Government's commitment under the National Housing Accord (Accord) to deliver an additional 10,000 affordable housing dwellings over 5 years from 2024 (affordable homes commitment). The Accord is an agreement

between all levels of government and other stakeholders to address the supply and affordability of housing in Australia. The NHAF will be funded through budget appropriations to Housing Australia to deliver the affordable homes commitment.

The HAFF and the Accord are part of a range of Government initiatives to improve housing outcomes for Australians, and will collectively support 20,000 new social homes and 20,000 new 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' to reflect the formation of 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.

Public consultation on an exposure draft Instrument and the accompanying Explanatory Statement was undertaken from 25 October 2023 to 8 November 2023. 36 submissions were received in response to the consultation from community housing providers and their peak bodies, First Nations peak housing organisations, institutional investors, representatives from the development and construction sector, local government organisations and state and territory governments and organisations. Housing Australia was also consulted on draft instruments during the development of the Instrument and Explanatory Statement. Some adjustments were made to the Instrument and Explanatory Statement following the consultation period to clarify and improve the operation of the HAFF and the NHAF.

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 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 sunset 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 class exemptions from disallowance if the instrument is a direction by the Minister to any person or body. The Government considers it appropriate that the Instrument is not subject to disallowance. The exemption recognises that executive control is intended in this instance where a ministerial direction is made to Housing Australia.

The Instrument commences the day after registration.

The Office of Impact Analysis (OIA) has been consulted and a Policy Impact Analysis (PIA) is not required for the amendments to establish the HAFFF and the NHAF. The PIA reference number is OBPR22-02931. The OIA has further advised that the amendments enacting the transition from the NHFIC to Housing Australia do not require a PIA. The PIA reference number is OBPR22-003367.

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 through the establishment of the Housing Australia Future Fund Facility (HAFFF) and an additional 10,000 affordable homes over five years through the establishment of the National Housing Accord Facility (NHAF). Financing will be made available through the HAFFF and the NHAF to eligible project proponents for the purposes of increasing the supply of social housing and affordable housing and addressing acute housing needs. Establishment of the HAFFF and the NHAF intends to encourage investment in the social or affordable

housing sector, thereby contributing to the development of the community housing sector.

Within this Instrument:

- Schedule 1 outlines matters related to the HAFFF;
- Schedule 2 outlines 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 the availability of social and affordable housing, and to support acute housing needs.

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 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:

- 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/>);
- Registered charity – the amendment stipulates that a registered charity means an entity registered under the *Australian Charities and Not-for-profits Commission Act 2012*; 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 subparagraphs 28F(1)(a) to (i) (in relation to the HAFFF) or paragraphs 28T(1)(a) to (i) (in relation to the NHAF).

The National Construction Code (NCC) establishes minimum requirements for the design and construction of buildings across Australia. The NCC 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 these activities are permitted within Housing Australia’s financing function, as outlined in the Housing Australia Act.

Item 4 of Schedule 1 to the Instrument repeals section 8D, which enabled Housing Australia to undertake preparatory work for the delivery of the HAFFF subject to some limitations. The commencement of the amendments in this Instrument means that section 8D is no longer required as Housing Australia is authorised to undertake work for the delivery of the HAFFF under this Instrument.

Minimum number of dwellings made available

Item 5 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 allows for grants to be made 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.

Housing Australia Future Fund Facility

Item 6 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 across Australia including in regional, rural and remote areas. 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
- 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).

To avoid doubt, the note to section 28D clarifies that new section 28H explains 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 wholly 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;
- if the project involves construction of a new dwelling and an application for development approval or an application for building approval, whichever is required first, was lodged with the competent authority on or after 1 October 2023:
 - the project proponent must declare that the project is or will be HAFFF construction compliant;
 - where a project is declared to be HAFFF construction compliant, the project proponent must provide evidence to Housing Australia to demonstrate the project's compliance; and
 - where a project is declared that it will be HAFFF construction compliant, the proponent must provide evidence to Housing Australia to demonstrate the project's compliance as soon as reasonably practicable after the dwellings are available.

A 'development application' refers to an application for a development approval or planning permit (however described by the relevant State or Territory planning legislation) and a 'building approval' means a construction or building permit or approval (however described by the relevant State or Territory).

A project is HAFFF construction compliant where each building constructed as part of the project complies with:

- the requirements for energy efficiency for houses and apartments in Parts H6 and J2 of the NCC; or
 - for the purposes of assessing compliance with the requirements for energy efficiency, Housing Australia will ignore:
 - : any different versions of Parts H6 or J2 of the NCC that might ordinarily apply in the State or Territory where the building is located; and
 - : any NCC energy efficiency requirements that relate specifically to climate zones 1 or 2, within the meaning of the NCC.
- the highest NCC energy efficiency requirements that are reasonably practicable, if it is not reasonably practicable for a project to meet the requirements outlined above; and
- the standards in the NCC relating to livable housing design.

These eligibility requirements ensure projects under the HAFFF will assist the Government's goal to increase the availability of social housing, affordable housing, or address acute housing needs by providing much needed financing to projects. 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 – all of which will support an increase of available social and affordable housing in Australia.

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. For the purposes of the HAFFF and NHAFF, Housing Australia will develop and apply an administrative definition of affordable housing that is consistent with the Government's objectives and compatible with established definitions currently used by State and Territory governments and the community housing sector; 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 project is or will be HAFFF construction compliant. 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.

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. Social and affordable housing made available through a HAFFF project must comply with standards in H6 or J2 (whichever is applicable to the project) regardless of whether the State or Territory in which the project is located has adopted these standards and whether the State or Territory has made any variations in adopting those standards. However, if it is not practical for the project to meet these requirements, the project should meet the highest energy efficiency requirement that is practical under the NCC.

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 7-stars under the Nationwide House Energy Rating Scheme (NatHERS) 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 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.

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
- a registered community housing provider (a community housing provider that is registered under a law or under a scheme administered by a State or Territory) that is a registered charity and 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) and that is a registered charity; or
- an entity that has the primary purpose of improving, directly, or indirectly, housing outcomes for members of the Australian Defence Force and that is a registered charity; or
- an entity that has the primary purpose of improving, directly, or indirectly, housing outcomes for former members of the Australian Defence Force and that is a registered charity and a constitutional corporation; 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.

Identifying eligible project proponents

Section 28G requires Housing Australia to make reasonable efforts to identify entities in each State and Territory (including in regional, rural and remote areas) whose business or activities:

- may be assisted by financing for a HAFFF project; and
- may include projects to increase social housing or affordable housing in the short term and may be assisted by financing for a HAFFF project.

Where an entity's existing business or activities has been identified as satisfying these criteria, 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.

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 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.

Housing Australia may tailor its concessional loans to suit the needs of project proponents. Tailoring of loans may include (but are not limited to) a range of concessions, including longer loan tenors and lower interest rates than offered by commercial financiers (including interest-free terms), and repayment holidays.

Housing Australia is also required to take appropriate security for its loans, having regard to the potential exposure of the Commonwealth and Housing Australia in the event of a default. State and Territory applicants are not required to provide security. For other applicants, Housing Australia will need to consider a range of factors in deciding what level of security is appropriate, including the quality and type of any security available from the project proponent.

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 areas on an equitable, as needs basis;
- the likely effect of a project on the supply and ongoing availability of social housing, affordable housing or housing that addresses an acute housing need, including in regional, rural and remote areas;
- whether the housing proposed under the project is well-located (close to work, schools, transport and other amenities) and supports improved 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, including the degree to which the workforce will support female apprentices and female trade apprentices in the building and construction industries;
- the extent of any concession that is appropriate to offer;
- 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 Commonwealth, State or Territory finance or activities;

- relevant reports or advice by the National Housing Supply and Affordability Council (Council) where these reports are publicly available and 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;
- 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; and
- whether the project delivers value for money, in terms of the amount of housing delivered and the extent to which it addresses unmet social, affordable and acute housing needs.

Consideration of these matters ensures Housing Australia has regard to a range of matters when financing projects which increase the availability of social and affordable housing or address acute housing needs. It requires consideration of whether certain financing types will attract institutional investment or private finance into the project or whether the project will leverage, complement or support other Commonwealth, State or Territory finance or activities. Housing Australia will consider whether its financing decisions are providing housing outcomes on an as-needs and equitable basis across Australia to ensure social and affordable housing is delivered where it is most needed. The balancing of all these matters, 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 social and affordable housing priorities, including supporting well-located housing, delivering projects that achieve value for money, encouraging private sector participation and developing the social and affordable housing sector.

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, including 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).

Matters to be considered when determining concessions

Section 28K requires Housing Australia to consider particular matters when determining if any loan concessions are to be granted under the HAFFF. Housing Australia must limit any concessions provided under the HAFFF to the minimum that it considers necessary for an eligible project to proceed or be completed in the proposed timeframe. The HAFFF should not provide greater concessions than Housing Australia considers necessary, and this may be reflected in the terms of the contract. Housing Australia will also need to take into account the extent of any public benefit from the housing made available under the project, the objects of the Housing Australia Act and the limits set in that Act in determining the extent of the concession.

Division 3—General matters

Reporting

Section 28L 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 development or in planning, or will not be completed;
- the number of projects funded in regional, rural and remote areas in each State and Territory; and

- the total amount of finance under the HAFFF provided in relation to those projects.

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, various groups of persons with housing needs including eligible key workers);
- 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 28L(3), Housing Australia must provide additional information in the report about projects that involve new dwellings being constructed. Housing Australia must include whether projects under the HAFFF are or are not HAFFF construction compliant, or will or will not be compliant at the time dwellings are made available, in the relevant reporting period.

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

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 28M permits the Board to disregard any likely liabilities or loans 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's determination as to amount for HAFFF financing decisions

Subparagraph 13(c)(i) of the Housing Australia Act allows the Investment Mandate to provide directions on limits on making loans and grants. Further to this subparagraph, new section 28N provides that the limit on loans and grants made for the purposes of the HAFFF. The limit is currently nil. The note to this section clarifies that it is intended that the limit will be increased at a future date, subject to future decisions of Government.

Further amendments

Items 7 and 8 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) aims to bring 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 in fulfilment of its National Housing Accord commitment. Housing Australia will have primary responsibility for delivering the Commonwealth's affordable housing commitment under 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:

- 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 28S(4);
- NHAF project - the amendment includes a signpost to subsection 28S(1); and
- NHAF special purpose vehicle - the amendment includes a signpost to subsection 28T(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 28P 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 across Australia including in regional, rural and remote areas. 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.

Division 1—Financing mechanisms and eligibility

Applications for finance under the NHAF

Section 28Q 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 28R 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 28S;
- the project proponent is eligible under new section 28T;
- 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).

To avoid doubt, the note to section 28R explains that Housing Australia can only finance National Housing Accord projects through loans and grants.

NHAF projects

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

- that delivers housing wholly 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;
- if the project involves construction of new dwellings and the development application or application for building approval (as appropriate) was lodged from 1 October 2023:

- the project proponent must declare that the project is or will be NHAF construction compliant;
- where a project is declared to be NHAF construction compliant, the proponent must provide evidence to Housing Australia to demonstrate the project’s compliance; and
- where a project is declared that it will be NHAF construction compliant, the proponent must provide evidence to Housing Australia to demonstrate the project’s compliance as soon as reasonably practicable after the dwellings are available.

A 'development application' refers to an application for a development approval or planning permit (however described by the relevant State or Territory planning legislation) and a 'building approval' means a construction or building permit or approval (however described by the relevant State or Territory).

A project is NHAF construction compliant where each building constructed as part of the project complies with:

- the requirements for energy efficiency for houses and apartments in Parts H6 and J2 of the NCC; or
 - For the purposes of assessing compliance with the requirements for energy efficiency, Housing Australia will ignore:
 - : any different versions of Parts H6 or J2 of the NCC that might ordinarily apply in the State or Territory where the building is located; and
 - : any NCC energy efficiency requirements that relate specifically to climate zones 1 or 2, within the meaning of the NCC.
- the highest NCC energy efficiency requirements that are reasonably practicable, if it is not reasonably practicable for a project to meet the requirements outlined above; and
- the standards in the NCC relating to livable housing design.

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. For the purposes of the HAFFF and NHAF, Housing Australia will develop and apply an administrative definition of affordable housing that is consistent with the Government’s objectives and compatible with established

definitions currently used by State and Territory governments and the community housing sector.

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. Affordable housing made available through a NHAF project must comply with standards in H6 or J2 (whichever is applicable to the project) regardless of whether the State or Territory in which the project is located has adopted these standards and whether the State or Territory has made any variations in adopting those standards. However, if it is not practical for the project to meet these requirements, the project should meet the highest energy efficiency requirement that is practical under the NCC.

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 7-stars under the Nationwide House Energy Rating Scheme (NatHERS) 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 projects financed under the NHAF 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.

Eligible project proponents for NHAF projects

Section 28T 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 (a community housing provider that is registered under a law or under a scheme administered by a State or Territory) that is a registered charity and 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) and that is a registered charity; or
- an entity that has the primary purpose of improving, directly, or indirectly, housing outcomes for members of the Australian Defence Force and that is registered as a charity; or
- an entity that has the primary purpose of improving, directly, or indirectly, housing outcomes for former members of the Australian Defence Force and that is a registered charity and a constitutional corporation; or
- a NHAF special purpose vehicle that is a constitutional corporation.

The note to new subsection 28T(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 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 28U(1) requires Housing Australia to make reasonable efforts to identify entities in each State and Territory (including in regional, rural and remote areas) whose business or activities:

- may be assisted by financing for a NHAF project; and
- may include projects to increase affordable housing in the short term and may be assisted by financing for a NHAF project.

Where an entity's existing business or activities has been identified as satisfying these criteria, Housing Australia must promote the NHAF to these potential proponents. This requirement will ensure there is adequate public awareness of the NHAF and that the facility is promoted to project proponents across Australia.

The business or activities of potential proponents may also 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 new affordable housing supply and ensures Housing Australia is identifying potential opportunities to increase the supply of affordable housing as soon as possible in Australia.

Financing mechanisms

Section 28V 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.

Housing Australia may tailor its concessional loans to suit the needs of project proponents. Tailoring of loans may include (but are not limited to) a range of concessions, including longer loan tenors and lower interest rates than offered by commercial financiers (including interest-free), and repayment holidays.

Housing Australia is also required to take appropriate security for its loans, having regard to the potential exposure of the Commonwealth and Housing Australia in the event of a default. State and Territory applicants are not required to provide security. For other applicants, Housing Australia will need to consider a range of factors in deciding what level of security is appropriate, including the quality and type of any security available from the project proponent.

The terms and conditions of financing under the NHAF 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 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 28W 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 areas on an equitable, as needs basis;
- the likely effect of the project on the supply and ongoing availability of affordable housing;
- whether the housing delivered under the project are well-located (close to work, schools, transport and other amenities) and supports 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 including the degree to which the workforce will support female apprentices and female trade apprentices in the building and construction industries;
- the extent of any concession that is appropriate to offer;
- the extent to which financing the project would assist Housing Australia to achieve the objectives of these amendments;
- 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;
- relevant reports or advice by the National Housing Supply and Affordability Council (Council) where these reports are publicly available and disclosed by Housing Australia to the project proponent;
- 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;

- 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; and
- whether the project delivers value for money, in terms of the amount of housing delivered and the extent it addresses unmet affordable housing needs.

Consideration of these matters ensures Housing Australia has regard to a range of matters when financing projects which increase the availability of affordable housing. It requires consideration of whether certain financing types will attract institutional investment or private finance into the project, or whether the project will leverage, complement or support other Commonwealth, State or Territory finance or activities. Housing Australia will consider whether its financing decisions are providing housing outcomes on an as-needs and equitable basis across Australia to ensure affordable housing is delivered where it is most needed. The balancing of all these matters, 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 affordable housing priorities, including supporting well-located housing, delivering projects that achieve value for money, encouraging private sector participation and developing the affordable housing sector.

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, including 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.

Matters to be considered when determining concessions

Section 28X requires Housing Australia to consider particular matters when determining if any loan concessions are to be granted under the NHAF. Housing Australia must limit any concessions provided under the NHAF to the minimum that it considers necessary for an eligible project to proceed or be completed in the proposed timeframe. The NHAF should not provide greater concessions than Housing Australia considers necessary, and this may be reflected in the terms of the contract. Housing Australia will also need to take into account the extent of any public benefit from the housing made available under the project, the objects of the Housing Australia Act and the limits set in that Act in determining the extent of the concession.

Division 3—General matters

Reporting

Section 28Y 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 development, in planning, or will not be completed;
- the number of projects funded in regional, rural and remote areas in each State and Territory; 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;
- 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, various groups of persons with housing needs including eligible key workers);
- 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 28Y(3), Housing Australia must provide additional information in the report about projects that involve new dwellings being constructed. Housing Australia must include whether projects under the NHAF are or are not NHAF construction compliant, or will or will not be compliant at the time dwellings are made available, in the relevant reporting period.

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

Section 48 of the Housing Australia Act requires that the 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 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 28Z permits the Board to disregard any likely liabilities or loans of Housing Australia that relate to the NHAF from the requirement to maintain adequate capital and reserves under section 48 of the Housing Australia Act. Housing Australia will facilitate the delivery of affordable housing by providing financing from the NHAF in part by entering into long-term payment contracts. The exclusion will allow Housing Australia to administer the NHAF 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's determination as to amount for NHAF financing decisions

Subparagraph 13(c)(i) of the Housing Australia Act allows the Investment Mandate to provide directions on limits on making loans and grants. Further to this subparagraph, new section 28ZA provides that the limit on loans and grants made for the purposes of the NHAF. The limit is currently nil. The note to this section clarifies that it is intended that the limit will be increased at a future date, subject to future decisions of Government.

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.

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 75 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:

- Commercial Financier – the amendment extends the definition of Commercial Financier so that it includes a private sector body that finances or invests into projects relating to housing, in addition to projects relating to housing-enabling infrastructure;
- 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; and
- infrastructure – the amendment repeals the definition as there is a new definition for infrastructure.

Housing Australia’s activities

Items 77, 79, 80 and 81 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 78, 85, 86 and 87 of Schedule 3 to the Instrument remove the terms ‘infrastructure loans, investments’ or ‘infrastructure loans or investment’ or ‘infrastructure loans and investments’ from section 7, paragraph 13(1)(a), subparagraph 13(1)(b)(i), subsection 13(3), and substitute with ‘loans’ or the ‘loans made under Part 4’. Additionally, items 103 and 111 of Schedule 3 to the Instrument remove the word ‘investment’ in the note to subsection 24(6), and subparagraph 28A(2)(e)(ii). Item 110 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 100 and 101 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 82 and 114 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

Items 88 and 96 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 89 and 113 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 102, 115 and 116 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 112 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 28ZC, the Investment Mandate specifies under section 28ZD, to be eligible for capacity 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 98 and 99 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 92 and 93 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

Items 76, 83, 84, 90, 91, 94, 95, 97, 104, 105, 106, 107, 108 and 109 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;
- subsection 16(2) and subsection 19(a) – minor amendments to reflect AHBA’s operation in supporting both social and affordable housing outcomes;
- section 18 – amendment to ensure consistency with the language used in the Housing Australia Act;
- paragraphs 22(1)(e) and (f) – amendments to ensure consistency with Housing Australia’s new functions;
- 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;
- paragraph 26(1)(a) and subsection 26(2) – minor editorial amendment to refer to projects; and
- paragraph 26(1)(c) – minor amendment to ensure consistency with new paragraphs 28K(1)(c) and 28X(1)(c)

Application of amendments

Item 117 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.