

## EXPLANATORY STATEMENT

### **Issued by authority of the Minister for Housing and Minister for Homelessness**

#### *Housing Australia Act 2018*

#### *Housing Australia Investment Mandate Amendment (2024 Measures No. 3) Direction 2024*

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

The Act established Housing Australia to improve housing outcomes for Australians. Housing Australia (previously, the National Housing Finance and Investment Corporation) commenced operation on 30 June 2018. It is a corporate Commonwealth entity in the Treasury portfolio and is governed by an independent board.

Housing Australia improves housing outcomes for Australians through its financing, guarantee and capacity building functions. As part of its financing function, Housing Australia administers the Housing Australia Future Fund Facility (HAFFF), the National Housing Accord Facility (NHAF), and the Affordable Housing Bond Aggregator (AHBA).

Applications for the next round of HAFFF financing (HAFFF Round 2) open on or after the commencement of this Instrument and close on 1 March 2025.

The purpose of the *Housing Australia Investment Mandate Amendment (2024 Measures No. 3) Direction 2024* (the Instrument) is to amend the Investment Mandate to improve the operation of the HAFFF and support the accelerated delivery of HAFFF Round 2. Specifically, the Instrument amends the Investment Mandate to:

- increase the limit on the sum of all loans made under the HAFFF on or after 1 July 2024 and before 1 July 2029 (relevant period) by \$204 million, from \$1.531 billion to \$1.735 billion; and decrease the limit on the sum of all loans made under the NHAF during the relevant period by \$204 million, from \$383 million to \$179 million. This allows additional financing to be provided under the HAFFF (including the second round of HAFFF financing) through the repurposing of NHAF funds;
- increase the annual limit for the sum of all HAFFF availability payments for the 2024-25 financial year and each subsequent financial year until the 2029-30 financial year from \$288 million to \$368 million. This allows Housing Australia to make a greater amount of HAFFF availability payments annually;
- increase the cap of Housing Australia's total liabilities (Liability Cap) by \$16 billion, from \$10 billion to \$26 billion; and
- limit the applications Housing Australia must consider for the second round of financing under the HAFFF – to applications made by or with States, Territories, State-government-owned corporations (that are constitutional corporations but not

utility providers) or Territory-government-owned corporations (that are constitutional corporations but not utility providers) in a defined period (commencement to 1 March 2025). This supports the accelerated delivery of HAFFF projects under the second round through close engagement with those entities.

Established on 8 December 2023, the HAFFF and the NHAF are the mechanisms by which Housing Australia administers the Government's commitment to support the delivery of 40,000 new social and affordable dwellings. These dwellings are delivered under two programs – the Housing Australia Future Fund (HAFF) and the National Housing Accord (Accord). Of the 30,000 dwellings committed under the HAFF, 10,000 dwellings will be affordable homes and 20,000 dwellings will be social homes. The 10,000 dwellings committed under the Accord are to be affordable homes only.

Under the Investment Mandate, the Liability Cap further sets the maximum value of liabilities that Housing Australia can incur under the Commonwealth guarantee of its liabilities created by section 51 of the Act. Housing Australia cannot incur liabilities exceeding the Liability Cap without prior agreement of the Minister for Housing and the Minister for Finance. The Liability Cap was last increased from \$7.5 billion to \$10.0 billion on 8 July 2024. The further increase of \$16 billion, taking the Liability Cap to \$26 billion, ensures that Housing Australia can continue to support its financing activities under the HAFFF, the NHAF and the AHBA.

No public consultation was undertaken on the Instrument as the changes are targeted and machinery in nature.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act). However, the Instrument is exempt from the sunseting regime set out in Part 4 of Chapter 3 of that Act by regulations made under paragraph 54(2)(b) of that Act. Item 3 of the table in section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (the Legislation Exemptions Regulation) exempts from sunseting instruments that are directions by a Minister to any person or body. As such a direction, the Instrument is also exempt from disallowance under section 42 of the Legislation Act by item 2 of the table in section 9 of the Legislation Exemptions Regulation. Accordingly, no statement of compatibility with human rights is required under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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

The Instrument commenced on the day after registration.

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

The Office of Impact Analysis has been (OIA) has been consulted (OIA ref: OIA24-08504) and agreed that an Impact Analysis is not required.

The measure has no impact on compliance costs.

**Details of the *Housing Australia Investment Mandate Amendment (2024 Measures No. 3) Direction 2024***

**Section 1 – Name**

This section provides that the name of the instrument is the *Housing Australia Investment Mandate Amendment (2024 Measures No. 3) Direction 2024* (the Instrument).

**Section 2 – Commencement**

This section provides that the Instrument commenced on the day after registration.

**Section 3 – Authority**

This section provides that the Instrument is made under the *Housing Australia Act 2018* (the Act).

**Section 4 – Schedule**

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

**Schedule 1 – Amendments**

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

**Improving the operation of the Housing Australia Future Fund Facility (HAFFF) and supporting the accelerated delivery of the second round of HAFFF financing**

Informed by application outcomes of the first round of financing under the HAFFF, the amendments to the Investment Mandate improve the operation of the HAFFF and support the accelerated delivery of the second round of HAFFF financing. Specifically, the amendments:

- increase the limit on the sum of all loans made under the HAFFF on or after 1 July 2024 and before 1 July 2029 (relevant period) by \$204 million, from \$1.531 billion to \$1.735 billion; and decrease the limit on the sum of all loans made under the National Housing Accord Facility (NHAF) during the relevant period by \$204 million, from \$383 million to \$179 million. This allows additional financing to be provided under the HAFFF (including the second round of HAFFF financing) through the repurposing of NHAF funds;
- increase the annual limit for the sum of all HAFFF availability payments for the 2024-25 financial year and each subsequent financial year until the 2029-30 financial year from \$288 million to \$368 million. This allows Housing Australia to make a greater amount of HAFFF availability payments annually;

- increase the cap of Housing Australia’s total liabilities (Liability Cap) by \$16 billion, from \$10 billion to \$26 billion, ensuring that Housing Australia can continue to expand its financing activities under the HAFFF, the NHAF, and the Affordable Housing Bond Aggregator (AHBA); and
- limit the applications Housing Australia must consider for the second round of financing under the HAFFF to applications made by or together with States, Territories, State-government-owned corporations (that are constitutional corporations but not utility providers) or Territory-government-owned corporations (that are constitutional corporations but not utility providers) between commencement and 1 March 2025. This supports the accelerated delivery of HAFFF projects under the second round through close engagement with those entities.

### **Repurposing of NHAF funds for HAFFF purposes**

Item 1 amends subsection 28N(3) to omit the reference to \$1.531 billion, substituting it with \$1.735 billion. The sum of all loans made under the HAFFF on or after 1 July 2024 and before 1 July 2029 (relevant period) must be less than or equal to \$1.735 billion.

This increases the limit by \$204 million and allows Housing Australia to make a greater amount of loans under the HAFFF. The \$204 million refers to unallocated loan funding that was available under the NHAF before the commencement of the Instrument. This amount is reallocated and repurposed to fund loans to be used in the second round of HAFFF financing.

Similarly, item 3 amends subsection 28ZA(3) to omit the reference to \$383 million, substituting it with \$179 million. As amended, this subsection provides that the sum of all loans made under the NHAF during the relevant period must be less than or equal to \$179 million. This \$204 million decrease reflects the additional \$204 million above, facilitating the repurposing of the funds as described in the above paragraph.

### **Increasing the limits on making HAFFF availability payments**

Item 2 amends subsection 28N(5) to omit references to \$288 million, substituting these references with \$368 million. Subsection 28N(5) sets the annual limit for the sum of all HAFFF availability payments for the 2024-25 financial year and each subsequent financial year until the 2029-30 financial year. This annual limit is \$368 million. Under paragraph 28N(5)(b) as amended, the increased annual limit will be indexed annually from the 2029-30 financial year onwards using the method in section 28NA.

Increasing these annual limits by \$80 million, from \$288 million to \$368 million, allows Housing Australia to make a greater amount of HAFFF availability payments annually.

### **Increasing the liability cap of Housing Australia**

Section 34 of the Investment Mandate operates with section 51 of the Act to cap the Commonwealth’s guarantee of Housing Australia’s liabilities. Specifically:

- subsection 51(1) of the Act provides that the due payment by Housing Australia of any money that becomes payable by Housing Australia to a person other than the Commonwealth is guaranteed by the Commonwealth. This is subject to a time limit set out in subsection 51(2) of the Act; and

- subsection 34(1) of the Investment Mandate prohibits the Board (the Board of Housing Australia: see section 4 of the Act) from entering a transaction which would result in the sum of the total guaranteed liabilities of Housing Australia and the current value of the AHBA reserve exceeding a specified amount (the Liability Cap), which prior to the commencement of this Instrument was \$10 billion.

Item 4 of the Instrument amends the heading of section 34 to omit the reference to \$10 billion, substituting this with “the prescribed amount”. This simplifies drafting by avoiding the need for further consequential amendments if the Liability Cap is changed in future. Item 5 further amends subsection 34(1) to omit the reference to \$10 billion, substituting this with \$26 billion.

From commencement of the Instrument, Housing Australia has a maximum of \$26 billion in liabilities comprised of:

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

Increasing the cap of Housing Australia’s total liabilities (Liability Cap) by \$16 billion, from \$10 billion to \$26 billion, ensures Housing Australia can continue to expand its financing activities.

These activities include the HAFFF, the NHAF, and the AHBA. The HAFFF and the NHAF aim to deliver the Government’s commitments to support 30,000 dwellings available as social and affordable housing under the HAFF and to support 10,000 dwellings available as affordable housing under the Accord. Through the AHBA, Housing Australia makes loans to eligible registered community housing providers.

In particular, the increased Liability Cap supports commitments for HAFFF availability payments under the first round of HAFFF financing and the upcoming second round of HAFFF financing.

The Government’s focus on providing housing options to all Australians requires Housing Australia to have the ability to finance these activities (in particular, HAFFF and NHAF projects) within the legislated Liability Cap. The increase in the Liability Cap to \$26 billion from commencement of the Instrument is necessary to ensure HAFFF and NHAF projects that have been committed to in the medium-term (including the first round of the HAFFF funding and the upcoming second round of the HAFFF funding) can proceed and that Housing Australia has sufficient liability space to facilitate long-term projects in the future.

### **Limiting eligible project proponents for HAFFF round 2 (transitional rule)**

Item 6 adds a new Division 8 to the end of Part 7. The new Division 8 and new section 43 provide a transitional rule for applications for the second round of HAFFF financing. Applications for the second round of HAFFF financing (HAFFF Round 2) open on or after the commencement of this Instrument and close on 1 March 2025. As such, subsections 43(1) and (3) provide that section 43 applies in relation to applications made on or after the commencement of this Instrument and before 1 March 2025 (transitional period).

Section 28C provides that Housing Australia must consider an application from an entity for the making of a loan or a grant under the HAFFF if the application is made in the manner and form approved by Housing Australia. Despite the operation of this section,

subsection 43(3) requires Housing Australia to not consider an application from an entity for finance under the HAFFF unless the entity is, or is applying together with:

- a State or Territory; or
- a State-government-owned corporation (other than a utility provider) that is a constitutional corporation; or
- a Territory-government-owned corporation (other than a utility provider) that is a constitutional corporation.

This requirement limits the applications made in the transitional period that Housing Australia must consider to applications made by or with these listed entities, which are a subset of the eligible project proponents described in section 28F.

The funding for HAFFF Round 2 is targeted to projects involving these entities to support accelerated delivery of the projects. Close engagement with State and Territory entities helps to ensure project applications are viable and to reduce burden on other eligible project proponents which may be included or contemplated in the application from the listed entities.

However, subsection 43(2) clarifies that this transitional rule does not apply to an application that relates to another application (the earlier application) made before the start of the transitional period, where the earlier application is still being considered by Housing Australia at the time the application is made. This accommodates circumstances where Housing Australia has requested or suggested that an application that was made during HAFFF Round 1 be resubmitted (for example, to correct errors).

From 1 March 2025, Housing Australia may still make financing decisions about applications made in the transitional period, and the limitations on Housing Australia's consideration of applications made by the transitional rule will apply to those applications. However, applications made on or after that date will not be affected by the transitional rule.