

EXPLANATORY STATEMENT

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

Housing Australia Act 2018

Housing Australia Investment Mandate Amendment (2025 Measures No. 1) Direction 2025

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. Housing Australia operates the Affordable Housing Bond Aggregator (AHBA), the National Housing Infrastructure Facility, the Housing Australia Future Fund Facility and the National Housing Accord Facility as part of its financing function. Housing Australia also provides support for capacity building of eligible registered community housing providers (CHPs) through its capacity building function, and administers the Home Guarantee Scheme (HGS) as part of its guarantee function. Housing Australia also has other functions conferred by legislation, such as Help to Buy functions under the *Help to Buy Act 2024*.

The AHBA Reserve is a function of the AHBA. The AHBA, including the AHBA Reserve, supports registered CHPs by providing them with low-cost finance to build and manage social and affordable housing projects. Registered CHPs can access loans from Housing Australia through the AHBA Reserve. In many instances, these loans will receive long-term finance through a bond issuance. Specifically, Housing Australia aggregates the funding requirements from registered CHPs and finances them by issuing long-term social and sustainability bonds in wholesale debt capital markets. The AHBA Reserve contains amounts borrowed by Housing Australia from the Commonwealth that relate to specific loans to CHPs. At the commencement of the *Housing Australia Investment Mandate Amendment (2025 Measures No. 1) Direction 2025* (Instrument), up to \$4 billion can be allocated to the AHBA Reserve.

Registered CHPs can also receive loans from the AHBA Reserve that are not connected to a later bond issuance. One circumstance in which this occurs is to provide construction financing that directly supports the development of new dwellings, which enables registered CHPs to make progressive drawdowns through the construction phase of a project prior to take-out finance at completion and financing of the loan via a bond issuance. Another circumstance where registered CHPs have separately received loans from the AHBA Reserve is to fund loans that will not be refinanced via bond issuance because the transaction would be better supported under the AHBA Reserve when considering the project structure.

The operation of the AHBA Reserve is provided for in section 11 of the Investment Mandate. Prior to the commencement of this Instrument, subsection 11(4) required Housing Australia to repay the Commonwealth in respect of an AHBA Reserve loan within 6 months after the day when the loan is required to be repaid to Housing Australia (or a later time allowed by the Minister). The repayment includes the amount of a particular loan (i.e. the principal) and an amount to compensate the Commonwealth for its cost of borrowing to finance the AHBA Reserve loan (i.e. the interest).

The purpose of the Instrument is to amend the Investment Mandate to require Housing Australia to repay the relevant amounts to the Commonwealth before the end of the 6-month period beginning on the earliest of the following:

- the day a registered CHP repays a loan;
- the day a registered CHP being required to repay the loan;
- Housing Australia raises finance by issuing bonds for a purpose that relates to the loan.

This amendment will support Housing Australia's prompt payment to the Commonwealth of amounts related to loans issued via the AHBA Reserve. As is currently the case, repayments of amounts relating to loan principal are to be credited to the Housing Australia Special Account (HASA) so that the funds remain available for future drawdowns for AHBA Reserve loans. Amounts relating to the Commonwealth's cost of borrowing for AHBA Reserve loans are expected, under current legislative settings, to be allocated to the Consolidated Revenue Fund without being credited to the HASA.

The instrument also provides that the Minister, upon receiving a written request from Housing Australia, may extend the time for Housing Australia to pay or repay the abovementioned amounts to the Commonwealth, if the Minister is satisfied that it is appropriate in all the circumstances to do so.

No public consultation was undertaken on the Instrument as the changes are targeted and machinery in nature. Housing Australia was consulted during the development of the Instrument.

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 is automatically repealed 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 (2025 Measures No. 1) Direction 2025*

Section 1 – Name

This section provides that the name of the instrument is the *Housing Australia Investment Mandate Amendment (2025 Measures No. 1) Direction 2025* (the Instrument).

Section 2 – Commencement

This section provides that the Instrument commenced on the day after the instrument is registered on the Federal Register of Legislation.

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 are amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

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

AHBA Reserve

Section 11 of the Investment Mandate provides for the operation of the Affordable Housing Bond Aggregator (AHBA) Reserve. The AHBA Reserve facilitates the operation of the AHBA, directions on the operation of which are set out in Part 3 of the Investment Mandate. The AHBA supports registered community housing providers (CHPs) by providing them with low-cost finance to build and manage social and affordable housing projects. This is done by aggregating funding requirements from registered CHPs and financing them by issuing long-term social and sustainability bonds in wholesale debt capital markets, supported by the Commonwealth's guarantee of Housing Australia's liabilities in section 51 of the Act (capped by section 34 of the Investment Mandate). In advance of bond issuance, registered CHPs can access loans directly from Housing Australia through the AHBA Reserve. Housing Australia can also directly issue loans to registered CHPs that will not be subject to bond issuance.

Requirements regarding repayment of AHBA Reserve loans and payment of the Commonwealth's cost of borrowing for AHBA Reserve loans were previously provided for by subsection 11(4) of the Investment Mandate.

Item 1 of the Instrument repeals subsection 11(4) of the Investment Mandate and substitutes subsections 11(4), (4A) and (4B).

Previously, subsection 11(4) provided that, within 6 months after the day when the Housing Australia loan to a CHP is required to be repaid to Housing Australia, or at a later time allowed by the Minister, Housing Australia had to repay to the Commonwealth an amount equal to the allocation (i.e. the principal of the loan), adjusted to cover the Commonwealth's cost of borrowing, and reduce the AHBA Reserve by the allocation.

Subsection 11(4) is amended to provide that, for each allocation (being an amount allocated to the Reserve that relates to a particular loan to a registered CHP), Housing Australia must repay to the Commonwealth an amount equal to the loan (paragraph 11(4)(a)), and pay an amount to the Commonwealth to cover the Commonwealth's cost of borrowing relating to the loan (paragraph 11(4)(b)), within the time periods set out in subsection 11(4A).

The 'amount equal to the loan' refers to the loan principal. The 'amount to cover the Commonwealth's cost of borrowing' refers to interest payable on the Commonwealth's loan to Housing Australia, which is set by reference to the yield of Australian Government Securities over the relevant period. It is intended that any additional funds Housing Australia earns as a consequence of issuing loans – most commonly, interest payments it collects that exceed the Commonwealth's cost of borrowing – can be kept by Housing Australia to support the performance of its functions, including making further loans to CHPs.

The note to subsection 11(4) clarifies that the repayments of amounts relating to loan principal are to be credited to the Housing Australia Special Account (HASA) while the amounts relating to the Commonwealth's cost of borrowing relating to the loan do not affect the HASA. Amounts relating to the Commonwealth's cost of borrowing for AHBA Reserve loans are expected, under current legislative settings, to be allocated to the Consolidated Revenue Fund generally, without being credited to the HASA.

Section 47B of the Act credits amounts to the HASA that are equal to amounts paid to the Commonwealth by Housing Australia that are:

- repayments of money debited from the HASA, or other money lent by the Commonwealth to Housing Australia (whether as described in subsection 50(1) of the Act or otherwise); and
- paid in accordance with the Investment Mandate.

New subsection 11(4A) of the Investment Mandate requires Housing Australia to pay or repay the amounts referred to in subsection 11(4) before the end of the 6-month period beginning on the earliest of the following:

- the day the registered CHP repays the loan;
- the day the registered CHP is required to repay the loan (even if the CHP does not repay the loan as required); or
- the day Housing Australia raises finance by issuing bonds for a purpose that relates to the loan.

These are the three circumstances in which Housing Australia receives money in respect of loan issuance via the AHBA Reserve.

The requirement in subsection 11(4A) is triggered by the earliest occurrence of one of the three circumstances, not by the occurrence of each circumstance. This addresses a situation where more than one of the circumstances happens. For example, Housing Australia often finances AHBA Reserve loans to registered CHPs via bond issuance. Housing Australia will receive funds from the issue of the bonds to repay the Commonwealth. However, the registered CHP is still required to repay the loan to Housing Australia by the end of the loan term (which repayment is broadly used to satisfy obligations to bondholders). Subsection 11(4A) is intended to operate so that, in this example, Housing Australia is required to repay amounts reflective of the loan principal and interest to the Commonwealth after the bond issuance relating to the loan, not after the subsequent repayment of the loan by the CHP.

Further, it is intended that, if Housing Australia receives partial principal repayments from registered CHPs in respect of AHBA Reserve loans or is otherwise in a position to make partial principal repayments, Housing Australia can pay those amounts to the Commonwealth and have those amounts allocated to the HASA. New subsection 11(4A) sets a timeframe for completion of payment of the full amount relating to the loan based on one of the three aforementioned events occurring. Partial payments are covered as these are made towards satisfaction of the ultimate obligation to repay the Commonwealth in full.

The note to subsection 11(4A) provides a brief overview of the AHBA's operation for clarity.

Subsection 11(4B) supports Housing Australia to seek an extension of time in relation to its repayment or payment obligations to the Commonwealth by writing to the Minister.

Upon receiving the written request, the Minister may extend the time for Housing Australia to pay or repay an amount to the Commonwealth. To extend the time period for payment or repayment, the Minister needs to be satisfied that it is appropriate in all the circumstances to do so. Housing Australia's written request to the Minister should provide sufficient information to support a decision to extend the time period.

An example of a scenario where an extension could be sought is where a registered CHP needs additional time to repay a loan and not providing such time would result in the registered CHP defaulting on the loan. In such a case, pursuant to due consideration of the written request, the Minister may agree to an extension of time. Other situations meriting an extension may also arise. Ultimately, all requests for an extension of time will be judged on the unique facts and circumstances.

Subsection 11(4B) effectively continues the power of the Minister in previous subsection 11(4) to extend the time period in which Housing Australia is able to repay allocations from the AHBA Reserve. The power is moved to a separate subsection to reflect its status as a separate administrative mechanism and provide certainty that:

- Housing Australia must make a request for an extension in writing; and
- the Minister must exercise judgement as to whether an extension is appropriate in all the circumstances.