



National Housing Finance and Investment Corporation Act 2018

No. 65, 2018

Compilation No. 3

Compilation date:	1 July 2021
Includes amendments up to:	Act No. 61, 2021
Registered:	13 August 2021

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *National Housing Finance and Investment Corporation Act 2018* that shows the text of the law as amended and in force on 1 July 2021 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	1
3 Object of this Act	2
4 Simplified outline of this Act	2
5 Definitions	3
6 Crown to be bound	4
Part 2—National Housing Finance and Investment Corporation	5
Division 1—Establishment and functions	5
7 Establishment	5
8 Functions of the NHFIC	5
9 Powers of the NHFIC	6
10 Constitutional limits	7
11 NHFIC does not have privileges and immunities of the Crown	8
Division 2—Investment Mandate	9
12 Investment Mandate	9
13 Matters covered by Investment Mandate	9
14 Limits on Investment Mandate	10
Part 3—Board	11
Division 1—Establishment and functions of the Board	11
15 Establishment of the Board	11
16 Functions of the Board	11
Division 2—Board members	12
17 Membership	12
18 Appointment of Board members	12
19 Chair	12
20 Term of appointment	13
21 Acting appointments	13
22 Remuneration	13
23 Leave of absence	14
24 Resignation	14
25 Termination of appointment	14

26	Other terms and conditions	15
27	Observer	15
Division 3—Meetings of the Board		17
28	Convening meetings	17
29	Presiding at meetings.....	17
30	Quorum.....	17
31	Voting at meetings.....	18
32	Conduct of meetings.....	18
33	Minutes.....	18
34	Decisions without meetings.....	18
Part 4—Chief Executive Officer, staff and consultants and committees		20
Division 1—Chief Executive Officer		20
35	Chief Executive Officer	20
36	Functions of the CEO	20
37	Appointment of CEO.....	20
38	Acting appointment as CEO	21
39	Remuneration of CEO	21
40	Leave of absence of CEO	21
41	Outside employment.....	22
42	Other terms and conditions.....	22
43	Resignation of CEO.....	22
44	Termination of appointment of CEO	22
Division 2—Staff and consultants		24
45	Staff.....	24
46	Consultants	24
Division 3—Committees		25
47	Committees.....	25
Part 5—Finance		26
Division 1—National Housing Finance and Investment Corporation Special Account		26
47A	National Housing Finance and Investment Corporation Special Account.....	26
47B	Credits to the Account.....	26
47C	Purpose of the Account.....	27
47D	Cap on the Account and transfers to general CRF.....	27

Division 2—The NHFIC’s money	29
48 Maintenance of adequate capital and reserves	29
48A Appropriation for the purposes of guarantee liabilities.....	29
49 Payment of annual dividends to the Commonwealth.....	30
50 Borrowings etc.	31
51 Guarantee by Commonwealth	32
52 Exemption from taxation	32
Part 6—Miscellaneous	33
53 Delegation by NHFIC.....	33
54 Delegation by Board.....	33
55 Delegation and subdelegation by CEO	33
56 Matters to be included in annual reports.....	34
57 Review of operation of Act	34
57A Review of assistance to first home buyers	34
58 Rules.....	35
Endnotes	36
Endnote 1—About the endnotes	36
Endnote 2—Abbreviation key	38
Endnote 3—Legislation history	39
Endnote 4—Amendment history	40

An Act to establish the National Housing Finance and Investment Corporation, and for related purposes

Part 1—Preliminary

1 Short title

This Act is the *National Housing Finance and Investment Corporation Act 2018*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	30 June 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Object of this Act

The object of this Act is to establish the National Housing Finance and Investment Corporation to improve housing outcomes for Australians by:

- (a) strengthening efforts to increase the supply of housing; and
- (b) encouraging investment in housing (particularly in the social or affordable housing sector); and
- (c) providing finance, grants or investments that complement, leverage or support Commonwealth, State or Territory activities relating to housing; and
- (d) contributing to the development of the scale, efficiency and effectiveness of the community housing sector in Australia; and
- (e) assisting earlier access to the housing market by first home buyers; and
- (f) assisting earlier access to the housing market by single parents with dependants.

4 Simplified outline of this Act

The National Housing Finance and Investment Corporation is established to improve housing outcomes by (within constitutional limits) making loans, investments and grants and issuing guarantees.

The NHFIC performs its functions in accordance with one or more directions given by the Minister, known as its Investment Mandate.

The Board of the NHFIC decides the NHFIC's strategies and policies and ensures the proper, efficient and effective performance of its functions.

The Chief Executive Officer of the NHFIC is responsible for the day-to-day administration of the NHFIC. The NHFIC may engage staff and consultants. The Board may establish Committees.

The Board must ensure that the NHFIC maintains commercially sound and sufficient levels of capital and reserves.

The NHFIC may pay a dividend to the Commonwealth, and may borrow money (supported by a Commonwealth guarantee).

5 Definitions

In this Act:

Board means the Board of the NHFIC.

Board member means a member of the Board and includes the Chair.

CEO means the Chief Executive Officer of the NHFIC.

Chair means the Chair of the Board.

Commonwealth company has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth officer means a person who:

- (a) holds, or performs the duties of, an appointment, office or position under a law of the Commonwealth; or
- (b) is otherwise in the service of the Commonwealth.

Finance Minister means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

guarantee liabilities has the meaning given by subsection 48A(2).

Investment Mandate has the meaning given by subsection 12(1).

NHFIC means the National Housing Finance and Investment Corporation.

Section 6

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

registered community housing provider means a community housing provider (however described) that is registered under a law of, or under a scheme administered by, a State or a Territory.

rules means rules made under section 58.

6 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

Part 2—National Housing Finance and Investment Corporation

Division 1—Establishment and functions

7 Establishment

- (1) The National Housing Finance and Investment Corporation is established by this section.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the NHFIC. That Act deals with matters relating to Commonwealth entities, including reporting and the use and management of public resources.

- (2) The NHFIC:
- (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued.
- (3) The NHFIC's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.

8 Functions of the NHFIC

- (1) The functions of the NHFIC are:
- (a) to make loans, investments and grants to improve, directly or indirectly, housing outcomes; and
 - (b) to determine terms and conditions for such loans, investments and grants; and
 - (c) to provide, to registered community housing providers, business advisory services and other assistance in capacity building; and
 - (ca) to issue guarantees to improve housing outcomes; and

Section 9

- (cb) to undertake research into housing affordability in Australia; and
 - (d) any other functions conferred on the NHFIC by this Act or any other Commonwealth law; and
 - (e) to do anything incidental or conducive to the performance of the above functions.
- (2) Without limiting subsection (1), the functions of the NHFIC include:
- (a) to grant financial assistance to States and Territories for the purposes of any of the matters mentioned in subsection (1); and
 - (b) to determine terms and conditions for the grants of financial assistance.
- (3) In performing its functions, the NHFIC must act in a proper, efficient and effective manner.

9 Powers of the NHFIC

- (1) The NHFIC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the NHFIC may:
- (a) enter into arrangements and contracts with Commonwealth entities and Commonwealth companies to obtain services to assist in the performance of its functions; and
 - (b) enter into:
 - (i) arrangements known as swaps, foreign exchange agreements, forward rate agreements, options or hedge agreements; or
 - (ii) arrangements having a similar purpose or effect.

Note: Section 59 of the *Public Governance, Performance and Accountability Act 2013* also gives the NHFIC the power to invest money that is not immediately required for the purposes of the NHFIC.

10 Constitutional limits

- (1) The NHFIC may perform its functions only:
- (a) for purposes relating to a corporation to which paragraph 51(xx) of the Constitution applies; or
 - (b) for purposes related to external affairs, including:
 - (i) giving effect to the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966, particularly Article 11 of that Covenant; or
 - (ii) giving effect to another international agreement to which Australia is a party; or
 - (iii) addressing matters of international concern; or
 - (iv) by way of the performance of its functions in a place outside Australia; or
 - (c) for purposes relating to the granting of financial assistance to which section 96 of the Constitution applies; or
 - (ca) for purposes relating to banking within the meaning of paragraph 51(xiii) of the Constitution; or
 - (d) for purposes relating to the collection of statistics; or
 - (e) for purposes relating to trade or commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
 - (f) by way of the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
 - (g) for purposes relating to people to which paragraph 51(xxvi) of the Constitution applies; or
 - (h) for purposes relating to railway construction or extension to which paragraph 51(xxxiv) of the Constitution applies; or
 - (i) by way of the provision of service, or financial assistance, to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth;

Section 11

- for a purpose of the Commonwealth; or
- (j) for purposes relating to a Territory; or
- (k) for purposes relating to the implied power of the Parliament to make laws with respect to nationhood; or
- (l) for purposes relating to the executive power of the Commonwealth; or
- (m) for purposes relating to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

Note: The International Covenant on Economic, Social and Cultural Rights is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (2) Paragraph (1)(a) applies in relation to a corporation to which paragraph 51(xx) of the Constitution applies only if the NHFIC has entered into an arrangement with the corporation that:
 - (a) sets out the terms and conditions on which money may be payable to the corporation under the arrangement; and
 - (b) requires the corporation to comply with the terms and conditions.
- (3) Without limiting subsection (2), the terms and conditions must provide for the circumstances in which the corporation must repay amounts paid under the arrangement.
- (4) This Act does not apply with respect to State banking that does not extend beyond the limits of the State concerned.

11 NHFIC does not have privileges and immunities of the Crown

The NHFIC does not have the privileges and immunities of the Crown in right of the Commonwealth.

Division 2—Investment Mandate

12 Investment Mandate

- (1) The Minister may, by legislative instrument, give the Board directions about the performance of the NHFIC's functions, and must give at least one such direction. The directions together constitute the *Investment Mandate*.

Note: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction—see regulations made for the purposes of paragraph 44(2)(b) of that Act.

- (2) In giving a direction, the Minister must have regard to the object of this Act and any other matters the Minister considers relevant.
- (3) In performing its functions, the NHFIC must take all reasonable steps to comply with the Investment Mandate.

13 Matters covered by Investment Mandate

The Investment Mandate may include directions about the following:

- (a) strategies and policies to be followed for the effective performance of the NHFIC's functions;
- (b) decision-making criteria for the following:
 - (i) making loans, investments and grants;
 - (ii) granting financial assistance to States and Territories;
 - (iia) issuing guarantees;
 - (iii) providing, to registered community housing providers, business advisory services and other assistance in capacity building;
- (c) limits on the following:
 - (i) making loans, investments and grants;
 - (ii) issuing guarantees;
 - (iii) granting financial assistance to States and Territories;

Section 14

- (d) risk and return relating to NHFIC's investments and guarantees;
- (e) any other matters the Minister thinks appropriate.

14 Limits on Investment Mandate

The Minister must not give a direction under subsection 12(1):

- (a) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring the Board:
 - (i) to make, or not to make, a particular loan, investment or grant; or
 - (ii) to grant, or not to grant, financial assistance to a State or Territory for a particular project; or
 - (ia) to issue, or not to issue, a particular guarantee; or
 - (iii) to take, or not to take, particular action relating to a particular loan, investment or grant; or
 - (iv) to take, or not to take, particular action relating to financial assistance granted to a State or Territory for a particular project; or
 - (v) to take, or not to take, particular action relating to a particular guarantee; or
- (b) that is inconsistent with this Act (including the object of this Act).

Part 3—Board

Division 1—Establishment and functions of the Board

15 Establishment of the Board

The Board of the NHFIC is established by this section.

16 Functions of the Board

- (1) The functions of the Board are:
 - (a) to decide, within the scope of the Investment Mandate, the strategies and policies to be followed by the NHFIC; and
 - (b) to ensure the proper, efficient and effective performance of the NHFIC's functions; and
 - (c) any other functions conferred on the Board by this Act.
- (2) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (3) Anything done in the name of, or on behalf of, the NHFIC by the Board, or with the authority of the Board, is taken to have been done by the NHFIC.

Division 2—Board members

17 Membership

The Board consists of:

- (a) the Chair; and
- (b) at least 4, and no more than 6, other members.

18 Appointment of Board members

- (1) Board members are to be appointed by the Minister by written instrument, on a part-time basis.
- (2) A person is not eligible for appointment as a Board member unless the Minister is satisfied that the person has appropriate qualifications, skills or experience in one or more of the following:
 - (a) banking and finance;
 - (b) law;
 - (c) housing (including social or affordable housing);
 - (d) infrastructure planning and financing;
 - (e) local government;
 - (f) public policy;
 - (g) an area of expertise prescribed by the rules.
- (3) In appointing Board members, the Minister must ensure that:
 - (a) the Board members collectively have an appropriate balance of qualifications, skills or experience in the fields mentioned in subsection (2); and
 - (b) at least one Board member has appropriate qualifications, skills or experience in social or affordable housing.

19 Chair

The Minister must, by written instrument, appoint one Board member to be the Chair.

20 Term of appointment

A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: A Board member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

21 Acting appointments

- (1) The Minister may, by written instrument, appoint a Board member to act as the Chair:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) The Minister may, by written instrument, appoint a person to act as a Board member:
 - (a) during a vacancy in the office of a Board member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when a Board member:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

22 Remuneration

- (1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the rules.

Section 23

- (2) A Board member is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

23 Leave of absence

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to another Board member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants another Board member leave of absence for a period that exceeds 3 months.

24 Resignation

- (1) A Board member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

25 Termination of appointment

The Minister may terminate the appointment of a Board member:

- (a) for misbehaviour; or
- (b) if the Board member is unable to perform the duties of his or her office because of physical or mental incapacity; or
- (c) if the Board member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or

- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (d) if the Board member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
- (e) if the Minister is satisfied that the performance of the Board member has been unsatisfactory for a significant period.

Note: The appointment of a Board member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

26 Other terms and conditions

A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

27 Observer

Role of the observer

- (1) A person appointed under this section (the **observer**):
 - (a) is entitled to receive notice of meetings of the Board; and
 - (b) may attend any meeting of the Board and take such part in the proceedings, not including voting, as the observer thinks fit; and
 - (c) may report to the Minister on any matter relating to the operations of the NHFIC or the Board, and must make such a report to the Minister if the Minister requests a report on such a matter; and
 - (d) is entitled to access to such information held by, or under the control of, the NHFIC as the observer requests for the purposes of taking part in proceedings of the Board or reporting to the Minister.

Section 27

Appointment of the observer

- (2) The Minister may, by written instrument, appoint a Commonwealth officer to be the observer, on a part-time basis.
- (3) The observer holds office for the period specified in the instrument of appointment. The period must not exceed 6 months.

Note: The observer may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (4) The Minister may at any time terminate the appointment of the observer.

Terms and conditions

- (5) The Minister may grant leave of absence to the observer on the terms and conditions that the Minister determines.
- (6) The observer may resign his or her appointment by giving the Minister a written resignation. The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

Division 3—Meetings of the Board

28 Convening meetings

- (1) The Board must hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene at least 4 meetings each calendar year; and
 - (c) must convene a meeting within 30 days after receiving a written request to do so from another Board member.

29 Presiding at meetings

- (1) The Chair must preside at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the other Board members present must appoint one of themselves to preside.

30 Quorum

- (1) At a meeting of the Board, a quorum is constituted by a majority of Board members.
- (2) However, if:
 - (a) a Board member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
 - (b) when the Board member leaves the meeting concerned there is no longer a quorum present;the remaining Board members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

Section 31

31 Voting at meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the Board members present and voting.
- (2) The person presiding at the meeting of the Board has a deliberative vote and, if the votes are equal, a casting vote.

32 Conduct of meetings

The Board may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Board members may participate in meetings.

33 Minutes

The Board must keep minutes of its meetings.

34 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
 - (c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the Board members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
 - (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which Board members are to indicate agreement with proposed decisions.

- (3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the Board member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

Part 4—Chief Executive Officer, staff and consultants and committees

Division 1—Chief Executive Officer

35 Chief Executive Officer

There is to be a Chief Executive Officer of the National Housing Finance and Investment Corporation.

36 Functions of the CEO

- (1) The CEO is responsible for the day-to-day administration of the NHFIC.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.
- (3) The CEO is to act in accordance with policies and strategies determined by the Board.
- (4) The Board may give written directions to the CEO, not inconsistent with any direction given to the Board under Division 2 of Part 2, about the performance of the CEO's duties.
- (5) The CEO must comply with a direction under subsection (4).
- (6) A direction under subsection (4) is not a legislative instrument.

37 Appointment of CEO

- (1) The CEO is to be appointed by the Board by written instrument, on a full-time basis.

Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

- (3) The Board must not appoint a Board member as the CEO.

38 Acting appointment as CEO

The Board may, by written instrument, appoint a person (other than a Board member) to act as the CEO:

- (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

39 Remuneration of CEO

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the rules.
- (2) The CEO is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

40 Leave of absence of CEO

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Board may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Board determines.

Section 41

41 Outside employment

- (1) The CEO must not engage in paid work outside the duties of his or her office without the Chair's approval.
- (2) The Chair must notify the Minister of any approval given under subsection (1).

42 Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Board.

43 Resignation of CEO

- (1) The CEO may resign his or her appointment by giving the Board a written resignation.
- (2) The resignation takes effect on the day it is received by the Board or, if a later day is specified in the resignation, on that later day.
- (3) The Chair must notify the Minister of the CEO's resignation.

44 Termination of appointment of CEO

- (1) The Board may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
 - (b) if the CEO is unable to perform the duties of his or her office because of physical or mental incapacity; or
 - (c) if the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

- (d) if the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (e) if the CEO engages, except with the Chair's approval, in paid work outside the duties of his or her office (see section 41 (outside employment)); or
 - (f) if the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
 - (g) if the Board is satisfied that the performance of the CEO has been unsatisfactory for a significant period.
- (2) If the Board terminates the appointment of the CEO, the Board must notify the Minister of the termination.

Division 2—Staff and consultants

45 Staff

- (1) The NHFIC may employ such persons as it considers necessary for the performance of its functions and the exercise of its powers.
- (2) An employee is to be employed on the terms and conditions that the NHFIC determines in writing.
- (3) The NHFIC may make arrangements for the services of officers or employees of the following to be made available to the NHFIC:
 - (a) the Commonwealth, a State or a Territory;
 - (b) an authority of the Commonwealth or of a State or Territory;
 - (c) any other organisation or body.

46 Consultants

- (1) The NHFIC may engage consultants to assist in the performance of its functions.
- (2) The consultants are to be engaged on the terms and conditions that the NHFIC determines.

Division 3—Committees

47 Committees

- (1) The Board may establish committees to advise or assist in the performance of the Board's or the NHFIC's functions.
- (2) A committee may be constituted:
 - (a) wholly by Board members; or
 - (b) wholly by persons who are not Board members; or
 - (c) partly by Board members and partly by other persons.
- (3) The Board may determine, in relation to a committee established under this section:
 - (a) the committee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the committee; and
 - (c) the procedures to be followed by the committee.
- (4) The members of the committee (other than Board members) are not officials for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

Part 5—Finance

Division 1—National Housing Finance and Investment Corporation Special Account

47A National Housing Finance and Investment Corporation Special Account

- (1) The National Housing Finance and Investment Corporation Special Account (the *Account*) is established by this section.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

47B Credits to the Account

There must be credited to the Account amounts equal to the following:

- (a) \$105 million, to be credited on the day this section commences;
- (b) \$310 million, to be credited on 1 July 2019;
- (c) \$270 million, to be credited on 1 July 2020;
- (d) \$165 million, to be credited on 1 July 2021;
- (e) each amount paid to the Commonwealth by the NHFIC, on or after the day this section commences, that:
 - (i) is a repayment of money debited from the Account, or of other money lent by the Commonwealth to the NHFIC (whether as described in subsection 50(1) or otherwise); and
 - (ii) is paid in accordance with the Investment Mandate.

Note 1: For paragraphs (a) and (e), this section commences on the day the *National Housing Finance and Investment Corporation Amendment Act 2018* commences.

Note 2: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an

Section 47C

item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

Note 3: An example of such an Appropriation Act is the *Appropriation Act (No. 2) 2018-2019*. Under section 15 of that Act, it is expected that \$150 million will be debited against the appropriation in that Act and credited to the Account.

47C Purpose of the Account

- (1) The purpose of the Account is to make loans to the NHFIC for the NHFIC to later apply in accordance with subsection (2).

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

- (2) The NHFIC may apply such loans:
- (a) for making loans in the performance of its function mentioned in paragraph 8(1)(a); or
 - (b) for other purposes as agreed between the Minister and the Finance Minister in accordance with the Investment Mandate.

Note: This subsection confers a function on the NHFIC to apply the loans from the Commonwealth mentioned in subsection (1). This means the Investment Mandate may include directions about how the NHFIC applies those loans.

- (3) Subsection (2) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the NHFIC.

47D Cap on the Account and transfers to general CRF

- (1) If, at a particular time, the balance of the Account exceeds \$1 billion, an amount equal to the excess is debited from the Account immediately after that time.
- (2) The Minister may, by writing, direct that a specified amount is to be debited from the Account on a specified day (which must be on or after the day the direction is made).

Part 5 Finance

Division 1 National Housing Finance and Investment Corporation Special Account

Section 47D

- (3) The Minister must consult the Board before making a direction under subsection (2).
- (4) A direction under subsection (2) is not a legislative instrument.
- (5) The Minister must give a copy of a direction under subsection (2) to the Finance Minister.

Division 2—The NHFIC's money

48 Maintenance of adequate capital and reserves

- (1) The Board is required to ensure, according to sound commercial principles, that the capital and reserves of the NHFIC at any time are sufficient:
 - (a) to meet the likely liabilities (other than guarantee liabilities) of the NHFIC; and
 - (b) to make adequate provision for default in the repayment of principal, or in the payment of interest or other charges, in connection with loans made by the NHFIC.
- (2) If, at any time, the Board determines:
 - (a) that the capital and reserves of the NHFIC are not sufficient to meet the likely liabilities, and make the provision, referred to in subsection (1); or
 - (b) that there are reasonable grounds for believing that, at a time in the future, the capital and reserves of the NHFIC may not be sufficient to meet the likely liabilities, and make the provision, referred to in subsection (1);the Board must, as soon as practicable, cause the Minister to be informed in writing of its determination and the reasons for that determination.

48A Appropriation for the purposes of guarantee liabilities

- (1) There may be paid out of the Consolidated Revenue Fund, which is appropriated accordingly, money for the purposes of payment to the NHFIC to meet its guarantee liabilities.
- (2) The *guarantee liabilities* of the NHFIC are the liabilities that the NHFIC incurs under guarantees the NHFIC has issued in the performance of its function under paragraph 8(1)(ca).

49 Payment of annual dividends to the Commonwealth

- (1) The Board must, within 4 months after the end of each financial year, by written notice given to the Minister, recommend that the NHFIC pay a specified dividend, or not pay a dividend, to the Commonwealth for that financial year.
- (2) The Minister must, within 30 days after receiving the recommendation, by written notice given to the NHFIC:
 - (a) approve the recommendation; or
 - (b) if the Board has recommended the payment of a dividend—direct the payment of a different specified dividend; or
 - (c) if the Board has recommended that no dividend be paid—direct the payment of a specified dividend.
- (3) Subject to subsections (4) and (5), in performing their functions under subsections (1) and (2), the Board and the Minister must have regard to:
 - (a) the policies of the Commonwealth Government, and the general policy of the NHFIC in relation to the performance of its functions; and
 - (b) such commercial considerations as the Board or the Minister, as the case may be, considers appropriate.
- (4) The NHFIC's dividend for a financial year must not exceed its profit for that year.
- (5) For each financial year in relation to which the Minister has approved a recommendation that a dividend be paid or has directed the payment of a dividend, the NHFIC must pay to the Commonwealth:
 - (a) if the Minister has approved a recommendation that a dividend be paid—the dividend specified in the recommendation; or
 - (b) if the Minister has directed that a dividend be paid or that a different dividend be paid—the dividend specified in the direction.

- (6) For the purposes of this section, the period beginning on the commencement of this Act and ending on 30 June 2018 is not to be taken to be a financial year.

50 Borrowings etc.

Borrowings from the Commonwealth

- (1) The Finance Minister may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the NHFIC on such terms and conditions as the Finance Minister determines.

Other borrowings etc.

- (2) The NHFIC may:
- (a) borrow money otherwise than from the Commonwealth; or
 - (b) raise money otherwise than by borrowing.
- (3) One of the ways in which the NHFIC may borrow or raise money under subsection (2) is by dealing with securities.

Security

- (4) The NHFIC may give security over all or any of its assets:
- (a) for the repayment by the NHFIC of money borrowed under subsection (1) or paragraph (2)(a) and the payment of interest on money so borrowed; or
 - (b) for the payment by the NHFIC of money (including interest) that the NHFIC is liable to pay in respect of money raised under paragraph (2)(b).

Limitation on borrowing etc.

- (5) The NHFIC must not borrow or raise money except under this section or Division 1.

Section 51

51 Guarantee by Commonwealth

- (1) Subject to subsection (2), the due payment by the NHFIC of any money that becomes payable by the NHFIC to a person other than the Commonwealth is guaranteed by the Commonwealth.
- (2) Subsection (1) does not apply in relation to money that becomes payable in relation to a contract entered into on or after the day (not earlier than 1 July 2023) determined under subsection (3).

Note: The guarantee will continue to apply in relation to contracts entered into before the determined day.

- (3) The Minister may, by legislative instrument, determine a day for the purposes of subsection (2). The day must not be a day occurring earlier than 60 days after the instrument is registered under the *Legislation Act 2003*.

52 Exemption from taxation

- (1) For the purposes of section 50-25 of the *Income Tax Assessment Act 1997*, the NHFIC is taken to be a public authority constituted under an Australian law.

Note: This means the NHFIC is exempt from income tax.

- (2) The NHFIC is not subject to taxation under a law of a State or Territory, if the Commonwealth is not subject to the taxation.

Part 6—Miscellaneous

53 Delegation by NHFIC

- (1) The NHFIC may, in writing under its seal, delegate all or any of its powers or functions under this Act to:
 - (a) a Board member; or
 - (b) the CEO.
- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the NHFIC.

54 Delegation by Board

- (1) The Board may, in writing, delegate to a Board member or the CEO any of its powers or functions under this Act.
- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the Board.

55 Delegation and subdelegation by CEO

- (1) The CEO may, in writing, delegate to a senior member of the staff referred to in section 45 any of the CEO's powers or functions under this Act.
- (2) If the NHFIC or the Board delegates a power or function under subsection 53(1) or 54(1) to the CEO, the CEO may, in writing, subdelegate the power or function to a senior member of the staff referred to in section 45.
- (3) In exercising any powers or performing any functions under the delegation or subdelegation, the delegate or subdelegate must comply with any directions of the CEO.

Section 56

- (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation.

56 Matters to be included in annual reports

The annual report prepared by the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include the following:

- (a) the particulars of any changes to the Investment Mandate during the period and their impact on the operations of the NHFIC;
- (b) in relation to each kind of financial support provided (including financial support provided by way of guarantees) by the NHFIC during the period, a summary of:
 - (i) the amount of that kind of financial support; and
 - (ii) the risks and returns to the Commonwealth;
- (c) the particulars of the NHFIC's research during the period into housing affordability in Australia.

Note: Section 46 of the *Public Governance, Performance and Accountability Act 2013* requires the Board to prepare annual reports.

57 Review of operation of Act

- (1) The Minister must cause a review of the operation of this Act to be undertaken as soon as possible after 30 June 2020.
- (2) The persons undertaking the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

57A Review of assistance to first home buyers

- (1) The Minister must cause a review of the National Housing Finance and Investment Corporation's activities assisting additional first

home buyers to enter the housing market to be commenced within 3 months after the end of:

- (a) the period beginning on the date when the first guarantee is issued and ending 12 months after that date; and
 - (b) each subsequent 12 month period.
- (2) The persons undertaking the review must give the Minister a written report of the review within 3 months of the commencement of the review.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

58 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Housing Finance and Investment Corporation Act 2018	65, 2018	29 June 2018	30 June 2018 (s 2(1) item 1)	
National Housing Finance and Investment Corporation Amendment Act 2018	139, 2018	29 Nov 2018	30 Nov 2018 (s 2(1) item 1)	Sch 2 (item 3)
National Housing Finance and Investment Corporation Amendment Act 2019	83, 2019	18 Oct 2019	Sch 1: 19 Oct 2019 (s 2(1) item 2)	Sch 1 (item 16)
Treasury Laws Amendment (2021 Measures No. 3) Act 2021	61, 2021	29 June 2021	Sch 2: 1 July 2021 (s 2(1) item 3)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 83, 2019; No 61, 2021
s 4	am No 83, 2019
s 5	am No 83, 2019
Part 2	
Division 1	
s 8	am No 83, 2019
s 10	am No 83, 2019
Division 2	
s 13	am No 83, 2019
s 14	am No 83, 2019
Part 3	
Division 2	
s 18	am No 139, 2018
Part 5	
Division 1	
Division 1	ad No 139, 2018
s 47A	ad No 139, 2018
s 47B.....	ad No 139, 2018
s 47C.....	ad No 139, 2018
s 47D	ad No 139, 2018
Division 2	
Division 2 heading.....	ad No 139, 2018
s 48	am No 83, 2019
s 48A	ad No 83, 2019
s 50	am No 139, 2018
Part 6	
s 56	am No 83, 2019

Endnote 4—Amendment history

Provision affected	How affected
s 57	am No 139, 2018
s 57A	ad No 83, 2019
