



# **Housing Australia Act 2018**

**No. 65, 2018**

## **Compilation No. 6**

<b>Compilation date:</b>	1 November 2023
<b>Includes amendments up to:</b>	Act No. 81, 2023
<b>Registered:</b>	19 November 2023

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## About this compilation

### This compilation

This is a compilation of the *Housing Australia Act 2018* that shows the text of the law as amended and in force on 1 November 2023 (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 Register ([www.legislation.gov.au](http://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 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 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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**An Act to establish Housing Australia, and for related purposes**

**Part 1—Preliminary**

**1 Short title**

This Act is the *Housing Australia 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 Housing Australia to improve housing outcomes for Australians by:

- (a) strengthening efforts to increase the supply of housing; and

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- (b) encouraging investment in housing (particularly in the social or affordable housing sector); and
- (c) providing finance or grants 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:
  - (i) single parents with dependants; and
  - (ii) legal guardians of children where the legal guardian is single; and
- (g) assisting earlier access to the housing market by individuals who have not held an ownership interest in real property in Australia in the last 10 years.

### 4 Simplified outline of this Act

Housing Australia is established to improve housing outcomes by (within constitutional limits) making loans and grants and issuing guarantees.

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

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

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



The Board must ensure that Housing Australia maintains commercially sound and sufficient levels of capital and reserves.

Housing Australia 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 Housing Australia.

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

**capacity building function**: see subsection 8(1C).

**CEO** means the Chief Executive Officer of Housing Australia.

**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.

**company** means a body corporate.

**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

**entity** includes:

- (a) a company; and
- (b) a trust; and

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(c) a partnership.

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

**financing function**: see subsection 8(1A).

**guarantee function**: see subsection 8(1B).

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

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

**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—Housing Australia**

### **Division 1—Establishment and functions**

#### **7 Establishment**

- (1) The body corporate that was established by this subsection as previously in force by the name National Housing Finance and Investment Corporation continues in existence as Housing Australia.

Note 1: Subsection 25B(1) of the *Acts Interpretation Act 1901* provides that a body whose name is altered by an Act continues in existence under the new name so that its identity is not affected.

Note 2: The *Public Governance, Performance and Accountability Act 2013* applies to Housing Australia. That Act deals with matters relating to Commonwealth entities, including reporting and the use and management of public resources.

- (2) Housing Australia:
- (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) Housing Australia'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 Housing Australia**

- (1) The functions of Housing Australia are:
- (a) the financing function; and
  - (b) the guarantee function; and
  - (c) the capacity building function; and
  - (d) any other functions conferred on Housing Australia by this Act or any other Commonwealth law; and

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- (e) to do anything incidental or conducive to the performance of the above functions.

*Financing function*

- (1A) Housing Australia's ***financing function*** is to make loans and grants to:
- (a) constitutional corporations, where this:
    - (i) is for the purpose of improving, directly or indirectly, housing outcomes; and
    - (ii) assists the constitutional corporation in the performance or development of its activities, functions, relationships or business; and
  - (b) States and Territories, where this:
    - (i) is for the purpose of improving, directly or indirectly, housing outcomes; and
    - (ii) is provided by way of a grant of financial assistance to the State or Territory; and
  - (c) entities, where this is for the purpose of improving, directly or indirectly, housing outcomes:
    - (i) in a Territory; or
    - (ii) for Aboriginal or Torres Strait Islander people; or
    - (iii) for members of the Australian Defence Force; or
    - (iv) for aliens (within the meaning of paragraph 51(xix) of the Constitution).

*Guarantee function*

- (1B) Housing Australia's ***guarantee function*** is to issue guarantees to constitutional corporations, where this:
- (a) is for the purpose of improving housing outcomes; and
  - (b) assists the constitutional corporation in the performance or development of its activities, functions, relationships or business.

*Capacity building function*

- (1C) Housing Australia's **capacity building function** is to provide business advisory services and other assistance in capacity building to:
- (a) registered community housing providers that are constitutional corporations, where this:
    - (i) is for the purpose of improving housing outcomes; and
    - (ii) assists the registered community housing provider in the performance or development of its activities, functions, relationships or business; and
  - (b) registered community housing providers, where this is for the purpose of improving housing outcomes:
    - (i) in a Territory; or
    - (ii) for Aboriginal or Torres Strait Islander people; or
    - (iii) for members of the Australian Defence Force; or
    - (iv) for aliens (within the meaning of paragraph 51(xix) of the Constitution).

*Obligation to act properly, efficiently and effectively*

- (3) In performing its functions, Housing Australia must act in a proper, efficient and effective manner.

## **9 Powers of Housing Australia**

- (1) Housing Australia 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), Housing Australia 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:

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- (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 Housing Australia the power to invest money that is not immediately required for the purposes of Housing Australia.

### **10 Financing, guarantee and capacity building functions**

- (1) This section applies in relation to Housing Australia's financing function, guarantee function and capacity building function.

#### *Applications*

- (2) An entity may apply to Housing Australia for any of the following in circumstances where the Investment Mandate provides that Housing Australia must consider such an application:
  - (a) the making of a loan or grant;
  - (b) the issuing of a guarantee;
  - (c) for assistance in capacity building.
- (3) Housing Australia must consider the application:
  - (a) within the timeframe specified in the Investment Mandate (if any); and
  - (b) in accordance with the decision-making criteria and limits specified in the Investment Mandate.
- (4) Housing Australia may only make loans and grants to, issue guarantees to or provide assistance in capacity building to, an entity in the performance of its functions mentioned in subsection (1) if the entity has applied to Housing Australia for the loan, grant, guarantee or assistance in capacity building under subsection (2).

*Terms and conditions*

- (5) The terms and conditions on which the loan, grant, guarantee or assistance in capacity building is provided must be set out in a written agreement between Housing Australia and the entity.
- (6) The entity must comply with the terms and conditions.

*Payments under the agreements*

- (7) If, under the terms and conditions set out in the written agreement, an amount is payable to Housing Australia:
  - (a) the amount is a debt due by the entity to Housing Australia; and
  - (b) the amount is recoverable by action in a court of competent jurisdiction.

**11 Housing Australia does not have privileges and immunities of the Crown**

Housing Australia 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 Housing Australia'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, Housing Australia 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 Housing Australia's functions;
- (b) decision-making criteria for the following:
  - (i) making loans 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 and grants;
  - (ii) issuing guarantees;
  - (iii) granting financial assistance to States and Territories;



- (d) risk and return relating to Housing Australia's loans 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 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 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 body that was established by this section as previously in force and known as the Board of the NHFIC continues in existence as the Board of Housing Australia.

#### **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 Housing Australia; and
  - (b) to ensure the proper, efficient and effective performance of Housing Australia'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, Housing Australia by the Board, or with the authority of the Board, is taken to have been done by Housing Australia.

## **Division 2—Board members**

### **17 Membership**

The Board consists of:

- (a) the Chair; and
- (b) at least 6, and no more than 8, 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);
  - (ca) housing for Aboriginal or Torres Strait Islander people;
  - (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.

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### 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.

- (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

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- (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 Housing Australia 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, Housing Australia as the observer requests for the purposes of taking part in proceedings of the Board or reporting to the Minister.

*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.



### **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.

**Part 3** Board

**Division 3** Meetings of the Board

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- (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 Housing Australia.

#### **36 Functions of the CEO**

- (1) The CEO is responsible for the day-to-day administration of Housing Australia.
- (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.

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- (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.

**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

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- (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) Housing Australia 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 Housing Australia determines in writing.
- (3) Housing Australia may make arrangements for the services of officers or employees of the following to be made available to Housing Australia:
  - (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) Housing Australia may engage consultants to assist in the performance of its functions.
- (2) The consultants are to be engaged on the terms and conditions that Housing Australia determines.

## **Division 3—Committees**

### **47 Committees**

- (1) The Board may establish committees to advise or assist in the performance of the Board's or Housing Australia'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—Housing Australia Special Account**

#### **47A Housing Australia Special Account**

- (1) The special account established by this section as previously in force is continued in existence under the name Housing Australia Special Account (the *Account*).

Note: The special account was originally named the National Housing Finance and Investment Corporation Special Account.

- (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 Housing Australia, 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 Housing Australia (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.

## Section 47C

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- 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 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 Purposes of the Account**

- (1) Each of the following is a purpose of the Account:
- (a) to make loans to Housing Australia for Housing Australia to later apply in accordance with subsection (2);
  - (b) to make payments to Housing Australia for Housing Australia to later apply in accordance with subsection (2A).

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

- (2) Housing Australia may apply such loans:
- (a) for making loans in the performance of its financing function; 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 Housing Australia to apply the loans from the Commonwealth mentioned in subsection (1). This means the Investment Mandate may include directions about how Housing Australia applies those loans.

- (2A) Housing Australia may apply such paragraph (1)(b) payments in making grants or loans, in the performance of its financing function, in relation to any of the following:
- (a) acute housing needs;
  - (b) social housing;
  - (c) affordable housing.

Note: This subsection confers a function on Housing Australia to apply the payments from the Commonwealth mentioned in paragraph (1)(b).

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This means the Investment Mandate may include directions about how Housing Australia applies those payments.

- (2B) A payment under paragraph (1)(b) must not be made before 1 July 2023.
- (3) Subsections (2) and (2A) do 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 Housing Australia.

**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).
- (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—Housing Australia'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 Housing Australia at any time are sufficient:
  - (a) to meet the likely liabilities (other than guarantee liabilities) of Housing Australia; 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 Housing Australia.
- (2) If, at any time, the Board determines:
  - (a) that the capital and reserves of Housing Australia 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 Housing Australia 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.
- (3) The Investment Mandate may include a direction that the Board must, for the purposes of subsections (1) and (2), disregard liabilities or loans of a specified type.

### **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 Housing Australia to meet its guarantee liabilities.

- (2) The *guarantee liabilities* of Housing Australia are the liabilities that Housing Australia incurs under guarantees Housing Australia has issued in the performance of its guarantee function.

#### **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 Housing Australia 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 Housing Australia:
- (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 Housing Australia 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) Housing Australia'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, Housing Australia 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

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- (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 Housing Australia on such terms and conditions as the Finance Minister determines.

*Other borrowings etc.*

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

*Security*

- (4) Housing Australia may give security over all or any of its assets:
  - (a) for the repayment by Housing Australia 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 Housing Australia of money (including interest) that Housing Australia is liable to pay in respect of money raised under paragraph (2)(b).

*Limitation on borrowing etc.*

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

**51 Guarantee by Commonwealth**

- (1) Subject to subsection (2), 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.
- (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 2028) 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*, Housing Australia is taken to be a public authority constituted under an Australian law.

Note: This means Housing Australia is exempt from income tax.

- (2) Housing Australia 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 Housing Australia**

- (1) Housing Australia 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 Housing Australia.

### **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 Housing Australia 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.



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- (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 Housing Australia;
- (b) in relation to each kind of financial support provided (including financial support provided by way of guarantees) by Housing Australia during the period, a summary of:
  - (i) the amount of that kind of financial support; and
  - (ii) the risks and returns to the Commonwealth.

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 Housing Australia's activities assisting additional first home buyers to enter the housing market to be commenced within 3 months after the end of:

## Section 57B

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- (a) the period beginning on the date when the first guarantee is issued by the NHFIC 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.

### 57B Review of financing function

- (1) The Minister must cause a review of the NHIF (within the meaning of the *National Housing Finance and Investment Corporation Investment Mandate Direction 2018*) to be commenced within 3 months after the end of:
  - (a) the period beginning on the day Schedule 2 to the *Treasury Laws Amendment (Housing Measures No. 1) Act 2023* commences and ending 12 months after that day; 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

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## 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 how an amendment is to be made. If, despite the misdescription, the amendment

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Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### 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)	—
Treasury Laws Amendment (2023 Measures No. 2) Act 2023	28, 2023	23 June 2023	Sch 5: 1 July 2023 (s 2(1) item 6)	—
Treasury Laws Amendment (Housing Measures No. 1) Act 2023	81, 2023	28 Sept 2023	Sch 1 (items 1–80, 83), Sch 2 (items 1–16) and Sch 3: 12 Oct 2023 (s 2(1) items 2, 3, 5) Sch 2 (item 17) and Sch 4 (items 40–43): 1 Nov 2023 (s 2(1) items 4, 6)	Sch 1 (item 83)

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

Provision affected	How affected
Title .....	am No 81, 2023
<b>Part 1</b>	
s 1 .....	am No 81, 2023
s 3 .....	am No 83, 2019; No 61, 2021; No 28, 2023; No 81, 2023
s 4 .....	am No 83, 2019; No 81, 2023
s 5 .....	am No 83, 2019; No 81, 2023
<b>Part 2</b>	
Part 2 heading .....	am No 81, 2023
<b>Division 1</b>	
s 7 .....	am No 81, 2023
s 8 .....	am No 83, 2019; No 81, 2023
s 9 .....	am No 81, 2023
s 10 .....	am No 83, 2019; No 81, 2023
	rs No 81, 2023
s 11 .....	am No 81, 2023
<b>Division 2</b>	
s 12 .....	am No 81, 2023
s 13 .....	am No 83, 2019; No 81, 2023
s 14 .....	am No 83, 2019; No 81, 2023
<b>Part 3</b>	
<b>Division 1</b>	
s 15 .....	rs No 81, 2023
s 16 .....	am No 81, 2023
<b>Division 2</b>	
s 17 .....	am No 81, 2023
s 18 .....	am No 139, 2018; No 81, 2023
s 27 .....	am No 81, 2023



## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 4</b>	
<b>Division 1</b>	
s 35 .....	am No 81, 2023
s 36 .....	am No 81, 2023
<b>Division 2</b>	
s 45 .....	am No 81, 2023
s 46 .....	am No 81, 2023
<b>Division 3</b>	
s 47 .....	am No 81, 2023
<b>Part 5</b>	
<b>Division 1</b>	
Division 1 heading.....	rs No 81, 2023
Division 1 .....	ad No 139, 2018
s 47A .....	ad No 139, 2018
	am No 81, 2023
s 47B.....	ad No 139, 2018
	am No 81, 2023
s 47C.....	ad No 139, 2018
	am No 81, 2023
s 47D .....	ad No 139, 2018
<b>Division 2</b>	
Division 2 heading.....	ad No 139, 2018
	rs No 81, 2023
s 48 .....	am No 83, 2019; No 81, 2023
s 48A .....	ad No 83, 2019
	am No 81, 2023
s 49 .....	am No 81, 2023
s 50 .....	am No 139, 2018; No 81, 2023
s 51 .....	am No 81, 2023
s 52 .....	am No 81, 2023

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Part 6</b>	
s 53 .....	am No 81, 2023
s 55 .....	am No 81, 2023
s 56 .....	am No 83, 2019; No 81, 2023
s 57 .....	am No 139, 2018
s 57A .....	ad No 83, 2019
	am No 81, 2023
s 57B.....	ad No 81, 2023