# EXPLANATORY STATEMENT

## Issued by authority of the Minister for Housing, Minister for Homelessness and Minister for Small Business

*National Housing Finance and Investment Corporation Act 2018*

*National Housing Finance and Investment Corporation Investment Mandate Amendment (Removal of Limit on Major Bank Guarantees) Direction 2023*

Subsection 12(1) of the *National Housing Finance and Investment Corporation Act 2018* (NHFIC Act) provides that the Minister may, by legislative instrument, give the Board of the National Housing Finance and Investment Corporation (NHFIC) directions about the performance of the NHFIC’s functions. The Board is subject to the requirements of the NHFIC Act and the *National Housing Finance and Investment Corporation Investment Mandate Direction 2018* (Investment Mandate).

The NHFIC Act established the NHFIC to improve housing outcomes for Australians. The NHFIC (to be renamed Housing Australia in the *Treasury Laws Amendment (Housing Measures No. 1) Act 2023*) is a corporate Commonwealth entity in the Treasury portfolio and is governed by an independent board. The NHFIC commenced operation on 30 June 2018 and is dedicated to improving housing outcomes. The NHFIC performs this role through its financing function, guarantee function and capacity building function.

The purpose of the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Removal of Limit on Major Bank Guarantees) Direction 2023* (Instrument) is to remove the limit imposed on guarantees that can be issued to major banks under the First Home Guarantee scheme and create a new principle requiring the NHFIC to ensure a proportion of guarantees are issued to smaller lenders in the 2022-23 financial year and onwards. This amendment ensures that eligible home buyers are not impeded from accessing the First Home Guarantee scheme. This is achieved by ensuring that the number of guarantees issued under the scheme are maximised, whilst the participation of smaller lenders is encouraged.

No public consultation was undertaken on the Instrument as the change is targeted and machinery in nature.

Details of the Investment Mandate are set out in Attachment A.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Instrument is exempt from the sunsetting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* as a result of regulations made for the purposes of paragraph 54(2)(b) of the Act. Item 3 of the table under section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides for class exemptions from sunsetting if the instrument is a direction by the Minister to any person or body. The Instrument is a direction from the Minister to the NHFIC, and therefore is exempt from sunsetting.

The Instrument is subject to the automatic repeal process under section 48A of the *Legislation Act 2003*. This sectionprovides that where a legislative instrument only repeals or amends another instrument, without making any application, saving or transitional provisions relating to the amendment or repeal, that instrument is automatically repealed. By virtue of subparagraph 48A(2)(a)(i), the Instrument automatically repeals on the day after the commencement of the Instrument which results in the amendment of the Investment Mandate. Once repealed, the sunsetting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* is no longer relevant to the Instrument.

The Instrument is also exempt from disallowance under section 42 of the *Legislation Act 2003*as a result of regulations made for the purposes of paragraph 44(2)(b) of that Act. Item 2 of section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015,* provides for class exemptions from disallowance if the instrument is a direction by the Minister to any person or body. The Instrument is a direction from the Minister to the NHFIC, and therefore is exempt from disallowance.

This Instrument commences the day after the Instrument is registered.

The Office of Impact Analysis (OIA) has been consulted (OBPR23-04395) and a Policy Impact Analysis (PIA) is not required for the amendments as there are nil regulatory impacts.

**ATTACHMENT A**

**Details of the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Removal of Limit on Major Bank Guarantees) Direction 2023***

Section 1 – Name of the Instrument

This section provides that the name of the Instrument is the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Removal of Limit on Major Bank Guarantees) Direction 2023* (Instrument).

Section 2 – Commencement

This Instrument commences the day after registration.

Section 3 – Authority

Section 3 provides that the Instrument is made under subsection 12(1) of the *National Housing Finance and Investment Corporation Act 2018* (NHFIC Act).

Section 4 – Schedules

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

Schedule 1 – Amendments

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

**Removal of Limit on Major Bank Guarantees**

Item 1 amends subsection 29I(7) of the Investment Mandate, replacing the reference to ‘a financial year’ with ‘the 2021-22 financial year or an earlier financial year’. The amendment limits the number of guarantees that can be issued to major banks in the 2021-22 financial year or an earlier financial year; and ensures there is no limit on the number of guarantees that can be issued to major banks in the 2022-23 financial year or a later financial year.

The limit was first introduced to support competition in the lending market by reserving a proportion of guarantees for issue by smaller lenders under the First Home Guarantee scheme (comprised of the First Home Guarantee, Family Home Guarantee, Regional First Home Buyer Guarantee and New Home Guarantee Streams). Since that time, the First Home Guarantee scheme has expanded significantly and the strong take-up of guarantees from major banks suggests that the limit could impede eligible first home buyers accessing all of the places available under the First Home Guarantee scheme.

The legislative limit has been removed from 1 July 2022 to provide the best chance for eligible first home buyers to access the First Home Guarantee scheme. By removing this limit, any restrictions on the capacity of non-major lenders to offer guarantees will not have the effect of limiting access to the scheme.

Item 2 adds paragraph 29K(1)(aa) which requires the NHFIC to ensure that a proportion of guarantees issued under the First Home Guarantee from the 2022-23 financial year and onwards, are issued to eligible lenders that are not major banks. This new principle will maximise the participation of non-major lenders by ensuring that the NHFIC uses its best endeavours to ensure all lenders have equitable access to the First Home Guarantee scheme to support competition in the lending market while simultaneously ensuring there remains the opportunity for all places to be taken up by the end of each financial year. The additional consideration will balance the overarching aim of item 1 to maximise the issuance of guarantees under the First Home Guarantee scheme, whilst still ensuring as many guarantees as possible are issued to non-major lenders.

The NHFIC may engage with lenders in relation to their access to First Home Guarantee scheme places during the course of a financial year to ensure these objectives are achieved. Additionally, consultation with participating lender industry groups will occur prior to making any substantial changes to the Scheme Rules which contain the operational details relating to the issuing of guarantees and their distribution between major and non-major lenders.