

EXPLANATORY STATEMENT

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

Housing Australia Act 2018

Housing Australia Investment Mandate Amendment (2025 Measures No. 2) Direction 2025

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

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

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

The HGS supports first home buyers, single parents or legal guardians with dependants, and other eligible home buyers to buy a home sooner by lowering the minimum deposit required to avoid lenders mortgage insurance for home loans from lenders participating in the scheme due to a government guarantee. The HGS comprises the First Home Guarantee, the Regional First Home Buyer Guarantee, the Family Home Guarantee and the New Home Guarantee. The New Home Guarantee ceased accepting new applications on 1 July 2022, and no new guarantees can be issued under this stream from and including the 2022-23 financial year.

The purpose of the *Housing Australia Investment Mandate Amendment (2025 Measures No. 2) Direction 2025* (Instrument) is to amend the Investment Mandate to better align home loan requirements for home buyers who are building a new dwelling on land on which a dwelling is not affixed with market practice. The amendments provide that a home loan issued to a home buyer who is building the new dwelling can exceed 30 years and encompass the period required to complete construction of the new dwelling. The amendments also include guardrails to ensure that these loans are only issued where the builder holds all the required licences and registrations to perform the work, insurances are in place in relation to the construction of the property, the building contract is entered into at arm's-length, and the building contract requires the builder to fully complete the construction of the dwelling to the extent that it is certified as fit for occupation. Further,

the Instrument requires that construction of dwellings supported by these loans be completed in a timely manner, with Housing Australia able to adjust requirements as appropriate or necessary.

No public consultation was undertaken on the Instrument as the changes are targeted and machinery in nature. Housing Australia was consulted in the development of the Instrument. Further, the amendments are modelled on provisions which have been the subject of consultation and which reflect existing commercial practice.

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

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

The Instrument commenced on the day after registration.

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

The Office of Impact Analysis has been (OIA) has been consulted (OIA ref: OIA24-08163) and agreed that an Impact Analysis is not required.

The measure is estimated to have a low impact on compliance costs.

Details of the *Housing Australia Investment Mandate Amendment (2025 Measures No. 2) Direction 2025*

Section 1 – Name

This section provides that the name of the instrument is the *Housing Australia Investment Mandate Amendment (2025 Measures No. 2) Direction 2025* (the Instrument).

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Schedule

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

Schedule 1 – Amendments

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

Enhancing requirements relating to construction of new dwellings for eligible loans under the Home Guarantee Scheme (HGS)

The amendments to the Investment Mandate support the operation of the HGS by adjusting the requirements to issue guarantees for the purchase of an interest in land on which a dwelling is not affixed and the construction of a dwelling on that land. Specifically, the amendments:

- better facilitate loan agreements to allow interest-only payments in the construction period by extending the maximum loan term to accommodate this period;
- allow the loan agreement to exceed 30 years, but only if the period of the loan agreement after the completion of the construction of the new dwelling is not more than 30 years;
- set new dwelling contract requirements that must be satisfied to support the integrity of the scheme; and
- establish timeframes for construction of a new dwelling which loan agreements must satisfy, to support the integrity of the scheme. Housing Australia may adjust

timeframes in individual cases where satisfied it is necessary or appropriate, and the loan agreement allows.

Definitions

Item 1 of the Instrument inserts two new definitions into the definitions section. They are:

- new dwelling contract requirements – the amendment inserts a signpost to the definition of new dwelling contract requirements under section 29CA; and
- timeframe requirements – the amendment inserts a signpost to timeframe requirements under section 29CB.

Eligible loan

Subsection 29C(2) of the Investment Mandate provides that an eligible loan must have particular features at the time it is entered into.

Item 2 of the Instrument repeals and substitutes paragraph 29C(2)(f) to clarify the scope of a loan where it relates to the purchase of an interest in land on which a dwelling is not affixed and the construction of a dwelling on that land. The amendment makes clear that the loan relates to the construction of the dwelling in addition to the purchase of the land interest. In circumstances where the lender requires separate loans for the purchase of land and that construction of a dwelling on that land, Housing Australia issues only one guarantee in respect of a combined land and construction arrangement with the eligible lender.

Item 4 of the Instrument inserts a new paragraph 29C(2)(m) to prescribe requirements that must be met where the loan relates to the purchase of a land interest on which a dwelling is not affixed and the loan also relates to the construction of a dwelling on that land – for example, a loan for a house and land package, or a loan for separate purchase of vacant land and construction of a dwelling on that land. The loan agreement for the construction of the dwelling must meet:

- new dwelling contract requirements in section 29CA; and
- timeframe requirements in section 29CB.

Item 5 of the Instrument repeals and substitutes subsection 29C(3) so that the following requirements concerning eligible loans in paragraphs 29C(2)(j) and (k) are subject to subsection 29C(3) concerning purchase of land on which a dwelling is not affixed and construction of a dwelling on that land:

- the loan agreement requires payments of principal for the full period of the loan; and
- the loan agreement has a term of up to 30 years.

The new paragraph 29C(3)(a) provides that where the loan relates to the purchase on an interest in land on which a dwelling is not affixed and a dwelling is to be built, the loan may be an eligible loan where it allows interest-only payments to be made while the dwelling is being built. At the conclusion of the construction period, the loan agreement

must require repayments of the principal of the loan for the remaining period of the loan agreement.

The new paragraph 29C(3)(b) provides that where the loan relates to the purchase on an interest in land on which a dwelling is not affixed and a dwelling is to be built, the term of the loan agreement can exceed 30 years, but only if the period of the loan agreement after the dwelling's construction is completed does not exceed 30 years. This extended term applies to a new dwelling being constructed under a house and land package, or a separate purchase of land with no dwelling affixed and construction of a dwelling on that land.

Item 3 of the Instrument makes a minor referencing amendment in paragraph 29C(2)(k) to reflect the amendments to subsection 29C(3).

New dwelling contract requirements

Item 6 of the Instrument inserts section 29CA. The new section outlines additional requirements in relation to a loan agreement for the construction of a new dwelling. This is to support the integrity of the HGS. All borrowers under the loan agreement must have entered into a building contract that meets these requirements:

- the building contract is with a builder that holds all necessary licences and registrations to perform the work required under the contract in the relevant jurisdiction;
- insurance policies are in place for the construction of the dwelling (as required by law);
- the building contract must be entered at arm's-length; and
- the building contract must require the builder to fully complete the dwelling, and the dwelling must be certified as fit for occupation.

To avoid doubt, it is intended that 'arm's-length' takes its ordinary meaning. This requires that the parties involved in the building contract are unaffiliated and acting in their own interests. It specifically excludes owner-builder constructions.

Timeframe requirements

Item 6 of the Instrument also inserts section 29CB. The new section establishes the timeframes in which the construction of a new dwelling must occur. These requirements seek to ensure that guarantees under the HGS are not issued to an applicant or applicants where construction of the new dwelling will not be completed in a timely manner, supporting integrity of the scheme.

The construction of the dwelling must commence within 12 months of the day on which the applicant becomes the registered owner of the relevant property. This is referred to as the 'transfer date'. Further, the construction must be completed within 36 months of the transfer date.

The timeframe may be adjusted if Housing Australia is satisfied that it is necessary or appropriate to do so given the circumstances of the particular case. In this situation, subsection 29CB(2) provides the timeframe requirements are specified by Housing

Australia by written notice given to the eligible lender. While not exhaustive of the situations in which an extension of time could be granted, a circumstance that could give rise to an adjusted timeframe is unavoidable construction delays outside of the control of the purchaser, where Housing Australia is satisfied, based on information available from the lender and or applicant (for example), that adjustment of the timeframe is appropriate.