

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

National Consumer Credit Protection Act 2009

Corporations Act 2001

Treasury Laws Amendment (Help to Buy Exemptions) Regulations 2025

Section 1364 of the *Corporations Act 2001* (Corporations Act) and section 329 of the *National Consumer Credit Protection Act 2009* (Credit Act) provide that the Governor-General may make regulations prescribing matters required or permitted by the Credit Act and the Corporations Act (as applicable) to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Credit Act and Corporations Act (as applicable).

The purpose of the *Treasury Laws Amendment (Help to Buy Exemptions) Regulations 2025* (Instrument) is to support the efficient and effective operation of the Help to Buy program (Help to Buy) by ensuring that, where Housing Australia and participating lenders (as defined in section 5 of the *Help to Buy Program Directions 2025* (Program Directions)) have obligations in relation to ‘Help to Buy arrangements’ (HTB arrangement) (as defined in section 5 of the *Help to Buy Act 2024* (HTB Act) by reference to section 6 of the HTB Act), these are regulated by the Program Directions.

The Instrument does this by amending the *National Consumer Credit Protection Regulations 2010* (Credit Regulations) to prescribe that the National Credit Code (NCC) does not apply to the provision of credit by Housing Australia under a HTB arrangement. Prescribing that the NCC does not apply has the effect that the Credit Act also does not apply to the provision of credit by Housing Australia under a HTB arrangement. The Instrument also amends the *Corporations Regulations 2001* (Corporations Regulations) to declare that a HTB arrangement is not a ‘derivative’ for the purposes of the Corporations Act.

Specifically, subsection 6(13) of the NCC, which is Schedule 1 to the Credit Act, provides that regulations may prescribe that a specified provision of the NCC does not apply to a specified class of credit contracts, consumer leases, mortgages, or guarantees. Section 761D of the Corporations Act sets out what a derivative is. However, paragraph 761D(3)(d) of the Corporations Act provides a power to declare a thing to not be a derivative.

The effect of the Instrument is that HTB arrangements are regulated via the Program Directions, which are directions issued by the Minister for Housing to Housing Australia regarding the implementation and administration of Help to Buy, rather than by the NCC, Credit Act and Corporations Act.

The *Housing Australia Act 2018* established Housing Australia to improve housing outcomes for Australians. Housing Australia is a corporate Commonwealth entity in the Treasury portfolio and is governed by an independent board. Housing Australia

(previously, the National Housing Finance and Investment Corporation) commenced operation on 30 June 2018.

The HTB Act established Help to Buy as a Commonwealth shared equity scheme administered by Housing Australia. Help to Buy assists low and middle income earners to purchase new or existing homes by accessing an equity contribution from the Commonwealth. The HTB Act enables Housing Australia, on behalf of the Commonwealth, to, among other things, administer Help to Buy in States that have referred power for the program, as well as in the Territories.

Neither the Corporations Act nor the Credit Act specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

Housing Australia and the Australian Securities and Investments Commission were consulted as part of making the Instrument. Public consultation was not undertaken as the amendments are machinery in nature. Public consultation was undertaken in relation to the Program Directions.

The Instrument is subject to disallowance.

The Instrument amends the *Corporations Regulations 2001* and the *National Consumer Credit Protection Regulations 2010*. These regulations are both exempt from sunseting due to the operation of item 18 of section 12 and item 42AA of section 12 respectively of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Corporations Regulations and the Credit Regulations are exempt from sunseting as they support the operation of intergovernmental agreements between the Commonwealth, States and Territories and therefore require long term certainty.

The Instrument has been made to support the implementation of Help to Buy, which involves a long-term commitment from Housing Australia, participating lenders and participants (as defined in section 5 of the Program Directions) in the program. Accordingly, it is appropriate that the Instrument is not subject to sunseting to support these parties having regulatory certainty in relation to these commitments.

The Instrument incorporates by reference the HTB Act as in force from time-to-time.

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

The Instrument commenced on the day after registration.

Details of the Instrument are set out in Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

Details of the Treasury Laws Amendment (Help to Buy Exemptions) Regulations 2025

Section 1 – Name

This section provides that the name of the instrument is the *Treasury Laws Amendment (Help to Buy Exemptions) Regulations 2025* (Instrument).

Section 2 – Commencement

The Instrument commenced the day after the Instrument was registered on the Federal Register of Legislation.

Section 3 – Authority

The Instrument is made under the *National Consumer Credit Protection Act 2009* (Credit Act) and the *Corporations Act 2001* (Corporations Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedule to the Instrument is 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

Corporations Regulations 2001

Item 1 – Subregulation 7.1.04(8A)

Section 761D of the Corporations Act sets out what a derivative is. However, paragraph 761D(3)(d) of the Corporations Act provides a power to declare certain things by regulation to not be a derivative that would otherwise meet the definition.

Item 1 amends regulation 7.1.04 of the *Corporations Regulations 2001* (Corporations Regulations) by inserting subregulation 7.1.04(8A), which provides that a ‘Help to Buy arrangement’ (which is defined in section 5 of the *Help to Buy Act 2024* (HTB Act) by reference to section 6 of the HTB Act) is declared to not be a derivative for the purposes of paragraph 761D(3)(d) of the Corporations Act.

The intent for this amendment is to clarify that a Help to Buy arrangement is not a derivative. This addresses any ambiguity that a Help to Buy arrangement could be considered to be a derivative for the purposes of the Corporations Act which, in-turn, would have regulatory implications for Housing Australia and participating lenders (which are defined in section 5 of the *Help to Buy Program Directions 2025* (Program Directions)) in their respective roles in the Help to Buy program. By removing this ambiguity, the Program Directions will provide for the regulatory requirements for Help to Buy arrangements.

To support the insertion of subregulation 7.1.04(8A), item 2 amends subregulation 7.1.04(9) of the Corporations Regulations by omitting the reference to subregulation 7.1.04(8) and substituting subregulation 7.1.04(8A). This updates subregulation 7.1.04(9) to reflect the amendment to the Corporations Regulations in item 1.

National Consumer Credit Protection Regulations 2010

Item 3 – Regulation 65D

Part 7-1 of the *National Consumer Credit Protection Regulations 2010* (Credit Regulations) provides for exemptions, declarations and other matters in relation to the National Credit Code (NCC), which is set out in Schedule 1 to the *National Consumer Credit Protection Act 2009* (Credit Act).

Item 3 inserts a new regulation 65D into the Credit Regulations. The effect of regulation 65D is that the NCC does not apply to the provision of credit by Housing Australia under a Help to Buy arrangement (within the meaning of the HTB Act). By prescribing that the NCC does not apply, this means that the Credit Act also does not apply to the provision of credit by Housing Australia under a Help to Buy arrangement.

The amendment is intended to exempt Housing Australia from compliance with the NCC and Credit Act insofar as it relates to the provision of credit under a Help to Buy arrangement so that Housing Australia's administration of Help to Buy is guided by its obligation to comply with the Program Directions. To require compliance with the NCC and Credit Act would duplicate regulatory burden and impede efficient administration of the Help to Buy program. Applicants and participants (which are defined in section 5 of the Program Directions by reference to section 10 of the Program Directions) will otherwise be protected via the obligations placed on Housing Australia under the Program Directions and the obligations placed on a participating lender by the NCC and Credit Act insofar as they apply to their responsibilities when issuing consumer credit in the form of a home loan.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Treasury Laws Amendment (Help to Buy Exemptions) Regulations 2025

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Treasury Laws Amendment (Help to Buy Exemptions) Regulations 2025* (instrument) is to prescribe a ‘Help to Buy arrangement’ (HTB arrangement), as defined in section 5 of the *Help to Buy Act 2024* (HTB Act) by reference to section 6 of the HTB Act, as being a product that is exempt from compliance with the National Credit Code (NCC), which is set out in Schedule 1 to the *National Consumer Credit Protection Act 2009* (Credit Act), which consequently means a HTB arrangement is also exempt from compliance with the Credit Act. The Instrument also declares that a HTB arrangement is not a derivative of the purposes of the *Corporations Act 2001*.

The HTB Act established the Help to Buy program (Help to Buy) as a Commonwealth shared equity scheme administered by Housing Australia. Help to Buy assists low and middle income earners to purchase new or existing homes by accessing an equity contribution from the Commonwealth. The HTB Act enables Housing Australia, on behalf of the Commonwealth, to, among other things, administer Help to Buy in States that have referred power for the program, as well as in the Territories.

The Instrument will support Housing Australia’s efficient and effective operation of the Help to Buy by reducing the regulatory burden on Housing Australia and participating lenders in relation to Help to Buy. Participants, which are defined in section 5 of the *Help to Buy Program Directions 2025* (Program Directions) by reference to section 10 of the Program Directions, and applicants will otherwise be protected via the obligations placed on Housing Australia under the Program Directions and the obligations placed on participating lenders, which are defined in section 5 of the Program Directions, by the NCC and Credit Act insofar as they apply to their responsibilities when issuing consumer credit in the form of a home loan.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.